

Case Details (Register of Actions)

Search executed on 04/29/2024 06:06 PM

Upcoming Hearing:
Evidentiary Hearing on 06/05/2024 at 3:00 PM

Case Information

Case Number: 27-CR-23-3198
Case Title: State of Minnesota vs AARON DASHAUN CHERRY
Case Type: Crim/Traf Mandatory
Date Filed: 02/10/2023
Case Location: Hennepin County, Hennepin Criminal Downtown
Judicial Officer: Koch, William H.
Case Status: Dormant

Related Cases

27-CR-18-5412
27-CR-21-19577
62-CR-18-5009
82-CR-17-4908

Party Information

Jurisdiction

State of Minnesota

Attorneys Active

- LUGER, JOSHUA IRVING - Lead Attorney
- ARNESON, THOMAS STUART
- COLE, JUDITH L
- GUNDERSON, GRANT WILLIAM

Defendant

CHERRY, AARON DASHAUN

Active Warrant

DOB: 08/19/1994
Minneapolis, MN 55404
Aliases:
Also Known As CHERRY, AARON D
Also Known As Cherry, Aaron Deshaun

Attorneys Active

- KNUTSON, CHELSEA ANN - Lead Attorney
- Herlofsky, Susan
- NOLEN, JULIUS ANTHONY
- PASMANTER, ELI DANIEL

Attorneys Inactive

- BRODHAG, AMANDA JEAN
- HORVATH, JAMES CHRISTOPHER

Charges

- 1

Violate No Contact Order - Within 10 years of the first of two or more convictions

Additional Statute: Violate No Contact Order-within 10 years-first of two or more conviction or possess dangerous weapon (629.75.2(d))

Level of Charge: Felony

Offense Date: 02/08/2023

Statute: 629.75.2(d)(1)

Community Of Offense: Minneapolis
Law Enforcement Agency: Minneapolis Police Department
Prosecuting Agency: Hennepin County Attorney

2

Domestic Assault-Felony **Statute:** 609.2242.4
Additional Statutes: Minimum Fines-Assault, Crim Sex (609.101.2); Domestic Assault-Felony (609.2242.4)
Level of Charge: Felony
Offense Date: 02/08/2023
Community Of Offense: Minneapolis
Law Enforcement Agency: Minneapolis Police Department
Prosecuting Agency: Hennepin County Attorney

Interim Conditions

03/12/2024	Interim conditions for CHERRY, AARON DASHAUN Judicial Officer: Lamas, Carolina A. Post Bail or Bond with No Conditions \$40,000.00
03/11/2024	Interim conditions for CHERRY, AARON DASHAUN Judicial Officer: Peralta, Nelson Expiration Date: 03/12/2024 Post Bail or Bond with No Conditions \$40,000.00
02/16/2024	Interim conditions for CHERRY, AARON DASHAUN Judicial Officer: Dayton Klein, Julia Expiration Date: 03/11/2024 - No contact with victim(s) - Make all future court appearances - Remain law-abiding - Post Bail or Bond with No Conditions \$40,000.00 - Stay a reasonable distance away from victim's residence - Conditions, other - Police escort to enter premises - Release with Conditions \$0.00 - No use or possession of firearms or dangerous weapons
02/10/2023	Interim conditions for CHERRY, AARON DASHAUN Judicial Officer: Scoggin, Paul Expiration Date: 02/10/2023 - Post Bail or Bond with Conditions \$40,000.00 - No contact with victim(s) - Do not enter victim's residence - Do Not Drive Without a Valid License - No alcohol/controlled substance use - No use or possession of firearms or dangerous weapons - Make all future court appearances - Remain law-abiding

Case Events

04/17/2024	Notice of Hearing Index #39	 1 page
03/12/2024	Identity Verified	
03/12/2024	Hearing Held In-Person	
03/11/2024	Order Revoking Interim Conditions of Release Index #38	 1 page
03/11/2024	Proposed Order or Document Index #37	 1 page
03/11/2024	Conditional Release Violation Report Index #36	
02/16/2024	Order for Conditional Release Judicial Officer: Dayton Klein, Julia Index #35	 1 page
02/15/2024	Notice by Attorney or Party Index #34	 1 page
02/13/2024	Bail to stand as previously ordered	
02/13/2024	Hearing Held Remote	
02/13/2024	Motion for Review Index #33	 1 page
02/09/2024	Order-Other Judicial Officer: Borer, George Index #32	 6 pages
02/06/2024	Bail to stand as previously ordered	
02/06/2024	Taken Under Advisement Judicial Officer: Borer, George Index #31	

02/06/2024	Motion Judicial Officer: Borer, George Party: Attorney KNUTSON, CHELSEA ANN Index #30	
02/06/2024	Hearing Held Remote	
02/05/2024	Notice of Motion and Motion Index #29	 6 pages
01/31/2024	Order Denying Motion Index #28	 3 pages
01/31/2024	Order Denying Motion Judicial Officer: Browne, Michael K Index #27	
01/31/2024	Bail to stand as previously ordered	
01/31/2024	Taken Under Advisement Judicial Officer: Browne, Michael K Index #26	
01/31/2024	Hearing Held Hybrid	
01/30/2024	Memorandum Index #25	 8 pages
01/26/2024	Memorandum Index #24	 4 pages
12/19/2023	Bail to stand as previously ordered	
12/19/2023	Motion Judicial Officer: Skibbie, Lori Party: Attorney KNUTSON, CHELSEA ANN Index #23	
12/19/2023	Hearing Held Remote	
12/15/2023	Notice of Motion and Motion Index #22	 1 page
12/11/2023	Finding of Incompetency and Order Judicial Officer: Skibbie, Lori Index #21	 5 pages

12/06/2023	Finding of Incompetency and Order Judicial Officer: Skibbie, Lori Index #20	 6 pages
12/06/2023	Found Incompetent Judicial Officer: Skibbie, Lori	
11/17/2023	Bail to stand as previously ordered	
11/17/2023	Taken Under Advisement Judicial Officer: Skibbie, Lori Index #19	
11/17/2023	Hearing Held In-Person	
09/05/2023	Bail to stand as previously ordered	
09/05/2023	Hearing Held In-Person	
08/31/2023	Rule 20 Evaluation Report Index #18	
08/31/2023	Rule 20 Report Distributed	
07/31/2023	Order-Evaluation for Competency to Proceed (Rule 20.01) Judicial Officer: Koch, William H. Index #17	 3 pages
07/25/2023	Bail to stand as previously ordered	
07/25/2023	Hearing Held In-Person	
04/04/2023	Bail to stand as previously ordered	
04/04/2023	Request for Continuance Index #16	
04/04/2023	Hearing Held Remote	
04/03/2023	Rule 20 Report Distributed	
04/03/2023	Rule 20 Evaluation Report Index #15	
03/30/2023	Rule 20 Progress Report Index #14	
03/07/2023	Order-Evaluation for Competency to Proceed (Rule 20.01) Judicial Officer: Koch, William H. Index #13	 3 pages

03/06/2023	Bail to stand as previously ordered	
03/06/2023	Probable Cause Found	
03/06/2023	Order-Evaluation for Competency to Proceed (Rule 20.01) Judicial Officer: Koch, William H. Index #12	 3 pages
03/06/2023	Hearing Held In-Person	
03/03/2023	Pre-Plea Worksheet Index #11	
02/15/2023	Pre-Plea Worksheet Index #10	
02/13/2023	Demand or Request for Discovery Index #9	 6 pages
02/10/2023	Order for Conditional Release Judicial Officer: Koch, William H. Index #8	
02/10/2023	Criminal Domestic Abuse No Contact Order DANCO Pretrial Judicial Officer: Koch, William H. Index #7	
02/10/2023	Statement of Rights Index #5	
02/10/2023	Order Granting Public Defender Judicial Officer: Koch, William H. Index #4	
02/10/2023	Hearing Held In-Person	
02/10/2023	Application for Public Defender Index #3	
02/10/2023	Pretrial Release Evaluation Form Index #2	
02/10/2023	E-filed Comp-Order for Detention Index #1	

Hearings

Upcoming Hearings

06/05/2024	03:00 PM	Evidentiary Hearing Judicial Officer: Skibbie, Lori Location: GC-C456	
06/11/2024	01:30 PM	Review Hearing Judicial Officer: Dayton Klein, Julia Location: GC-C457 Cancelled; Other	
Previous Hearings			
04/16/2024	01:30 PM	Hearing Judicial Officer: Mercurio, Danielle Location: GC-C1957 Cancelled; Other	
03/12/2024	01:30 PM	Violation Hearing Judicial Officer: Lamas, Carolina A. Location: PSF 141	Result: Held On the Record
02/21/2024	01:30 PM	Motion Hearing Judicial Officer: Dayton Klein, Julia Location: GC-C559 Cancelled; Other	
Date Updated: 02/14/2024 Reset by Court to 02/21/2024 01:30 PM - By agreement			
Original Hearing Date: 02/21/2024 09:00 AM			
02/13/2024	01:30 PM	Bail Hearing Judicial Officer: Mercurio, Danielle Location: GC-C556	Result: Held On the Record
02/06/2024	01:30 PM	Bail Hearing Judicial Officer: Borer, George Location: GC-C456	Result: Held On the Record
01/31/2024	09:00 AM	Motion Hearing Judicial Officer: Browne, Michael K Location: GC-C459	Result: Held On the Record
12/19/2023	01:30 PM	Bail Hearing Judicial Officer: Skibbie, Lori Location: GC-C457	Result: Held On the Record
11/17/2023	09:00 AM	Evidentiary Hearing Judicial Officer: Skibbie, Lori Location: GC-C457	Result: Held On the Record
09/05/2023	09:00 AM	Hearing Judicial Officer: Koch, William H. Location: GC-C1653	Result: Held On the Record
07/25/2023	01:00 PM	Hearing Judicial Officer: Koch, William H. Location: GC-C1653	Result: Held Off the Record
Date Updated: 06/28/2023 Reset by Court to 07/25/2023 01:00 PM - By agreement			
Date Updated: 06/27/2023 Reset by Court to 07/26/2023 08:30 AM - By agreement			
Date Updated: 04/24/2023			

		Reset by Court to 06/28/2023 07:00 AM - By agreement	
		Date Updated: 04/12/2023	
		Reset by Court to 04/24/2023 10:30 AM - By agreement	
		Original Hearing Date: 04/13/2023 08:30 AM	
04/18/2023	01:30 PM	Hearing Judicial Officer: Skibbie, Lori Location: GC-C457 Cancelled; Other	
04/04/2023	01:30 PM	Hearing Judicial Officer: Dayton Klein, Julia Location: GC-C559	Result: Held On the Record
03/06/2023	11:30 AM	Omnibus Hearing Judicial Officer: Koch, William H. Location: GC-C1653	Result: Held On the Record
02/10/2023	02:30 PM	First Appearance Judicial Officer: Koch, William H. Location: PSF 141	Result: Held On the Record

Search executed on 04/29/2024 06:06 PM

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT - FELONY DIVISION
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

vs.

Aaron Dashaun Cherry,

Defendant,

)
) **DEMAND FOR PRESERVATION**
) **AND DISCLOSURE OF EVIDENCE,**
) **AND MOTION FOR SUPPRESSION**
) **AND OTHER RELIEF**

) **MNCIS No. 27-CR-23-3198**
)
)
)

* * *

Defendant, by and through counsel, hereby demands preservation of, disclosure of, and access to all evidence related to the case; moves the Court for the relief specified below; and demands a hearing on the same.

DEMAND FOR PRESERVATION AND DISCLOSURE OF EVIDENCE

Defendant demands that the State preserve all information and evidence within the reach of the disclosures required under Rule 9.01 of the Minnesota Rules of Criminal Procedure and applicable case law.

Defendant further demands that the State disclose all such information and evidence, and that it make all disclosures required by Rule 9.01 prior to the probable cause pretrial conference in this case.

Defendant demands access to all items subject to disclosure, and this access shall include, as appropriate, the opportunity to inspect, reproduce, photograph, test, interview, or otherwise document the matters disclosed.

These demands apply to:

1. **Investigative reports** prepared by state agents or employees in the investigation or evaluation of the case, together with the original notes of the arresting officers, if any.
2. **Statements**, as fully described in Rule 9.01, subd. 1(2). This request includes any written or recorded statement made by the Defendant or any alleged accomplice, regardless of when made, and the substance of any non-recorded oral statements by the Defendant or accomplices. This request includes recorded statements by any other person and any

written record containing the substance of statements by them, whether or not they are expected to be called at trial. This request includes statements made to any member of prosecution's staff, victim advocates, and any other person of which the government is aware or should be aware. State v. Adams, 555 N.W.2d 310 (Minn. App. 1996). It also includes disclosure of the fact that an interview with a witness took place, regardless of whether it was transcribed or whether written statements or written summaries were prepared. State v. Kaiser, 486 N.W.2d 384, 386-87 (Minn. 1992) This request also encompasses copies of recorded statements made pursuant to State v. Scales, 518 N.W.2d 587 (Minn. 1994) and any attempted recordings that for whatever alleged reason are inaudible or unavailable.

