

**STATE OF MINNESOTA  
COUNTY OF HENNEPIN**

**DISTRICT COURT  
FOURTH JUDICIAL DISTRICT  
PROBATE/MENTAL HEALTH DIVISION**

State of Minnesota,  
Plaintiff,

Court File No. 27-CR-23-3198

v.

Aaron Dashaun Cherry,  
Defendant.

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**WRITTEN ORDER DENYING STATE'S MOTION**

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**APPEARANCES**

This matter came duly before the Honorable Michael K. Browne, Judge of District Court, on Wednesday, January 31, 2024, for a hybrid hearing pursuant to the State's Motion for review filed on December 15, 2023. The Court is chambered at the Hennepin County Government Center, 300 South Sixth Street, Minneapolis Minnesota.

Joshua Luger, Assistant Hennepin County Attorney, represented the State, and appeared remotely.<sup>1</sup> Mr. Cherry, the Defendant, appeared in person and in custody. He was represented by Chelsea Knutson and Susan Herlofsky, Assistant Hennepin County Public Defenders, who also appeared in person.

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<sup>1</sup> Attorney Luger appeared remotely via Zoom, with no objection. All other appearances were made in person at the Hennepin County Government Center.

### **BACKGROUND**

At the hearing, the Court considered the arguments of the parties regarding the review of Referee Skibbie's Order (counter-signed by Judge Dayton Klein) filed on December 6, 2023, which found the Defendant was incompetent to proceed. The Court ruled from the bench on January 31, 2024, denying the State's Motion in its entirety. This order memorializes the ruling from the bench.

### **CONCLUSIONS OF LAW**

On January 31, 2024, this Court found that it had authority to review Referee Skibbie's December 6<sup>th</sup> Order pursuant to MINN. STAT. § 484.70, Subd. 7(d), which states: "[r]eview of any recommended order or finding of a referee by a judge may be by notice served and filed within ten days of effective notice of the recommended order or finding. The notice of review shall specify the grounds for review and the specific provisions of the recommended findings or orders disputed, and the court, upon receipt of a notice of review, shall set a time and place for a review hearing." Here, the State filed their Motion on December 15, 2023, nine days after Referee Skibbie's December 6<sup>th</sup> Order was issued. Their Motion also specified the issues for review including that (1) mutism is not a mental health diagnosis that provides for a determination of incompetence and (2) the finding of malingering has not been refuted. *See* MNCIS Index No. 22.

Regarding the State's first argument, MINN. R. CRIM. P. 20.01, Subd. 2 states that: "[a] defendant is incompetent and must not plead, be tried, or be sentenced if the defendant due to mental illness or cognitive impairment lacks ability to: (a) rationally consult with counsel; or (b) understand the proceedings or participate in the defense." All parties agreed that Referee Skibbie analyzed this matter under the lens of cognitive impairment (and not mental illness). Therefore,

the State's first argument that mutism is not a mental health diagnosis that provides for a determination of incompetence was denied.

Regarding the State's second argument, all parties agreed that malingering was discussed at the hearing before Referee Skibbie, including in both Dr. Herbert's report and in her testimony. Referee Skibbie was not persuaded by Dr. Herbert's testimony. Correspondingly, Referee Skibbie's recommendations in the December 6<sup>th</sup> Order discussed malingering, but did not rely upon Dr. Herbert's testimony in reaching the conclusion that malingering did not have an impact. The Court notes that the State had the opportunity to call Dr. Coffin for testimony regarding the issue of malingering but chose not to do so. Therefore, the State's second argument that the finding of malingering has not been refuted was denied.

In summary, this Court found that there was no information before the Court which would cause this Court to believe that Referee Skibbie's December 6<sup>th</sup> Order should be changed or vacated. This Court further found that Referee Skibbie weighed the evidence presented, considered the persuasiveness of such evidence, and determined credibility. Therefore, the State's Motion is denied.

#### **ORDER**

1. The State's Motion filed on December 15, 2023, is **DENIED**.
2. The Findings of Fact and Conclusions of Law Regarding Defendant's Competency to Proceed, filed on December 6, 2023, is **CONFIRMED**.

IT IS SO ORDERED.

**BY THE COURT**