3. **Audio or video records** produced regarding this case, including squad video, 911 calls, radio runs, police radio communications, scout runs, police transport recordings, and record checks.
4. **Reports related to examinations, tests, or expert testimony**, as fully described in Rule 9.01, subd. 1(4). In addition to disclosure, Defendant also demands the in-person testimony of all analysts who performed tests the results of which the state intends to introduce into evidence at any hearing related to this case. Further, defendant hereby provides notice that he retains his right to cross-examine the analysts under State v. Caulfield, 722 N.W.2d 304, Minn. 2006.
5. **Documents and other tangible objects**, as fully described in Rule 9.01, subd. 1(3)
6. **Search warrants** obtained and executed regarding the case, including inventories and items seized.
7. **Identification procedures** including but not limited to lineups, show-up identifications, photo arrays, or the like, and details on the nature and circumstances of any and all identification procedures that become known to the government in the future.
8. **Witnesses and other persons**, as fully described in Rule 9.01, subd. 1(1).
9. **Conviction records** for all witnesses and other persons, as required to be disclosed under Rule 9.01, subd. 1(1).
10. **Prior convictions** of the Defendant or defense witnesses, to be provided as certified copies. In addition to disclosure, defendant also demands notice if the state intends to use a conviction to impeach any defense witness, including Defendant.

11. **Alleged but uncharged misconduct, prior bad acts, or relationship evidence** which the State intends to introduce at trial in this matter, disclosure to include police reports and any other documentation.
12. **Evidence related to an enhanced or aggravated sentence**, as identified in Rule 9.01, subd. 1(7). In addition to disclosure, defendant also demands notice if the state intends to seek an aggravated or enhanced sentence.
13. **Brady material.** i.e., any information that tends to negate or reduce the guilt of the accused, or which tends to mitigate punishment as to the offense charged. For the purposes of cross-examining State witnesses, this includes impeachment evidence as well as inducements offered to or accepted by a witness to be called by the State, whether the inducement was for the benefit of the witness or for the benefit of another, including but not limited to financial assistance, plea agreements, agreements not to prosecute, or any benefit or assistance of any kind whatsoever. Defendant demands the prosecutor's compliance with the duty to learn about Brady material, even if known only to police or others acting on the government's behalf in the case.

These requests encompass all information or evidence known to the prosecutor on this case personally or if known to any other prosecutor or law enforcement agent, as well as information and evidence about which the prosecutor on this case could acquire actual knowledge through the exercise of due diligence in responding to these inquiries.

Lastly, the defense demands disclosure of all audio or video files on CD ROM or DVD ROM disc, and demands that the state provide any and all software or other files necessary to open, view or play such disc(s).

This demand for preservation and disclosure, in its entirety, continues until final disposition of this case. It therefore encompasses any additional information subject to disclosure that becomes known to the State after the State has begun complying with discovery rules, orders or defense requests. Minn. R. Crim. P. 9.03, subd. 2;

MOTION TO COMPEL DISCLOSURE AND ACCESS

Defendant moves the Court for an Order requiring the State

- 1 To preserve all evidence and other matters subject to disclosure as herein demanded and as otherwise required by Minnesota Rule of Criminal Procedure 9.01.

- 2 To permit Defendant to have access to, inspect, reproduce, photograph, or otherwise document all disclosed items, as described in Minn. R. Crim. P 9.01, subd. 1 & subd. 1a(2).
- 3 To allow defendant to conduct reasonable tests or to provide notice and an opportunity for defense experts to observe the state's own tests if those tests preclude further tests or experiments, as described in Minn. R. Crim. P 9.01, subd. 1(4)(b).
- 4 To assist Defendant in seeking access to specified matters relating to the case which are within the possession or control of an official or employee of any governmental agency, but which are not within the control of the prosecuting attorney, as described in Minn. R. Crim. P. 9.01, subd 2(1).
- 5 For an Order directing the prosecuting attorney to identify and produce any informants who supplied or contributed information to the prosecution which led to the issuance of a Complaint against the Defendant on the grounds:
 - a. The privilege of non-disclosure of any informants must give way and disclosure of the identity of an informer is required where disclosure is essential or relevant and material, and helpful to the defense of an accused, or lessens the risk of false testimony, or is necessary to secure useful testimony, or is necessary to a fair determination of the cause; or
 - b. Disclosure is necessary as a means to afford this Defendant an opportunity to establish that if informants did exist, that the information supplied to the prosecutor by them was inaccurate or misrepresentative.

MOTION TO SUPPRESS EVIDENCE

Defendant moves the Court for an Order suppressing, particularly with respect to those items identified in the state's notice under Rule 7.01:

- 1 Any and all evidence obtained as a result of a stop, search, or seizure, on the ground that such evidence was obtained in violation of Defendant's constitutional and statutory protections against unreasonable searches and seizures.
- 2 Any and all confessions, admissions, or statements in the nature of confessions made by Defendant, together with any evidence obtained as a result thereof, on the grounds that any use of such evidence, in any manner, would be in violation of the Defendant's constitutional and statutory rights.

- 3 Any and all identifications of Defendant and evidence of identification procedures used during the investigation, together with any evidence obtained as a result of identification procedures used during the investigation, on the ground that any use of such evidence, in any manner, would be in violation of the Defendant's constitutional and statutory rights.

Defendant further moves this court for an order suppressing other evidence or granting any relief that the court may require to ensure a fair and expeditious trial on this matter.

MOTION TO EXCLUDE EVIDENCE

Defendant moves the Court for an Order restraining the prosecution from attempting to introduce at trial:

- 1 Evidence obtained as a result of stop, search, or seizure, confession or other statement by the Defendant, or identification procedures, as described above, on the grounds that the notices filed by the State are vague, ambiguous, and inspecific, all to the prejudice of the Defendant and contrary to the meaning of Minnesota R. Crim. P. 7.01.
- 2 Evidence that Defendant has been guilty of additional misconduct or crimes on other occasions, on the grounds that the state has not provided notice of its intent to use such evidence or, if it did, that such notice was not specific enough or failed to specify a particular exception to the general rule of exclusion. Defendant also moves for exclusion on the grounds that the evidence is not admissible under any exception to the general rule of exclusion, that such evidence is more prejudicial than probative, or that such evidence has not been proven to be clear and convincing.
- 3 Evidence, argument, or any other reference to prior convictions, if any, of the Defendant.
- 4 Any and all other evidence for which the State has failed to provide notice as required by the Minnesota Rules of Criminal Procedure

Defendant further moves this court for an order excluding other evidence or granting any relief that the court may require to ensure a fair and expeditious trial on this matter.

DEMAND FOR HEARING

Defendant hereby demands a contested hearing on the above motions, to be held as soon as practicable after the serving and filing hereof.

Respectfully submitted,

OFFICE OF THE HENNEPIN COUNTY PUBLIC DEFENDER
LISA M. LOPEZ – FIRST ASSISTANT PUBLIC DEFENDER

By /s/
Amanda Brodhag
Attorney License No. 398217
Attorney for Defendant
701 Fourth Avenue South, Suite 1400
Minneapolis, MN 55415
Telephone: 612-348-6419

DATED: This 13th day of February, 2023.

State of Minnesota

District Court

County of Hennepin

Fourth Judicial District

State of Minnesota,
Plaintiff,

Referee Lori D. Skibbie
Case Type: Criminal

v.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW
REGARDING DEFENDANT'S
COMPETENCY TO PROCEED**

Aaron Dashaun Cherry,

Defendant.

Case Number(s): 27-CR-23-3198;
27-CR-21-19577

The above-entitled matter came before Lori D. Skibbie, Referee of District Court, on November 17, 2023, for an evidentiary hearing upon the Defense's objection to the competency opinion rendered by Dr. Lauren Herbert, Director of the Department for Human Services Forensic Evaluation Department, dated August 31, 2023. Joshua Luger, Assistant Hennepin County Attorney, appeared for the State. Chelsea Knutson appeared with and on behalf of the Defendant who was present. Dr. Lauren Herbert testified, and the Court received her report dated August 31, 2023. Chelsea Knutson also testified. Also present at the hearing was Susan Herlofsky, Defense co-counsel. The Court took the matter under advisement. Based upon the arguments presented and all the files and records herein, the Court orders as follows:

1. Defendant is **INCOMPETENT** to proceed.

PROCEDURAL HISTORY AND FINDINGS OF FACT

Mr. Cherry is charged with one count of Violating a No Contact Order and one count of Domestic Assault – Felony. On July 31, 2023, probable cause was found that a crime had been committed, and a Rule 20.01 evaluation was ordered by Judge Koch. Dr. Lauren Herbert of Fourth Judicial District Psychological Services was assigned to complete the 20.01 evaluation of the defendant, Mr. Cherry. Dr. Herbert filed her report with the court on August 31, 2023, and opined that Mr. Cherry was competent to proceed. The Defendant requested an evidentiary hearing.

In her report filed August 31, 2023, Dr. Herbert stated that due to Mr. Cherry's lack of participation in the interview, relevant background information could not be obtained directly from Mr. Cherry. Therefore, the background information was obtained by looking at Dr. Coffin's April 3, 2023, Rule 20 Report. Rule 20 Report. p. 4. Dr. Herbert noted that Mr. Cherry reported he was born in Illinois and has a poor relationship with his parents. *Id.* He was raised by his father's sister who he considers his mother. *Id.* Mr. Cherry had previously denied in a 2009 psychological evaluation any mental health treatment of any kind. However, during this evaluation he was diagnosed with Conduct Disorder, Mild to Moderate and History of Alcohol and Cannabis Abuse. *Id.* According to Hennepin Healthcare records from April 26, 2018, Mr. Cherry presented with "severe attention deficit". *Id.* Mr. Cherry, according to a 2018 PSI, had consumed alcohol to the point of blacking out, but did not consume alcohol every day. *Id.* This PSI stated Mr. Cherry had also started using cannabis in 2007 or 2008 and had used it everyday until 2017. *Id.* However, a 2022 PSI stated that Mr. Cherry denied ever experimenting with cannabis or alcohol ever in his life. *Id.* at 5. Mr. Cherry has never had symptoms of psychosis, including auditory or visual hallucinations, delusional or paranoid thoughts, or ideas of reference. *Id.* However, medical records reported that Mr. Cherry had suicidal behavior in 2018 while in Ramsey County Jail. *Id.*

Dr. Herbert also reviewed Mr. Cherry's prior three competency to proceed evaluations. The first evaluation was done by Dr. Bruce Renken on November 17, 2021. *Id.* at 8. Dr. Renken stated that Mr. Cherry was minimally cooperative. *Id.* His responses were disjointed or in unfinished sentences or phrases. *Id.* He then began to respond in a very slow manner before eventually speaking at a normal pace. *Id.* Dr. Renken questioned why Mr. Cherry was able to speak normally and asked if Mr. Cherry was playing games. *Id.* Mr. Cherry responded, "I won't play games." *Id.* Dr. Renken also noted that at another evaluation, Mr. Cherry presented as if he could not understand basic instructions. *Id.* Dr. Renken opined that Mr. Cherry was incompetent to proceed and noted, "Mr. Cherry's history suggests an atypical clinical picture, with possible factors of substance and malingers, as well as likely symptoms of mental illness." *Id.* Mr. Cherry was diagnosed with Antisocial Personality Disorder and Unspecified Anxiety Disorder. *Id.*

The second competency hearing was administered by Dr. John Anderson on May 13, 2022. Dr. Anderson opined that Mr. Cherry was competent to proceed and Mr. Cherry's cooperation was inconsistent throughout the interviews. *Id.* Dr. Anderson noted that Mr. Cherry would sometimes respond to questions and other times "stared as if to convey he did not hear a question". *Id.* Dr.

Anderson administered a screening instrument to test for malingering and noted that Mr. Cherry responded yes to all but one item, which is atypical for someone with genuine psychiatric or cognitive disorder. *Id.* Dr. Anderson opined that Mr. Cherry was feigning and deemed him competent to proceed. *Id.* Mr. Cherry was diagnosed with Antisocial Personality Disorder, Alcohol Use Disorder and Cannabis use Disorder, both in a controlled environment. *Id.*

Mr. Cherry's most recent competency evaluation was completed on April 3, 2023, by Dr. Richard Coffin. *Id.* at 9. Dr. Coffin noted that Mr. Cherry was not cooperative in answering questions. *Id.* Mr. Cherry communicated through gesturing and writing various case numbers, statements, phone numbers and emails from the collection of documents Mr. Cherry had brought into the interview. *Id.* During another interview with Dr. Coffin, Mr. Cherry was mostly mute except to complain of abdominal pain. *Id.* He was clutching his abdomen and rocking back and forth throughout the majority of the interview. *Id.* Mr. Cherry was able to participate in some discussion, but his thoughts were disorganized outside of those few interactions. Dr. Coffin noted Mr. Cherry can communicate about topics he chooses, but otherwise has disjointed communications. *Id.* at 11. Dr. Coffin diagnosed Mr. Cherry with Antisocial Personality Disorder, Malingering and Cannabis Use Disorder, in a controlled environment. *Id.* at 13. Dr. Coffin opined that Mr. Cherry was competent to proceed. *Id.*

Dr. Herbert, after reviewing these files and conducting her own interviews with Mr. Cherry opined that Mr. Cherry was competent to proceed. *Id.* at 17. Dr. Herbert's report noted that Mr. Cherry did not speak throughout their interview. *Id.* at 16. She noted that Mr. Cherry showed her his inmate bracelet at one point, but otherwise provided no communication. *Id.* Dr. Herbert stated that Mr. Cherry's history presents an atypical clinical picture and the symptom he presents with most consistently is mutism. *Id.* She notes mutism, with the exception of Schizophrenia, is generally not a feature of mental illness. However, she does state mutism can be a symptom of cognitive impairment, "typically related to a developmental and/or neurocognitive disability." *Id.* Dr. Herbert noted, "Mutism alone is not sufficient to render an individual incompetent to proceed." *Id.* Dr. Herbert further states that Mr. Cherry has demonstrated an ability to understand what is being said to him by responding behaviorally that is relevant. *Id.* Finally, Dr. Herbert concluded in her report that because Mr. Cherry remained mute that she was "unable to formally obtain information relevant to his ability to consult with counsel, understand the proceedings, or participate in his defense." *Id.* at 17.

In addition to her report, Dr. Herbert provided testimony in this matter. Dr. Herbert testified that she reviewed the prior competency proceedings, including the reports done by Dr. Renken, Dr. Anderson and Dr. Coffin. She also reviewed a 2018 PSI report. Dr. Herbert also personally interviewed Mr. Cherry. Her interview with Mr. Cherry only lasted about 5 minutes. She testified that typically evaluations last between an hour and a half to two hours. Dr. Herbert testified that despite the short-time frame in her personal evaluation, she opined that Mr. Cherry was likely competent to proceed. She testified that her determination comes from the totality of the information available, and that it is important not to weigh one source heavier than another. However, Dr. Herbert testified that she was not able to say with certainty that Mr. Cherry could rationally consult with counsel.

Dr. Herbert testified further that she did not do psych, cognitive or malingering testing on Mr. Cherry. When Dr. Herbert was asked if one component of malingering is different presentations with different individuals, she answered yes. However, she further testified that she did not find it necessary to speak to friends or family of Mr. Cherry. She also stated that she did not speak to other deputies in the jail that had more routine contact with Mr. Cherry as she didn't find it necessary to seek out that information. Dr. Herbert also testified that psych testing would be useful to making a diagnosis of malingering but did not test Mr. Cherry for it. She further testified that mutism could be a result of cognitive impairment or deficit. However, Dr. Herbert stated she did not do cognitive testing for Mr. Cherry as she did not see the need for it.

Ms. Knutson, Mr. Cherry's counsel, also provided testimony in this matter. Ms. Knutson testified that she has been a public defender in Minneapolis since April 2018. She stated she currently represents around 80 clients and has provided legal services for several hundred throughout her five-year tenure as a public defender. Ms. Knutson testified that she has only requested Rule 20.01 competency evaluation for three clients, including Mr. Cherry, since she became a public defender. She stated that she met with Mr. Cherry three to four times before making a Rule 20.01 motion, and two to four times since, and had spoken with his previous counsel as well. During these meetings with Mr. Cherry, he did not speak with Ms. Knutson verbally. She stated that he would only communicate through writings that did not give direction on how to proceed in his current case. Ms. Knutson tried open and closed-ended questions, asked specific questions about the writings Mr. Cherry would give her and attempted to solicit nonverbal communication by gesture to ascertain a level of understanding. These meetings, in total, lasted

approximately two to three hours, and in that time, there was never a verbal response from Mr. Cherry.

Ms. Knutson further testified that due to the lack of communication with Mr. Cherry, it makes certain decisions with his case impossible. She states that Mr. Cherry must be able to make a decision about whether to plea and whether or not to testify, which cannot be ascertained without any logical communication from Mr. Cherry. Ms. Knutson also stated that she has not been able to gather any information from Mr. Cherry. When asked if Ms. Knutson believed Mr. Cherry could understand the charges, she said it was unclear because she has never received an answer. She stated that decisions must come from Mr. Cherry and if he does understand, he still is not communicating with her. She further testified that she could see no benefit to Mr. Cherry not communicating. When asked if Mr. Cherry's mutism was delaying moving forward in his case, she replied yes and that he has been in custody since February 2023. Ms. Knutson stated that even when Mr. Cherry would gesture or write something down, it was nonsensical and not in response to the questions she asked him. She stated that she did not find his responses to be meaningful. Finally, Ms. Knutson stated she would not be able to effectively represent Mr. Cherry due to his lack of communication.

LEGAL CONCLUSIONS

"A defendant has a due process right not to be tried or convicted of a criminal charge if he the Minnesota Rules of Criminal Procedure requires the Court to find a defendant not competent unless the greater weight of the evidence shows that the defendant is competent to proceed. Minn.R.Crim.P. Rule 20.01, subd. 5 (c). A defendant is not competent if, due to mental illness or cognitive impairment he is unable to "(a) rationally consult with counsel or (b) understand the proceedings or participate in the defense." *Id.*, subd. 2. The determination of whether a defendant is able to rationally consult with the defense attorney or understand and participate in the proceedings turns on the facts of each particular case. Moreover, fact-finders, including district courts, are not required to accept an expert's testimony or recommendations. *State v. Roberts*, 876 N.W.2d 863, 868 (Minn. 2016). Foremost, throughout the criminal proceedings the trial court must be mindful of its protective duty to ensure that a defendant is competent to proceed. See *State v. Bauer*, 245 N.W.2d 848, 852 (Minn. 1976) (ruling that the court should have conducted further inquiry into the important matter of defendant's competency). It is the State's burden, by a

preponderance of the evidence, to prove that a defendant is competent. *State v. Curtis*, 921 N.W.2d 342, 348 (2018). The standard to be applied is a fair preponderance of the evidence. *Id.*

Based on the totality of the facts noted above, the Court finds that the State has not met its burden of proving, by greater weight of the evidence, that Mr. Cherry is currently able to rationally consult with counsel, understand the proceedings, and participate in his defense. While Dr. Herbert opined in her report that Mr. Cherry would be competent, Mr. Cherry's mutism has significantly hindered his ability to consult with counsel and participate in his defense. The Court finds Dr. Herbert's report to be credible, but not persuasive. Mr. Cherry's competency proceeding history shows that Mr. Cherry has not been able to communicate or show understanding in a way that is meaningful towards his criminal proceedings. Dr. Herbert herself also stated she was not able to say with certainty that Mr. Cherry could rationally consult with counsel.

The Court finds Ms. Knutson's testimony that Mr. Cherry has not verbally spoken with her and has not provided any communications regarding any decisions with his case to be persuasive. Mr. Cherry has only provided a few writings, all of which have not made sense or shown that he has a requisite understanding of his criminal case. There has not been any communication in a logical or sensical way between Mr. Cherry and Ms. Knutson since Ms. Knutson took over the case, despite six to eight meetings between them. For these reasons, the Court finds that Mr. Cherry does not have a rational understanding of the proceedings, lacks the ability to rationally consult with counsel, and lacks the ability to participate in his defense.

Therefore, the court finds that the defendant, Mr. Cherry (Aaron Deshaun Cherry) is **INCOMPETENT**.

Order Recommended By:

BY THE COURT:

Referee of District Court

Judge of District Court

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
CRIMINAL DIVISION

State of Minnesota,

Court File No. 27-CR-23-3198; 27-CR-21-
19577

Plaintiff,

vs.

Aaron Dashaun Cherry
a/k/a Aaron D. Cherry
a/k/a Aaron Deshaun Cherry,

Defendant.

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER REGARDING
COMPETENCY

This matter came before the undersigned Referee of District Court on November 17, 2023. The hearing was held remotely using the Zoom internet platform. Joshua Luger, Assistant Hennepin County Attorney, represented the plaintiff. Defendant appeared in custody and was represented by Chelsea Knutson, Esq.

Based on all the files, records and proceedings in this case, the Court makes the following:

FINDINGS OF FACT

1. Defendant (date of birth 08/19/1994), was charged in MNCIS file 27-CR-23-3198 with Violate No Contact Order (Felony), and Domestic Assault (Felony), arising from an incident alleged to have occurred on February 8, 2023. Defendant was also charged with Domestic Assault (Felony), arising from an incident alleged to have occurred on October 18, 2021. On March 6, 2023, Judge Koch found probable cause to believe that the offenses were committed, and that Defendant committed them.
2. On July 31, 2023, Judge Koch ordered that Defendant undergo an evaluation to assess Defendant's competency to proceed in this matter pursuant to Minn.R.Crim.P. 20.01.
3. Dr. Lauren A. Herbert, Psy.D., LP, Psychological Services of Hennepin County District Court, reviewed Defendant's records, interviewed Defendant, and filed a written report with this Court.

4. A contested competency hearing was held on November 17, 2023, and Referee Skibbie determined that Defendant, due to mental illness or cognitive impairment, lacks the ability to rationally consult with counsel; or lacks the ability to understand the proceedings or participate in the defense.

CONCLUSIONS OF LAW

Defendant is presently incompetent to stand trial.

ORDER

1. The criminal proceedings in this matter are suspended until Defendant is restored to competency to proceed. While suspended, the criminal court retains authority over the criminal case including, but not limited to, bail or conditions of release.
2. Copies of this Order shall be served upon counsel for the parties and any objections to this Order shall be filed with the Court within ten (10) days of the date of service.

Joshua Luger, Assistant Hennepin County Attorney – Criminal Division;

Chelsea Knutson, Assistant Hennepin County Public Defender

3. The Hennepin County Prepetition Screening Program (PSP) must conduct a prepetition screening pursuant to the Minnesota Commitment and Treatment Act and make a recommendation as to whether the defendant should be civilly committed under the Act.
4. PSP shall investigate whether civil commitment should be pursued and forward a recommendation in a written report supporting or not supporting civil commitment to the Hennepin County Attorney's Office – Adult Services Division ("HCAO-ASD") within five (5) days of receiving this Order.
5. Prepetition Screening shall provide copies of the Rule 20 Competency Evaluation, the criminal Complaint(s), and the underlying police report(s) along with its written recommendation to the Hennepin County Attorney's Office – Adult Services Division.
6. Defendant is ordered to cooperate with the civil commitment process including appearing at all court appearances in the civil and criminal cases.
7. Members of PSP shall have access to all Defendant's files and records, including those protected by Federal regulation or law. This Order grants the members of PSP access to the records of any individual or entity that has provided observation, evaluation, diagnosis, care,

treatment, or confinement of the Defendant. This Order applies to, but is not limited to, records maintained by: Minnesota Fourth Judicial District Court Psychological Services; chemical dependency evaluators and treatment providers; health clinics; medical centers and hospitals; physicians; psychologists; mental health care providers; case managers; parole and probation agencies; residential and nonresidential community mental health treatment facilities or programs; regional treatment centers; the Minnesota Department of Corrections; the correctional authority for any other state; schools and school districts; law enforcement agencies; and the Court's own records.

8. This Order also authorizes employees or officers of the record keepers described above to discuss the Defendant's condition, history, treatment, and/or status with the members of PSP. Information collected by PSP pursuant to this Order shall be considered private data on the Defendant, but it may be included in the written report produced by PSP and forwarded to the HCAO-ASD.
9. If the Fourth Judicial District Court – Probate/Mental Health Division finds the Defendant to be mentally ill, developmentally disabled, chemically dependent, or mentally ill and dangerous to the public, the Defendant may be committed directly to an appropriate safe and secure facility. The Hennepin County Sheriff shall transport the Defendant from the Hennepin County Adult Detention Center to the custody of the head of the facility named in the order for civil commitment when notified that placement is available for the Defendant.
10. The head of the treatment facility shall submit a written report addressing the Defendant's competency to proceed in the criminal case when the Defendant has attained competency, or at least every six months.
11. Psychological Services of Hennepin County District Court, or the Department of Human Services Forensic Evaluation Department if the defendant is civilly committed, shall have access to Defendant's treatment records to prepare the required report(s) on the defendant's mental condition with an opinion as to competency to proceed. By presentation of a copy of this order, whether mailed, sent electronically, discussed verbally, or personally delivered, the custodian of records for any agency, department, or health care provider shall release all information and/or records related to Defendant, including medical, psychological, behavioral, social service, probation/correctional, developmental disability, military, Social Security, employment, and educational records, to the agency requesting the records within 72 hours.

This Order shall be sufficient to require an agency, department, entity, or health care provider to release the requested information and/or records related to treatment Defendant has received in connection with that facility. Any of the defendant's records released pursuant to this order may not be disclosed to any other person without court authorization or Defendant's signed consent.

12. The criminal conditions of release remain in effect until placement at an appropriate facility can occur.
13. If Defendant is not subject to the provisions of Minn. Stat. § 253B.18, the head of the treatment facility shall hold Defendant safe and secure under the civil commitment, and shall not permit the Defendant's release, institutional transfer, partial institutionalization status, discharge, or provisional discharge of the civil commitment until the Fourth Judicial District Court – Criminal Division has ordered conditions of release consistent with the proposed change in status. Any proposed change in status under the civil commitment requiring amended conditions of release shall be made in writing to the Fourth Judicial District Court – Criminal Division and parties at least 14 days prior to proposed change in status. The written proposal shall address the following issues 1) whether the Defendant is competent to proceed; 2) how the proposed plan will meet the Defendant's treatment needs; and 3) public safety risks and how they will be addressed. Either party may request a hearing to address the proposed changes to the conditions of release. If no hearing is requested, the court may issue an order amending the conditions of release consistent with the proposed change in status in the civil commitment matter.
14. In the event the Fourth Judicial District Court – Mental Health Division does not commit the Defendant, then the Defendant shall be transported in secure custody back to the Fourth Judicial District Court – Criminal Division for further proceedings herein.
15. Defendant's next appearance in Hennepin County District Court – Criminal Division on this matter and status review of Defendant's competence to proceed is June 18, 2024. One week prior to that date, reports regarding Defendant's competency and mental status shall be e-filed and e-served to:
 - a. Fourth Judicial District Court – 4thCriminalRule20 email list;
 - b. Chelsea Knutson, Assistant Hennepin County Public Defender;
 - c. Joshua Luger, Assistant Hennepin County Attorney;

- d. Assistant Hennepin County Attorney's Office – Adult Services Division (if a commitment is ordered);
- e. The Commitment Defense Panel attorney appointed to represent Defendant by the Fourth Judicial District Court – Probate/Mental Health Division.

16. A copy of this Order, the Rule 20.01 Competency Evaluation, the criminal complaint(s), and the underlying police report(s) shall be delivered via email to the Prepetition Screening Program of Hennepin County's Human Services and Public Health Department.

Order Recommended By:

BY THE COURT:

Referee of District Court

Judge of District Court

MINNESOTA
JUDICIAL
BRANCH

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

vs.

AARON DASHAUN CHERRY,

Defendant.

**STATE'S MEMORANDUM TO
RECONSIDER THE FINDING OF
COMPETENCE**

MNCIS No.: 27-CR-23-3198

C.A. File No: 23A01579

* * * * *

**TO: THE HONORABLE JUDGE MICHAEL BROWNE JUDGE OF DISTRICT COURT
AND DEFENDANT, BY AND THROUGH HIS ATTORNEY, CHELSEA KNUTSON.****INTRODUCTION**

AARON DASHAUN CHERRY, Defendant herein, is charged with Felony Violation of a No Contact Order and Domestic Assault Felony. Upon his motion, Defendant performed a rule 20.01 evaluation to determine his mental competency to stand trial. The findings of that evaluation were released on April 4, 2023, finding that Defendant was competent to stand trial. Defendant later requested a second evaluation. The findings of that evaluation were released on August 31, 2023. That evaluation also found the Defendant competent. The Defendant then requested a contested competency hearing where the second evaluator and Defense Attorney testified. After this hearing Referee Skibbie found the Defendant not competent. The State now argues that the conclusions should be set aside this Court must make a finding of competent consistent with the two evaluations done in this case. The State submits this memorandum in support of that motion.

FACTS

The State agrees with the facts and procedural history as written in Referee Skibbie's order.

ARGUMENT

“A defendant is incompetent and must not plead, be tried, or be sentenced if the defendant lacks ability to: (a) rationally consult with counsel; or (b) understand the proceedings or participate in the defense due to mental illness or deficiency.” Minn. R. Crim. P. 20.01, subd. 2. Where a defendant’s competency is disputed, the rule provides that, in the absence of proof of the defendant’s competence by a preponderance of the evidence, a court must find the defendant incompetent. *Id.*, subd. 5.¹ “This directive, in effect, creates a presumption of incompetence.” *State v. Curtis*, — N.W.2d —, 2018 WL 6626496, at *6 (Minn. Dec.19, 2018). The burden is on the State to prove by a preponderance of the evidence that a defendant is competent. *See, e.g., id.* at *5; *State v. Ganpat*, 732 N.W.2d 232, 238 (Minn. 2007); *State v. Mills*, 562 N.W.2d 276, 281 (Minn. 1997). Evidence of the defendant’s irrational behavior, demeanor at trial, and any prior medical opinion on competence to stand trial are relevant in determining whether there is reason to doubt the defendant’s competence. *State v. Camacho*, 561 N.W.2d 160, 172 (Minn. 1997) (citing *Drope v. Missouri*, 420 U.S. 162, 180 (1975)).

The Defendant has had two competency examinations in this proceeding, neither of which have found him incompetent or provided diagnosis of mental illness that would allow for a finding of incompetency. The Judge may consider these reports as evidence. The second report was accepted by Referee Skibbie as an exhibit. This report adopts the findings of the first report. Referee Skibbie in their finding of incompetence relied on the testimony of the Defense Attorney and the testimony of one of the evaluators in finding that the Defendant has mutism. Mutism is an anxiety disorder that effects ones ability to speak in stressful or anxiety inducing situations

¹ Although the plain language of subdivision 5 does not explicitly place the burden of proving competence on the State, it does so by implication. *See Curtis*, 2018 WL 6626496, at *5.

but does not effect one's ability to understand the world around them. On page 10 of his report, Dr Coffin writes, "Mutism is not a feature of any MI besides Schizophrenia and Catatonia. These diagnoses were never noted in the available records and the Defendant does not have additional symptoms consistent with either diagnosis." Dr. Coffin on page 4 of his report states that the Defendant had never raised mental illness concerns on visits to hospitals. This is significant given the use of Defendant's present refusal to communicate and the interpretation that this represents a mental illness that rises to the level of incompetence. When discussing the issue of mutism in the most recent evaluation, Dr. Herbert states on page 16 that, "{m}utism alone is not sufficient to render an individual incompetent". Dr. Herbert in that section goes on to describe how there are 12 features that need to be present to diagnose Catatonia-mutism is one feature but requires the other 11 features which are not present for the Defendant.

The first competency evaluation in this case found the Defendant to be malingering. In that report, Dr. Coffin also notes that a previous evaluator also found that Mr. Cherry was competent and malingering in 2022. The second examiner in this case, testified that she only spoke with Mr. Cherry for about five minutes over zoom and did not perform any tests. After the short meeting she found it was not worth proceeding further due to his not engaging meaningfully with the meeting. He however did respond to her when he showed his wrist band to identify himself rather than identifying himself verbally. This evaluator in her report and on the stand did not make a full finding of competent or incompetent. She did not disagree with any of the findings in the previous report. Her report largely adopts the previous findings of Dr. Coffin. In her testimony she opined that she felt he was in the direction of incompetence but was not willing to make a full finding in either direction because of the limited time she spent with the client and based most of her findings on the original report finding malingering. Referee Skibbie relied heavily on the testimony of the second evaluator and the Defense attorney in this case,

however a full reading of both evaluations is needed. More weight should be given to the opinions in both the reports made after the two competency evaluations done in this case in the last year.

Based on the evidence available, there is no evidence that the mutism is based on any mental health diagnosis. There is no evidence to suggest that Defendant is not malingering as the first evaluator found and the second evaluator did not contest. There is only evidence that the Defendant does not communicate adequately with his attorney and did not communicate with the most recent evaluator. A finding of incompetence at this juncture serves to encourage defendants going forward to remain selectively mute in an attempt to be found incompetent. There is presently no evidence that the Defendant cannot understand the legal proceedings or charges against him, only evidence that he will not communicate regarding legal issues.

CONCLUSION

There is clear evidence contained in both of the Defendant's evaluations that he is malingering and mute but not incompetent to stand trial. While Defendant does have some challenges that have proved to be roadblocks in his life, they do not rise to the level of incompetence. For the reasons stated above, the State requests that this Court reconsider the previous finding of incompetence.

Respectfully submitted,

MARY F. MORIARITY
Hennepin County Attorney

/s/ Joshua Luger

Joshua Luger (0403384)
Assistant County Attorney
300 South 6th Street
C2100 Government Center
Minneapolis, MN 55487
Telephone: 612-596-6005

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT-ADULT DIVISION
FOURTH JUDICIAL DISTRICT

State of Minnesota

Plaintiff,

-vs-

AARON CHERRY,

Defendant.

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**MEMORANDUM OPPOSING
STATE'S MOTION TO RECONSIDER**

Court File No. 27-CR-23-3198; 21-19577

TO: THE HONORABLE JUDGE OF DISTRICT COURT; AND JOSHUA LUGER, ASSISTANT
HENNEPIN COUNTY ATTORNEY.

STATEMENT OF FACTS

On October 20, 2021 Defendant Aaron Cherry was charged with a felony Domestic Assault pursuant to Minn. Stat. § 609.2242 in case file 27-CR-21-19577. Concerns were raised regarding his competency to proceed and an evaluation pursuant to Minnesota Rule of Criminal Procedure 20.01 was ordered. The evaluator opined that Mr. Cherry was incompetent to proceed and he was found incompetent by the Honorable Lisa Janzen on November 23, 2021. The proceedings were suspended, although the State of Minnesota filed an intent to prosecute on November 29, 2021.

A six-month review evaluation was conducted and opined Mr. Cherry was now competent to proceed. That opinion was not challenged by the parties and Mr. Cherry was found competent on June 22, 2022 by the Honorable Lisa Janzen. Mr. Cherry ultimately pled guilty to that offense and was sentenced on September 15, 2022 for a probation term of three years; he remains on probation for that offense. A probation violation report was filed on March 6, 2023 alleging contact with the victim and failure to remain law abiding for the allegations in pending case 27-CR-23-3198. In 27-CR-23-3198 Mr. Cherry is alleged to have committed a felony No Contact Order Violation in violation of Minn. Stat. § 629.75.2(d)(1) and Domestic Assault in violation of Minn.

Stat. § 609.2242 on February 8, 2023. He was arrested on that date and has remained in custody ever since – 357 days as of the filing of this memorandum and counting.

Concerns over Mr. Cherry's competence were again raised and a Rule 20 evaluation on both files was ordered on March 7, 2023. That evaluator, Dr. Richard Coffin, opined that Mr. Cherry was competent, but the Defense challenged this opinion and a contested hearing was set. The request for a contested hearing was ultimately withdrawn, but no judicial finding was entered. Due to a change in circumstances and a substitution of counsel competence concerns were once again raised. The Honorable William Koch ordered an updated Rule 20 evaluation on July 31, 2023. The evaluator opined that Mr. Cherry was competent to proceed, but the Defense challenged that opinion.

A contested hearing was held on November 17, 2023 in front of Referee Lori Skibbie. Andrew Luger appeared for the State. Chelsea Knutson and Susan Herlofsky appeared for Mr. Cherry, who was also present. The State offered the testimony of Dr. Lauren Herbert and Exhibit 1: Dr. Herbert's August 31, 2023 report opining competence. Dr. Herbert interviewed Mr. Cherry for approximately five minutes via Zoom technology, during which Mr. Cherry remained mute. She made no attempt to conduct an in-person interview or correspond via writing. During the course of this extremely brief interview, Dr. Herbert testified she was unable to address confidentiality or establish rapport with Mr. Cherry. She was unable to make any determinations of Mr. Cherry's ability to engage in complex decision making or appreciation of the charges or proceedings. She did not conduct any psychological or cognitive testing. She did not obtain the most recent behavior logs or listen to any jail calls to aid in her determination of competency, although she did review some grievance forms that had nonsensical content.

Dr. Herbert testified that she did refer to Dr. Coffin's April 3, 2023 report in her forensic evaluation. However, Dr. Herbert testified that she was not involved in Dr. Coffin's evaluation of Mr. Cherry and that it is important for each evaluator to make their own independent determinations because they may see different behaviors, make different diagnoses, or even come to differing opinions related to competency. She also testified that mental health and competency are fluid and an individual's presentation can vary based on temporal, situational, and behavioral changes. Importantly, Dr. Coffin **did not** testify at the November 17, 2023 hearing and his report **was not** offered as an exhibit by the State, although the State relies heavily on its content in the memorandum arguing reconsideration.

Nevertheless, Dr. Herbert opined based on that prior evaluation and her five-minute interview that Mr. Cherry was competent and suffered from antisocial personality disorder, cannabis use disorder, and malingering. She testified that the antisocial personality disorder diagnosis is based on a juvenile conduct disorder diagnosis from 2009, and further that this diagnosis has a historical bias involving young black men that may make it more difficult to rule out underlying mental illness. Dr. Herbert testified that malingering is the intentional production of false or exaggerated symptoms motivated by external incentives such as financial compensation or avoiding criminal prosecution, presented in Mr. Cherry's case through his mutism. She acknowledged that Mr. Cherry's mutism could undermine any external incentives – his cases have been in competency-related proceedings for nearly a year during which time he has remained in custody and his mutism and other communication difficulties render him unable to communicate with his attorney. Mutism can be a symptom not only of mental illness, but a cognitive impairment or neurocognitive disability. Dr. Herbert did not do any testing to determine whether Mr. Cherry

suffered from a mental illness, cognitive impairment, or malingering. Dr. Herbert also acknowledged that she could not say whether Mr. Cherry could rationally consult with counsel.

The Defense offered the testimony of Chelsea Knutson. She testified that Mr. Cherry has never verbally communicated with her during her representation, despite her attempting multiple communication styles. Mr. Cherry has only communicated to Ms. Knutson through writings that are nonsensical and not in response to her questions. Ms. Knutson testified that she has never received any clear communication from Mr. Cherry on whether he understands the charges, whether he wants to plead guilty or have a trial, or whether he wants to testify in his defense. She could identify no clear benefit to Mr. Cherry from failing to communicate with her. Ultimately, she opined that she is not able to meaningfully represent Mr. Cherry due to his inability to communicate in any format with her.

Referee Skibbie issued an Order, approved by the Honorable Julia Dayton Klein, on December 6, 2023 finding that Mr. Cherry is incompetent to proceed. She explicitly found that while Dr. Herbert's opinion was credible, it was not persuasive. In contrast, Referee Skibbie found that Ms. Knutson's testimony was persuasive in concluding that Mr. Cherry is unable to participate in the proceedings and rationally consult with counsel. Ultimately Referee Skibbie found that the State had failed to meet its burden to prove that Mr. Cherry does not suffer from a mental illness or cognitive impairment and is able to rationally consult with counsel and participate in his defense. The State filed a motion to reconsider on December 15, 2023. The matter was assigned to be heard by the Honorable Michael Browne over the Defense's objection to having the matter heard by another judicial officer. This memorandum follows.

LEGAL ARGUMENT

I. This Matter Should Be Heard by the Judicial Officer Who Presided Over the Contested Hearing.

The contested hearing was heard by Referee Skibbie, who is appointed pursuant to Minn. Stat. § 484.70. The State did not object to the matter being heard by a referee in lieu of a district court judge, although it had the ability to do so. Minn Stat. § 484.70, subd. 6. The powers of a referee include hearing matters, recommending findings of fact, and issuing orders subject to confirmation by a judge. *Id.* at subd. 7. All of these procedures were followed in this case. The State did not request a motion for judicial review of the Referee's order, which is governed by that same statute. *Id.* The State asked for a motion to reconsider. The Rules of Criminal Procedure do not contain a specific provision allowing motions to reconsider earlier rulings, but the silence on the subject does not preclude them. *State v. Montjoy*, 366 N.W.2d 103, 107-08 (Minn. 1985) (holding that a prosecutor properly moved for clarification and reconsideration on an omnibus order); *State v. Papadakis*, 643 N.W.2d 349, 356-57 (Minn. Ct. App. 2002). Reconsideration may be more efficient, rather than allowing a decision with the potential for error to stand on the record only to be reverse or remanded through appeal. *Montjoy*, 366 N.W.2d at 107-08. *See also State v. Needham*, 488 N.W.2d 294 (Minn. 1992) (Remanded to reopen Omnibus Hearing). The State asks this Court to reconsider the findings based upon the testimony and evidence received at the November 17, 2023 hearing. There has been no transcript ordered of the hearing, and in any event a transcript would not give another judicial officer the ability to properly weigh the testimony presented in court based on persuasiveness and nonverbal cues. Another judicial officer would not be able to reconsider the testimony it did not receive. The Court should not permit the matter to be heard by another judicial officer.

II. Referee Skibbie Did Not Err in Finding that the State Failed to Prove Mr. Cherry Is Competent by a Fair Preponderance of the Evidence.

“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.” Minn. R. Crim. P. 20.01, subd. 2. The State bears the burden of proving that Mr. Cherry is competent by a fair preponderance of the evidence. *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018) (quoting *State v. Ganpat*, 732 N.W.2d 232 (Minn. 2007)). Unless the State can meet that burden, the court *shall* enter an order finding that the defendant is incompetent – an explicit presumption of incompetence. Minn. R. Crim. P. 20.01, subd. 5 (emphasis added).

The State offered two pieces of evidence in an attempt to meet its burden: the testimony of Dr. Lauren Herbert and her report. The State’s memorandum places great emphasis on Dr. Coffin’s opinion in his April 3, 2023 report when arguing for reconsideration. But neither Dr. Coffin’s testimony nor his report was offered during the hearing. A contested competency hearing is an evidentiary hearing governed by both the Minnesota Rules of Criminal Procedure and the Minnesota Rules of Evidence. Minn. R. Crim. Pro. 20.01, subd. 5; Minn. R. Evid. 1101. Because Dr. Coffin did not testify, his opinion of competence (not a judicial finding, as the State erroneously suggests) was not able to be cross-examined. Most importantly, Dr. Coffin’s report was from April, nearly five months prior to Dr. Herbert’s report and seven months prior to the contested hearing. As Dr. Herbert clearly testified, competency and mental health is fluid. Dr. Coffin did not have the most recent, nor most pertinent, information as it relates to Mr. Cherry’s competence, and should not be given greater weight than the testimony of Dr. Herbert or Ms. Knutson. Referee Skibbie properly considered the testimony of both those witnesses and determined that Ms. Knutson was more persuasive; therefore the State failed to meet its burden.

The State finally argues that mutism alone is not a mental illness for purposes of competency. Mutism may not be a mental illness, but it can be a symptom of a mental illness or a cognitive impairment as Dr. Herbert testified. The State improperly shifts the burden by arguing that “there is no evidence to suggest that the defendant is not malingering.” It is the State’s burden to prove that Mr. Cherry does not have a mental illness or a cognitive impairment. Dr. Herbert did no testing to determine whether he suffered from any mental illness or cognitive impairment. She did not do any testing to determine whether he was malingering, although such testing exists. She met with him for five minutes and rendered an opinion, despite acknowledging that antisocial personality disorder can be accompanied by bona fide mental illness, mental illness can develop or increase in severity over time, and cognitive impairments may appear over time. With such little investigation or evidence, the State could not have met its burden that Mr. Cherry did not have a mental illness or cognitive impairment, which is reflected in Referee Skibbie’s findings. The State also argues “there is no evidence that the Defendant cannot understand the legal proceedings or charges against him, only evidence that he will not communicate regarding legal issues.” That is flatly contravened by the evidence presented in the hearing. Dr. Herbert and Ms. Knutson both testified that they are unable to determine whether Mr. Cherry understands the legal proceedings in this case because he is unable to communicate. Ms. Knutson further testified that his writings and nonverbal responses are nonresponsive to her questions and suggest a lack of understanding. The evidence shows that Mr. Cherry does not understand these proceedings, and the State has not shown that he is competent by fair preponderance of the evidence. The Court should deny the State’s motion for reconsideration.

CONCLUSION

The motion should properly be heard before the factfinder Referee Skibbie. The State has not proven by a preponderance of the evidence that Mr. Cherry is competent. The Court should deny the State's motion for reconsideration.

Respectfully Submitted,

OFFICE OF THE HENNEPIN COUNTY PUBLIC DEFENDER
MICHAEL BERGER - CHIEF PUBLIC DEFENDER

By: /s/
Chelsea Knutson
Attorney No. 0398617
Assistant Public Defender
701 4th Avenue South, Suite 1400
Minneapolis, Minnesota 55415
Telephone: 612-596-7889

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FELONY DIVISION
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

-vs-

AARON CHERRY,

Defendant.

**NOTICE OF REQUEST
FOR JUDICIAL REVIEW
OF REFEREE ORDER**

MNCIS. Nos. 27-CR-23-3198,
27-CR-21-19577

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TO: THE COURT; AND TOM ARNESON AND JOSHUA LUGER, ASSISTANT
HENNEPIN COUNTY ATTORNEYS.

NOTICE OF REQUEST AND REQUEST FOR JUDICIAL REVIEW

Aaron Cherry requests judicial review of Referee Borer's February 9, 2024 Order Denying Motion for Release and Denying Motion for Amended Conditional Release Order and specifically requests review of the following provisions of the Order:

1. Findings of Fact 4, 5, 6, 7, 8, 9, 10
2. Order 1, 2

on grounds that the Findings and Order are not supported by the weight of the evidence and apposite legal authority. This motion is made pursuant to Minnesota Statute § 484.70 subd. 7, Minn. R. Crim. P. 6.02 and 20.01, and *State v. Bauer*, 299 N.W.2d 493 (Minn. 1980). Mr. Cherry also relies upon all records, files and proceedings, and upon any oral or written arguments the Court may entertain.

Respectfully Submitted,

OFFICE OF THE HENNEPIN COUNTY PUBLIC DEFENDER

By: /s/
Chelsea Knutson
Attorney No. 0398617
Assistant Public Defender
701 4th Avenue South, Suite 1400
Minneapolis, Minnesota 55415
Telephone: 612-596-7889

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FELONY DIVISION
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

-vs-

AARON CHERRY,

Defendant.

**WITHDRAWAL OF REQUEST
FOR JUDICIAL REVIEW
OF REFEREE ORDER**

MNCIS. Nos. 27-CR-23-3198,
27-CR-21-19577

*

*

*

TO: THE COURT; AND TOM ARNESON AND JOSHUA LUGER, ASSISTANT
HENNEPIN COUNTY ATTORNEYS.

WITHDRAWAL OF REQUEST FOR JUDICIAL REVIEW

The State and Defense have agreed to amend Mr. Cherry's conditional release to include release from custody without monetary bail. Due to this agreement, Mr. Cherry respectfully withdraws his request for judicial review of Referee Borer's February 9, 2024 Order Denying Motion for Release and Denying Motion for Amended Conditional Release Order.

Respectfully Submitted,

OFFICE OF THE HENNEPIN COUNTY PUBLIC DEFENDER

By: /s/
Chelsea Knutson
Attorney No. 0398617
Assistant Public Defender
701 4th Avenue South, Suite 1400
Minneapolis, Minnesota 55415
Telephone: 612-596-7889

STATE OF MINNESOTA
HENNEPIN COUNTY

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota

v.

AARON DASHAUN CHERRY
100 1st Street
Minneapolis MN 55404

Court File: 27-CR-24-4834;
27-CR-21-19577;
27-CR-24-4834

NOTICE OF HEARING

Your next court appearance is:

**Wednesday, June 05, 2024
3:00 PM**

with

Referee Lori Skibbie

**C-4, 300 South Sixth Street
Minneapolis Minnesota 55487-
0340**

This appearance is for: Evidentiary Hearing

- **If you do not appear for this hearing, a bench warrant may be issued for your arrest. For petty misdemeanors, a conviction will be entered if you fail to appear.**
- **Arrive 15 minutes early** to allow time to go through security and meet with your attorney or to apply for a court-appointed attorney if you do not have funds to hire a lawyer.
- You can receive automatic reminders of future court dates via email or text. Set this up at www.mncourts.gov/hearing-reminders.aspx or scan the QR code to enroll.
- Look for your name on a monitor for further courtroom information.
- Court may take a few hours – please plan for this.
- If your contact information changes, you must let the court know at 612-348-2040.
- If you are appearing on a traffic offense, please bring your driver's license and proof of insurance.
- If you are paying a fine, please bring payment if you can. Credit cards, cash, and checks are accepted.
- Stay in touch with your attorney if you have one. If you are representing yourself, please review www.mncourts.gov/Help-Topics/Representing-Yourself-in-Court.aspx.
- If you cannot afford to hire a lawyer and would like to apply for a court-appointed attorney before this appearance visit <https://4thcourtspde.courts.state.mn.us> or scan the QR code to start the application.



Defendant Signature

Date

STATE OF MINNESOTA**DISTRICT COURT****COUNTY OF HENNEPIN****FOURTH JUDICIAL DISTRICT**

State of Minnesota,

**STATE'S NOTICE OF MOTION
AND MOTION**

Plaintiff,

vs.

Court Case No. 27-CR-23-3198
C.A. Case No. 23A01579

Aaron Dashaun Cherry,

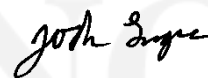
Defendant.

NOTICE

TO: THE COURT AND COUNSEL FOR THE ABOVE-NAMED DEFENDANT

PLEASE TAKE NOTICE that as soon thereafter as counsel may be heard, before the Honorable Judge Dayton-Klein, Judge of District Court, the State will move the Court for a Motion to reconsider the finding of incompetence based on the fact that the finding of malingering has not been refuted and a conclusion of mutism is not a mental health diagnosis that provides for a determination of incompetence under the law. A further memorandum of law will follow at a later date, ahead of a hearing.

Respectfully submitted,

MARY F. MORIARTY
Hennepin County Attorney 12/15/2023Joshua Luger(0403384)
Assistant County Attorney
300 S 6th St
C2100
Minneapolis, MN 55487
Telephone: 612-596-6005

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FELONY DIVISION
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

-vs-

AARON CHERRY,

Defendant.

**NOTICE OF MOTION AND
MOTION FOR RELEASE**

MNCIS. Nos. 27-CR-23-3198,
27-CR-21-19577

*

*

*

TO: THE COURT; AND TOM ARNESON AND JOSHUA LUGER, ASSISTANT
HENNEPIN COUNTY ATTORNEYS.

NOTICE OF MOTION

PLEASE TAKE NOTICE that on Tuesday, February 6, 2024 at 1:30 p.m., or as soon
thereafter as counsel may be heard, Aaron Cherry will seek the following relief:

MOTION

Aaron Cherry requests that this court modify his conditions of release to permit
conditional release without posting monetary bail due to Mr. Cherry's incompetence. This
motion is made pursuant to Minn. R. Crim. P. 6, 20.01, *Jackson v. Indiana*, 406 U.S. 715
(1972), and upon all records, files and proceedings, and upon any oral or written arguments
the Court may entertain.

Respectfully Submitted,

OFFICE OF THE HENNEPIN COUNTY PUBLIC DEFENDER

By: /s/
Chelsea Knutson
Attorney No. 0398617
Assistant Public Defender
701 4th Avenue South, Suite 1400
Minneapolis, Minnesota 55415
Telephone: 612-596-7889

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT-ADULT DIVISION
FOURTH JUDICIAL DISTRICT

State of Minnesota

Plaintiff,

-vs-

AARON CHERRY,

Defendant.

**MEMORANDUM IN SUPPORT
OF MOTION FOR RELEASE**

Court File No. 27-CR-23-3198;
27-CR-12-19577

TO: THE HONORABLE JUDGE OF DISTRICT COURT; AND THOMAS ARNESON
AND JOSHUA LUGER, ASSISTANT HENNEPIN COUNTY ATTORNEYS.

STATEMENT OF FACTS

On October 20, 2021 Defendant Aaron Cherry was charged with a felony Domestic Assault pursuant to Minn. Stat. § 609.2242 in case file 27-CR-21-19577. Concerns were raised regarding his competency to proceed and an evaluation pursuant to Minnesota Rule of Criminal Procedure 20.01 was ordered. The evaluator opined that Mr. Cherry was incompetent to proceed and he was found incompetent by the Honorable Lisa Janzen on November 23, 2021. A six-month review evaluation was conducted and opined Mr. Cherry was now competent to proceed; he was found competent on June 22, 2022 by the Honorable Lisa Janzen. Mr. Cherry ultimately pled guilty to that offense and was sentenced on September 15, 2022. A probation violation report was filed on March 6, 2023 alleging contact with the victim and failure to remain law abiding for the allegations in pending case 27-CR-23-3198. In 27-CR-23-3198 Mr. Cherry is alleged to have committed a felony No Contact Order Violation in violation of Minn. Stat. § 629.75.2(d)(1) and Domestic Assault in violation of Minn. Stat. § 609.2242 on February 8, 2023.

Concerns over Mr. Cherry's competence were again raised and a Rule 20 evaluation on both files was ordered on March 7, 2023. The evaluator opined that Mr. Cherry was competent to proceed, but the Defense challenged that opinion and a contested hearing was

held on November 17, 2023 in front of Referee Lori Skibbie. Referee Skibbie issued an Order, approved by the Honorable Julia Dayton Klein, on December 6, 2023 finding that Mr. Cherry is incompetent to proceed. The State filed a motion to reconsider on December 15, 2023. The matter was heard before the Honorable Michael Brown on January 31, 2024; Judge Brown denied the motion to reconsider but at that time denied a reduction of bail because Mr. Cherry did not have a residential address. Defense requested that the matter be reset for a bail hearing on the next available Rule 20 calendar. Mr. Cherry has been in custody since his arrest on February 8, 2023 – 363 days as of the filing of this memorandum and counting. The State has declined to pursue civil commitment of Mr. Cherry. He is next scheduled to have a six-month review of his competency on June 11, 2024. If he remains in custody until that date, he will have been incarcerated 490 days.

LEGAL ARGUMENT

The Minnesota Constitution provides, in Article I, Section 5 “[e]xcessive bail shall not be required, nor shall excessive fines be imposed; nor shall cruel or unusual punishments be inflicted.” Further, a person charged with an offense “*must* be released on personal recognizance or an unsecured appearance bond unless a court determines that release will endanger the public safety or will not reasonably assure a defendant’s appearance.” Minn. R. Crim. P. 6.02, subd. 1 (emphasis added). In those limited circumstances, the court must impose conditions that will reasonably assure person’s appearance, including placing the defendant under supervision, placing restrictions on travel or residence, requiring a bond ,or other necessary conditions. *Id.* The Court must review conditions of release on request of any party. Minn. R. Crim. P. 6.02, subd. 4.

But it is not so simple as considering the traditional legal considerations of bail. Mr. Cherry has been found incompetent pursuant to Minn. R. Crim. P. 20.01, subd. 2. (“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”). “The United States Supreme Court has stated that it would be cruel and unusual punishment to make the status of being mentally ill a crime.” *State v. Bauer*, 299 N.W.2d 493, 498 (Minn. 1980) (citing *Robinson v. California*, 370 U.S. 660, 666 (1962)). In *Bauer*, the defendant shot and killed a police officer who was attempting to serve him with a mental health commitment order. He was indicted for murder and convicted, but his conviction was overturned due to competency-related concerns. *Id.* at 495. The defendant was found incompetent, as well as mentally ill and dangerous; he was subsequently civilly committed and held at various secure hospitals. *Id.* After numerous incompetency findings, the district court certified to the Minnesota Supreme Court the question of whether the indictment should be dismissed as a violation of (among other grounds) cruel and unusual punishment. In that case, the Court found that continued confinement of the defendant was not cruel and unusual because his confinement “is commensurate with his status as mentally ill and dangerous” and he was “confined in a setting designed to treat his mental illness to the greatest extent possible under the current state of medical knowledge.” *Id.* at 499. This case is not like *Bauer* because Mr. Cherry has not been civilly committed so there is no finding that he is mentally ill and dangerous. He is not in a state hospital receiving treatment for any mental illness – in fact, there has been finding that Mr. Cherry is mentally ill at all. Rather, there has been a finding he is incompetent due to cognitive impairment, something he has not and cannot receive treatment for while in the Hennepin County Jail.

In *Jackson v. Indiana*, the United States Supreme Court held that indefinite commitment of a deaf-mute, incompetent defendant “solely on account of his incompetency to stand trial does not square with the Fourteenth Amendment’s guarantee of due process.” 406 U.S. at 731. In *O'Connor v. Donaldson*, 422 U.S. 563, 575 (1975), the United States Supreme Court similarly noted that “[a] finding of ‘mental illness’ alone cannot justify a State’s locking a person up against his will and keeping him indefinitely in simple custodial confinement.

Assuming that that term can be given a reasonably precise content and that the ‘mentally ill’ can be identified with reasonable accuracy, there is still no constitutional basis for confining such persons involuntarily if they are dangerous to no one and can live safely in freedom.” In Mr. Cherry’s case, the State is functionally seeking indefinite detention of Mr. Cherry by imposing a bail of \$20,000 with conditions – an amount Mr. Cherry has been unable to post for a year and seems unlikely to be able to do in the future. The State has declined to pursue civil commitment of Mr. Cherry. He is neither mentally ill nor dangerous. He is incompetent, and the State’s attempt to have him held indefinitely while the proceedings are suspended violates the due process and excessive bail concerns outlined in *Bauer* and *Jackson*.

At the January 31, 2024 hearing, Judge Michael Browne declined to release Mr. Cherry on conditions without posting monetary bail because the address Mr. Cherry provided was of a post office and Mr. Cherry “had nowhere to go.” Homelessness is not a basis to deny conditional release and is excessive bail. Mr. Cherry provided an address at which he can receive mail for court notices. Mr. Cherry can stay in a homeless shelter.¹ Counsel for Mr. Cherry will further supplement the record orally at the bail hearing, but most social services such as Medical Assistance, General Assistance, or Community Access for Disability Inclusion (CADI) housing waiver are not available while incarcerated. Homeless shelters contacted on Mr. Cherry’s behalf require him to be out of custody before being able to secure a bed. The Court and the State have created the conditions by which Mr. Cherry is unhoused by keeping him in custody for a year, yet seek to hold his homelessness against him by making residential housing a condition of his conditional release. To do so at all violates the right to excessive bail and cruel and unusual punishment, let alone indefinitely because the proceedings are

¹ Of note, the new Minnesota Statute § 611.55, subd. 4, not yet implemented, governs the obligation of a forensic navigator to assist incompetent defendants. Among their duties, forensic navigators must assist in developing a bridge plan which includes “a confirmed housing address the defendant will use upon release, *including but not limited to emergency shelters*” (emphasis added). The statute clearly contemplates that homeless incompetent defendants may be released even without a permanent residential address.

suspended due to Mr. Cherry's incompetence. The Court should modify the conditions of release to permit release without bail.

RESPECTFULLY SUBMITTED,

OFFICE OF THE HENNEPIN COUNTY PUBLIC DEFENDER
MICHAEL BERGER - CHIEF PUBLIC DEFENDER

By: /s/

Chelsea Knutson
Attorney for Defendant
Attorney License No. 0398617
701 4th Avenue South, Suite 1400
Minneapolis, MN 55415
Telephone: (612) 596-7889

Dated: This 5th day of February, 2024.

MINNESOTA
JUDICIAL
BRANCH

**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.

WRITTEN ORDER DENYING STATE'S MOTION

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.¹ 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.

¹ 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 6th 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 6th 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 6th 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 6th 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

State of Minnesota

District Court

Hennepin County

Fourth Judicial District

State of Minnesota,
Plaintiff,

v.

AARON DASHAUN CHERRY,
Defendant.

**Order to Fourth Judicial District Court
Psychological Services**
27-CR-23-3198,
27-CR-211-19577

Defendant Information	
☐ Out of Custody ☒ In Custody – at Facility: <u>PSF</u>	
Date of Birth: 08/19/1994	SILS Identifier: 832680; 0321552
Phone: Home: 773-351-5127, Cell: 773-971-8326	
Email:	
Current Address:	☐ Confirmed address with Defendant
Additional family/collateral contact number and instructions:	

It is hereby ordered:

- ☒ For felony and gross misdemeanor cases, probable cause has been found.
- ☐ The defendant is to be released upon completion of the interview process.
- ☐ This is part of the targeted misdemeanor program.

1. The Chief of Psychological Services of the Fourth Judicial District or the Chief's designee ("Examiner") shall conduct the following psychological evaluation, assessment and/or consultation regarding the defendant:

- ☒ Competency to participate in proceedings pursuant to Rule 20.01
- ☐ Mental state at the time of the alleged act pursuant to Rule 20.02 (M'Naghten Rule)
- ☐ Sex Offender Evaluation pursuant to Minnesota Statute § 609.3457
- ☐ Repeat Sex Offender Evaluation pursuant to Minnesota Statute § 609.3457
- ☐ Consultation (Pre-Sentence) _____
- ☐ Other (please specify) _____

2. Copies of this evaluation shall be provided to the Court and the following individuals:

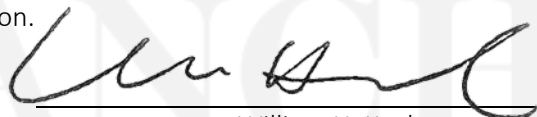
Defense Attorney: JAMES CHRISTOPHER HORVATH
Prosecuting Attorney: JOSHUA IRVING LUGER

Phone: 612-208-2377
Phone: 612-596-6005
Phone:

3. The hearing for the return of the psychological evaluation will be held on April 04, 2023 at 1:30 PM.

4. Upon presentation of this order, the relevant custodian of records shall provide (whether mailed, faxed, or personally delivered) to the Examiner all relevant records from the following sources: behavioral, chemical dependency, developmental disability, educational, employment, judicial, law enforcement (including audio/visual recordings), medical, probation/correction, psychological, and social service. A copy of the records so requested shall be delivered to the Examiner within 96 hours of presentation of this order. Records that are faxed shall be sent to 612-348-3452. Mailed records should be sent to Hennepin County District Court, Psychological Services, 300 South Sixth Street, C-509 Government Center, Minneapolis, Minnesota 55487. All agencies maintaining the above-listed records may also communicate verbally with the requesting Examiner.
 - **The Court specifically finds** good cause exists for authorizing the disclosure of the identified records, including chemical dependency records, because other ways of obtaining the information are not available or would not be effective, and the public interest and need for disclosure outweighs the potential injury to the patient, the physician/patient relationship and any chemical dependency treatment facility or organization holding records pertaining to Defendant.
5. During the preparation of the report, the Examiner and any employee of Community Corrections and Rehabilitation may discuss the case and share relevant information in a manner consistent with Minnesota Rules of Criminal Procedure, Minnesota Statutes, and case law.
6. If a sex offender evaluation has been ordered and the defendant is a Repeat Sex Offender as defined in Minnesota Statute § 609.3457, Psychological Services is ordered to comply with both the requirements of §609.3457 and the agreement with Minnesota State Operated Forensic Services. A copy of any Repeat Sex Offender Report produced by Psychological Services shall be forwarded to the Court and the Commissioner of Corrections.
7. In the case of Rule 20 evaluations, the Examiner shall offer in the report an opinion and support for the opinion on whether the defendant:
 - a. Is suitable to refer for consideration of civil commitment and the basis of the possible commitment,
 - b. May be mentally ill and dangerous, and
 - c. Needs immediate hospitalization.
8. In the case of Rule 20 evaluations, the Examiner shall promptly notify the prosecutor, defense attorney and the Court if the Examiner concludes that the defendant:
 - a. Presents an imminent risk of serious danger to another,
 - b. May be imminently suicidal, or
 - c. Needs emergency intervention.

Dated: March 6, 2023



William H. Koch
District Court Judge

- ✓ Please direct the prosecuting agency to forward a copy of the police report for each case to Psychological Services.
- ✓ If a defendant is to be released upon completion of the interview process, a Conditional Release Order must be filed giving that direction.



PSYCHOLOGICAL SERVICES
300 S. 6th Street, Suite C-509, Minneapolis MN 55487-0351 • (612) 348-3723 • FAX (612) 348-3452

You have been ordered to participate in a psychological evaluation.
A doctor will contact you to schedule your evaluation.

Many evaluations are now completed in a non-contact office at the Hennepin County Government Center, located in downtown Minneapolis. The address is:

**Psychological Services
Hennepin County Government Center
300 South Sixth Street
C Tower, 5th Floor
Suite 509
Minneapolis, MN 55487
612-348-3723**

Please be aware security screening is in place at the Government Center and you should allow an extra 10-15 minutes prior to your appointment for this process.

Health screening questions will be asked when you check in for your evaluation, and individuals with COVID-19 symptoms will be rescheduled. **Anyone experiencing COVID-19 symptoms should not come to an in-person appointment but should call the examiner as soon as possible.** Everyone needs to follow current rules for wearing a face covering.

Some evaluations are being completed by video technology. The decision about how an evaluation is completed will be made by the assigned examiner based upon a number of factors. **Please, do not assume evaluations can be completed by video technology.**

If you are not contacted by the assigned examiner at least two weeks prior to the return hearing, you should call 612-348-3723.

Filed in District Court
State of Minnesota
Mar 06, 2023 12:19 pm

State of Minnesota

District Court

Hennepin County

Fourth Judicial District

State of Minnesota,
Plaintiff,

v.

AARON DASHAUN CHERRY,
Defendant.**Order to Fourth Judicial District Court
Psychological Services**
27-CR-23-3198,
27-CR-21-19577

Defendant Information	
☐ Out of Custody ☒ In Custody – at Facility: <u>PSF</u>	
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Phone: Home: 773-351-5127, Cell: 773-971-8326	
Email:	
Current Address:	
☐ Confirmed address with Defendant	
Additional family/collateral contact number and instructions:	

It is hereby ordered:

- ☒ For felony and gross misdemeanor cases, probable cause has been found.
☐ The defendant is to be released upon completion of the interview process.
☐ This is part of the targeted misdemeanor program.

- The Chief of Psychological Services of the Fourth Judicial District or the Chief's designee ("Examiner") shall conduct the following psychological evaluation, assessment and/or consultation regarding the defendant:
 - ☒ Competency to participate in proceedings pursuant to Rule 20.01
 - ☐ Mental state at the time of the alleged act pursuant to Rule 20.02 (M'Naghten Rule)
 - ☐ Sex Offender Evaluation pursuant to Minnesota Statute § 609.3457
 - ☐ Repeat Sex Offender Evaluation pursuant to Minnesota Statute § 609.3457
 - ☐ Consultation (Pre-Sentence) _____
 - ☐ Other (please specify) _____

- Copies of this evaluation shall be provided to the Court and the following individuals:

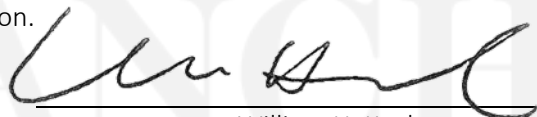
Defense Attorney: JAMES CHRISTOPHER HORVATH
 Prosecuting Attorney: JOSHUA IRVING LUGER

Phone: 612-208-2377
 Phone: 612-596-6005
 Phone:

- The hearing for the return of the psychological evaluation will be held on April 04, 2023 at 1:30 PM.

4. Upon presentation of this order, the relevant custodian of records shall provide (whether mailed, faxed, or personally delivered) to the Examiner all relevant records from the following sources: behavioral, chemical dependency, developmental disability, educational, employment, judicial, law enforcement (including audio/visual recordings), medical, probation/correction, psychological, and social service. A copy of the records so requested shall be delivered to the Examiner within 96 hours of presentation of this order. Records that are faxed shall be sent to 612-348-3452. Mailed records should be sent to Hennepin County District Court, Psychological Services, 300 South Sixth Street, C-509 Government Center, Minneapolis, Minnesota 55487. All agencies maintaining the above-listed records may also communicate verbally with the requesting Examiner.
 - **The Court specifically finds** good cause exists for authorizing the disclosure of the identified records, including chemical dependency records, because other ways of obtaining the information are not available or would not be effective, and the public interest and need for disclosure outweighs the potential injury to the patient, the physician/patient relationship and any chemical dependency treatment facility or organization holding records pertaining to Defendant.
5. During the preparation of the report, the Examiner and any employee of Community Corrections and Rehabilitation may discuss the case and share relevant information in a manner consistent with Minnesota Rules of Criminal Procedure, Minnesota Statutes, and case law.
6. If a sex offender evaluation has been ordered and the defendant is a Repeat Sex Offender as defined in Minnesota Statute § 609.3457, Psychological Services is ordered to comply with both the requirements of §609.3457 and the agreement with Minnesota State Operated Forensic Services. A copy of any Repeat Sex Offender Report produced by Psychological Services shall be forwarded to the Court and the Commissioner of Corrections.
7. In the case of Rule 20 evaluations, the Examiner shall offer in the report an opinion and support for the opinion on whether the defendant:
 - a. Is suitable to refer for consideration of civil commitment and the basis of the possible commitment,
 - b. May be mentally ill and dangerous, and
 - c. Needs immediate hospitalization.
8. In the case of Rule 20 evaluations, the Examiner shall promptly notify the prosecutor, defense attorney and the Court if the Examiner concludes that the defendant:
 - a. Presents an imminent risk of serious danger to another,
 - b. May be imminently suicidal, or
 - c. Needs emergency intervention.

Dated: March 6, 2023



William H. Koch
District Court Judge

- ✓ Please direct the prosecuting agency to forward a copy of the police report for each case to Psychological Services.
- ✓ If a defendant is to be released upon completion of the interview process, a Conditional Release Order must be filed giving that direction.

**PSYCHOLOGICAL SERVICES****300 S. 6th Street, Suite C-509, Minneapolis MN 55487-0351 • (612) 348-3723 • FAX (612) 348-3452**

You have been ordered to participate in a psychological evaluation.
A doctor will contact you to schedule your evaluation.

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Hennepin County Government Center
300 South Sixth Street
C Tower, 5th Floor
Suite 509
Minneapolis, MN 55487
612-348-3723**

Please be aware security screening is in place at the Government Center and you should allow an extra 10-15 minutes prior to your appointment for this process.

Health screening questions will be asked when you check in for your evaluation, and individuals with COVID-19 symptoms will be rescheduled. **Anyone experiencing COVID-19 symptoms should not come to an in-person appointment but should call the examiner as soon as possible.** Everyone needs to follow current rules for wearing a face covering.

Some evaluations are being completed by video technology. The decision about how an evaluation is completed will be made by the assigned examiner based upon a number of factors. **Please, do not assume evaluations can be completed by video technology.**

If you are not contacted by the assigned examiner at least two weeks prior to the return hearing, you should call 612-348-3723.

State of Minnesota

District Court

Hennepin County

Fourth Judicial District

State of Minnesota,
Plaintiff,

v.

AARON DASHAUN CHERRY,
Defendant.**Order to Fourth Judicial District Court
Psychological Services**27-CR-23-3198
27-CR-21-19577

Defendant Information	
☐ Out of Custody ☒ In Custody – at Facility: <u>PSE</u>	
Date of Birth: 08/19/1994	SILS Identifier: 832680; 0321552
Phone: Home: 773-351-5127, Cell: 773-971-8326	
Email: unknown@courts.state.mn.us	
Current Address: 100 1st Ave Minneapolis MN 55408	
☐ Confirmed address with Defendant	
Additional family/collateral contact number and instructions: 27-CR-21-19577	

It is hereby ordered:

- ☒ For felony and gross misdemeanor cases, probable cause has been found.
☐ The defendant is to be released upon completion of the interview process.
☐ This is part of the targeted misdemeanor program.

1. The Chief of Psychological Services of the Fourth Judicial District or the Chief's designee ("Examiner") shall conduct the following psychological evaluation, assessment and/or consultation regarding the defendant:

- ☒ Competency to participate in proceedings pursuant to Rule 20.01
☐ Mental state at the time of the alleged act pursuant to Rule 20.02 (M'Naghten Rule)
☐ Sex Offender Evaluation pursuant to Minnesota Statute § 609.3457
☐ Repeat Sex Offender Evaluation pursuant to Minnesota Statute § 609.3457
☐ Consultation (Pre-Sentence) _____
☐ Other (please specify) _____

2. Copies of this evaluation shall be provided to the Court and the following individuals:

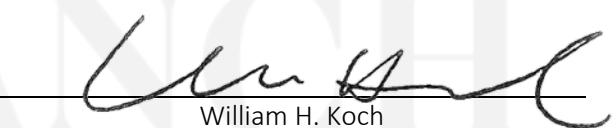
Defense Attorney: CHELSEA ANN KNUTSON
Prosecuting Attorney: JOSHUA IRVING LUGER

Phone: 612-596-7889
Phone:
Phone:

3. The hearing for the return of the psychological evaluation will be held on September 05, 2023 at 9:00 AM.

4. Upon presentation of this order, the relevant custodian of records shall provide (whether mailed, faxed, or personally delivered) to the Examiner all relevant records from the following sources: behavioral, chemical dependency, developmental disability, educational, employment, judicial, law enforcement (including audio/visual recordings), medical, probation/correction, psychological, and social service. A copy of the records so requested shall be delivered to the Examiner within 96 hours of presentation of this order. Records that are faxed shall be sent to 612-348-3452. Mailed records should be sent to Hennepin County District Court, Psychological Services, 300 South Sixth Street, C-509 Government Center, Minneapolis, Minnesota 55487. All agencies maintaining the above-listed records may also communicate verbally with the requesting Examiner.
 - **The Court specifically finds** good cause exists for authorizing the disclosure of the identified records, including chemical dependency records, because other ways of obtaining the information are not available or would not be effective, and the public interest and need for disclosure outweighs the potential injury to the patient, the physician/patient relationship and any chemical dependency treatment facility or organization holding records pertaining to Defendant.
5. During the preparation of the report, the Examiner and any employee of Community Corrections and Rehabilitation may discuss the case and share relevant information in a manner consistent with Minnesota Rules of Criminal Procedure, Minnesota Statutes, and case law.
6. If a sex offender evaluation has been ordered and the defendant is a Repeat Sex Offender as defined in Minnesota Statute § 609.3457, Psychological Services is ordered to comply with both the requirements of §609.3457 and the agreement with Minnesota State Operated Forensic Services. A copy of any Repeat Sex Offender Report produced by Psychological Services shall be forwarded to the Court and the Commissioner of Corrections.
7. In the case of Rule 20 evaluations, the Examiner shall offer in the report an opinion and support for the opinion on whether the defendant:
 - a. Is suitable to refer for consideration of civil commitment and the basis of the possible commitment,
 - b. May be mentally ill and dangerous, and
 - c. Needs immediate hospitalization.
8. In the case of Rule 20 evaluations, the Examiner shall promptly notify the prosecutor, defense attorney and the Court if the Examiner concludes that the defendant:
 - a. Presents an imminent risk of serious danger to another,
 - b. May be imminently suicidal, or
 - c. Needs emergency intervention.

Dated: July 31, 2023



William H. Koch
District Court Judge

- ✓ Please direct the prosecuting agency to forward a copy of the police report for each case to Psychological Services.
- ✓ If a defendant is to be released upon completion of the interview process, a Conditional Release Order must be filed giving that direction.



REGIONAL PSYCHOLOGICAL SERVICES
300 S. 6th Street, Suite C-509, Minneapolis MN 55487-0351 • (612) 540-7303 • FAX (612) 348-3452

You have been ordered to participate in a psychological evaluation.
A representative from Regional Psychological Services will contact you to
schedule your evaluation.

Many evaluations are now completed in a non-contact office at the Hennepin
County Government Center, located in downtown Minneapolis. The address is:

Regional Psychological Services
Hennepin County Government Center
300 South Sixth Street
C Tower, 5th Floor
Suite 509
Minneapolis, MN 55487
612-540-7303

Please be aware security screening is in place at the Government Center and you should
allow an extra 10-15 minutes prior to your appointment for this process.

Some evaluations are being completed by video technology. The decision about how an
evaluation is completed will be made by the assigned examiner based upon a number of
factors. **Please, do not assume evaluations can be completed by video technology.**

If you are not contacted by a representative at least two weeks prior to the return
hearing, you should call 612-540-7303.

STATE OF MINNESOTA
COUNTY OF HENNEPIN

Filed in District Court
State of Minnesota
Feb 16, 2024 8:13 am

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota
v.

Case: 27-CR-23-3198

AARON DASHAWN CHERRY

DOB (SILS): 08/19/1994; SILS: 832680

Charge: Violate No Contact Order

CONDITIONAL RELEASE ORDER

☐ New Order ☒ Amended Order

You are released on any of the following marked options (and marked conditions):

- ☒ Post bail/bond of \$40,000 with no conditions. ☐ Post bail/bond of \$_____ with the following conditions.
☐ Post cash bail of \$_____ with no conditions. ☐ Post cash bail of \$_____ with the following conditions.
☐ You are released with no bond, bail, or conditions. ☒ You are released with no bail on the following conditions.

- ☒ Obey all laws.
- ☒ Attend all court appearances and appointments with Psychological Services and Probation, including any Pre-Sentence Investigation interview.
- ☒ Do not have direct or indirect contact (including through social media) with S.C.N. Stay away from a three-block radius of this person and where this person lives, works, or goes to school. Stay away from 1700 block of Hennepin Avenue, Minneapolis, MN.
☒ except with a police escort to recover your personal properties.
- ☒ Do not possess any firearm or ammunition ☒ or other item used as a weapon.
- ☒ Stay in contact with your attorney and provide the court with your current address, phone, and email.
- ☒ This amendment results from an agreement between your counsel and the State.

Internal Use Only (as needed):

REVIEWED WITH DEFENDANT WHO WAS RELEASED TO:

☐ Self ☐ Treatment ☐ Other _____

Signatures:

Probation Officer _____ Date _____

Deputy _____ Date _____

Dayton Klein, Julia

2024.02.15 16:42:29

-06'00'

Judge

Date

Defendant

Date

HC 2921 (02/2023)

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
PROBATE/MENTAL HEALTH DIVISION
JUDICIAL DISTRICT: FOURTH

Court File No. 27-CR-23-3198

State of Minnesota,

Plaintiff,

v.

Aaron Dashaun Cherry,

Defendant.

**ORDER DENYING MOTION FOR RELEASE,
AND DENYING MOTION FOR AMENDED
CONDITIONAL RELEASE ORDER**

This matter came before the Court on February 6, 2024, on a Motion by Counsel for the Defendant to Modify the Conditions of Release of the Defendant from the Hennepin County Adult Detention Center, and to remove the bail requirement imposed on Defendant by the Court's Conditional Release Order dated February 10, 2023. The hearing took place remotely using Zoom video. The Defendant appeared at the hearing in custody from the Hennepin County Adult Detention Center and was represented by attorneys Chelsea Knutson and Susan Herlofsky, Assistant Hennepin County Public Defenders. The State of Minnesota was represented by Assistant Hennepin County Attorney Thomas Arneson.

The matter was referred for hearing to the undersigned District Court Referee, and based on the Referee's recommendations, the Court makes the following:

FINDINGS OF FACT

1. Defendant (date of birth 08/19/1994) was charged in Court File No. 27-CR-23-3198 with felony Violation of No Contact Order Within 10 years of the first of two convictions, in violation of Minn. Stat. § 629.75.2(d)(1); and felony Domestic Assault in violation of

Minn. Stat. § 609.2242.4. Both charges arise from an incident alleged to have occurred on February 8, 2023.

2. In the course of the proceedings, concerns were raised over Defendant's competence and a Rule 20 evaluation was ordered by the Court on March 7, 2023. The psychologist who evaluated the Defendant opined that he was competent to proceed on the criminal charges. Defendant's Counsel challenged that opinion and a contested competency hearing was subsequently held on November 17, 2023. On December 6, 2023, an Order was issued by this Court finding that Defendant was incompetent to proceed on the criminal charges. A motion for review of the December 6, 2023 Order was made by the State's Counsel, and by oral and written Orders dated January 31, 2024, the motion was denied and the December 6, 2023 Order was confirmed.
3. Defense Counsel notes that under Minn. R. Crim. P. Rule 6.02, subd. 4, the Court must review conditions of release on request of any party. Defense Counsel also directs the Court to Minn. R. Crim. P. Rule 6.02, subd. 1 which reads, in part, that a person must be released on personal recognizance or an unsupervised appearance bond "unless a court determines that release will endanger the public safety or will not reasonably assure the defendant's appearance."
4. When determining release, the Court looks to Minn. R. Crim. P. Rule 6.02, subd. 2 which sets forth the factors the court must consider in determining conditions of release. When analyzing the case under this Rule the Court finds as follows:
 - a. The nature and circumstances of the offense charged are serious. Both charges are felonies and both allegedly involved a victim with a prior DANCO against the Defendant.
 - b. As to the weight of the evidence, the Defendant is presumed innocent, however, the Court notes that on March 6, 2023, the Honorable Judge William H. Koch found

probable cause to believe that the offenses were committed and that the Defendant committed them.

- c. No information was presented to the Court about the Defendant's family ties.
- d. No information was presented to the Court about employment, but it appears from the Hennepin County Pre-Trial Evaluation filed February 10, 2023, that Defendant was unemployed prior to the alleged offenses.
- e. No information was presented to the Court about Defendant's financial resources.
- f. As for Defendant's character and mental condition, the Court has most recently found that he is incompetent to stand trial on the criminal charges.
- g. The Pre-Trial Evaluation indicates that Defendant's length of residence in the community prior to the offense was only one year.
- h. The Defendant has several prior felony convictions including Domestic Assault, Fourth Degree Assault, Domestic Strangulation, Armed Robbery, and Unlawful Possession of a Weapon by a Felon. Additionally, the Defendant has misdemeanor convictions of Trespass, Fleeing by means other than a motor vehicle, Violation of a No Contact Order, and Disorderly Conduct.
- i. The Pre-Trial Evaluation indicates 10 failures to appear beginning in January 2020 and ending in May 2022. Additionally, Defendant's Pre-Trial Score on his Pre-Trial Evaluation was 76, a very high score.
- j. No evidence was presented regarding any prior flight to avoid prosecution by the Defendant.
- k. The victim's safety is of concern to the Court especially given the Defendant's history of violence.
- l. No evidence was presented as to the jeopardy of any other person's safety.
- m. The Court has serious concerns about the public safety because of the Defendant's conduct and his past behavior.

5. When weighing all of the Rule 6.02, subd. 2 factors as a whole, the Court finds that Defendant's release without appropriate safeguards in place will endanger the victim, the public safety, and will likely result in the Defendant's nonappearance for future hearings.
6. Defense Counsel notes that Defendant has been in custody since his arrest on February 8, 2023. While this may be an extended period of time in custody, the Court does not find this to be cruel or unusual punishment. Here, the Court determined that Defendant is a risk to public safety and is not assured that he would appear in the future. He is charged with violating a no contact order within 10 years of the first of two convictions and domestic assault. The Defense Motion also indicates that Defendant is alleged to have violated his probation by having contact with the victim and by failing to remain law abiding, which would have occurred when Defendant was out of custody. MNCIS Index No. 29. The Court is also not assured that Defendant would attend future Court appearances, given his history of bench warrants issued as a result of failing to appear. The Court has not been presented with any reasonable alternatives for release of the Defendant that would not result in jeopardizing public safety or his future Court appearances.
7. Defense Counsel indicates that even though the Defendant has been found incompetent due to cognitive impairment, he is not receiving treatment while in the Jail. However, it is not the Court's role to find an appropriate placement or treatment for the Defendant. It is the Court's role to protect the safety of the victim and the public, and to ensure the Defendant is not a flight risk. Neither the State nor the Defense has presented a reasonable suggestion for a conditional release of the Defendant that would satisfy these concerns.
8. Following the Court's finding that the Defendant was incompetent to stand trial, the State declined to pursue civil commitment of the Defendant. Defense Counsel argues that the

Defendant is unconstitutionally being held indefinitely and solely on account of his incompetence to stand trial. The Court finds, however, that the Defendant is being held based on the risk he poses to public safety and the lack of assurance that he would attend future Court appearances, and not because of his incompetence to stand trial. Additionally, the Defendant is not being held indefinitely. He is scheduled to appear before this Court for a six-month review hearing on June 11, 2024, demonstrating that the Court continues to review his status.

9. Defense Counsel states that the placements which have been contacted will not accept the Defendant without an evaluation which cannot be done at the Jail. The Court also acknowledges Defense Counsel's suggestion that this Court issue an Order to transport the Defendant to 1800 Chicago for evaluation, care and treatment. The Court notes, however, that this facility is not a secure facility which would not serve to protect the victim or the general public. The court does not find this proposal to be an adequate condition for release. Defense Counsel also argues that the Defendant has an address in the community, however, the address is a post office box and not a residence. While the Defendant cannot be punished for failing to have a residence, this is another factor which leads the Court to find it likely that the Defendant would not be able to be reached for future court appearances. Additionally, Hennepin County Probation will not supervise the Defendant if released because he has been found incompetent to stand trial on the criminal charges. Therefore, the Court finds that a release of the Defendant under the proposal made by Defense Counsel will endanger the public safety and will not reasonably assure the Defendant's appearance at future hearings.

10. Since no appropriate conditions have been presented to the Court for the Defendant's conditional release, the Court finds the current bail and conditions of release to be appropriate and declines to amend its Conditional Release Order to allow for release of Defendant from the Adult Detention Center.

ORDER

IT IS ORDERED:

1. The Defendant's Motion to remove the bail requirements imposed by the Court and release him from the Hennepin County Adult Detention Center without bail, but on conditions, is DENIED.
2. The conditions of release set forth in the Conditional Release Order filed February 10, 2023, shall remain in effect.
3. Copies of this Order shall be served upon Counsel for the parties including:

Joshua Luger, Assistant Hennepin County Attorney;

Thomas Arneson, Assistant Hennepin County Attorney;

Chelsea Knutson, Assistant Hennepin County Public Defender; and

Susan Herlofsky, Assistant Hennepin County Public Defender.

Order Recommended by:

BY THE COURT:

Referee of District Court

Judge of District Court

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota, Plaintiff.**ORDER REVOKING CONDITIONAL
RELEASE AND APPEARANCE**

vs.

Aaron Dashaun Cherry, Defendant.
Dist Ct File 27-CR-23-3198

On March 08, 2024, the Department of Community Corrections and Rehabilitation filed a Conditional Release Violation Report, alleging under penalty of perjury that Defendant violated the following interim conditions in this case:

1. Obey all laws

The court finds that there is probable cause to believe Defendant has violated the interim conditions, so the Conditional Release is hereby set aside and vacated. Defendant is ordered to appear before a Judicial Officer of the District Court so that a final determination may be made as to whether Defendant has violated the interim conditions.

☐ **SUMMONS**

I order court administration to summons the defendant to appear before a Judicial Officer.

☐ **WARRANT**

It is further ordered that a bench warrant shall be issued for the defendant's apprehension.

Bail: _____ (**Note:** Hold without bail cannot be ordered unless a guilty plea/finding has been entered and the defendant is awaiting sentencing.)

☒ **ORDER OF DETENTION**

Since the Defendant is already in custody, I order, subject to bail or conditions of release, that the Defendant continue to be detained pending further proceedings.

Bail: \$40,000 (**Note:** Hold without bail cannot be ordered unless a guilty plea/finding has been entered and the defendant is awaiting sentencing.)

BY THE COURT:

Judge of District Court

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota, Plaintiff.**ORDER REVOKING CONDITIONAL
RELEASE AND APPEARANCE**

vs.

Aaron Dashaun Cherry, Defendant.
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BY THE COURT:

Judge of District Court