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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1781**

State of Minnesota,
Respondent,

vs.

Leanne Ranae Todd,
Appellant.

**Filed September 11, 2017
Affirmed
Smith, Tracy M., Judge**

Anoka County District Court
File No. 02-CR-14-5498

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Anthony C. Palumbo, Anoka County Attorney, Kelsey R. Kelley, Assistant County Attorney, Anoka, Minnesota (for respondent)

Charlie F. Clippert, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Peterson, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

In this criminal appeal, appellant Leanne Ranae Todd argues that the state did not prove by a fair preponderance of the evidence that she was competent to stand trial.

Because we conclude that the district court's finding of competency is supported by sufficient evidence, we affirm.

FACTS

Todd participated in the attempted robbery of two men in August 2014, during which two co-defendants stabbed the men. Todd was charged with two counts of aiding and abetting first-degree assault and two counts of aiding and abetting attempted first-degree aggravated robbery.

The district court ordered a rule 20 evaluation to assess whether Todd was competent to stand trial. Minn. R. Crim. P. 20.01. Dr. Ann Winkowski filed the first evaluation of Todd in November 2014. Winkowski diagnosed Todd with a mild intellectual disability. Winkowski reported that Todd understood basic legal concepts when unfamiliar concepts were explained to her and was able to evaluate her legal options. Winkowski opined that Todd was competent to stand trial. The district court concluded that Todd was competent based on Winkowski's report.

At the request of Todd's attorney, the district court ordered an updated competency evaluation in January 2015. Winkowski also conducted the second evaluation. Winkowski observed that Todd "presented as significantly more disabled" than during the first evaluation. When Winkowski confronted Todd about her behavior, Todd's "presentation shifted dramatically and she demonstrated a more complete understanding of her legal circumstances." Winkowski performed a portion of a CAST-MR, a test designed to assess the competency of individuals with intellectual disabilities, and concluded that

Todd's score was typical of individuals who are found competent. Winskowski again concluded that Todd was competent.

Todd objected to Winskowski's second evaluation and requested an adversarial competency evaluation. Dr. Harlan Gilbertson conducted two evaluations of Todd. Gilbertson found that Todd had an IQ of 48 and an intellectual developmental disorder of mild/moderate severity. Todd told Gilbertson that she did not regularly use a computer, with the exception of "a little" Facebook. Gilbertson concluded that Todd was incompetent because she lacked the ability to consult with her attorney to a reasonable degree.

The district court ordered Winskowski to respond to Gilbertson's reports. Winskowski stated that Gilbertson's reports provided further evidence that Todd was malingering. As an example of Todd's malingering, Winskowski demonstrated that Todd exaggerated her lack of social-media presence by showing that Todd had an active Facebook page. Winskowski noted that Todd was connected in her community, sought out resources, and was at one time licensed to drive. Winskowski concluded, "[Todd's] ability to dramatically change her level of functioning when confronted, her performance on the CAST-MR, and information that suggests a profoundly different level of functioning than she demonstrated during her second interview with me and her evaluation by Dr. Gilbertson, clearly demonstrates that [Todd] is malingering and that she is competent."

The district court ordered Dr. Dawn Peuschold, a third evaluator, to conduct a final evaluation of Todd. Peuschold conducted three tests to assess whether Todd was malingering, the results of which were consistent with malingering. Peuschold noted that Todd appeared to function at a level greater than Gilbertson's reports suggested because

Todd engaged in many activities—using mass transit, paying bills, participating in social media, voting, and making doctors’ appointments—that were not consistent with the types of disabilities identified by Gilbertson. Based on Winskowski’s initial report and Peuschold’s own evaluation, Peuschold concluded that Todd was competent.

Gilbertson, Winskowski, Peuschold, and Todd’s attorney testified at the competency hearing. Gilbertson testified that Todd appeared to be “psychologically retreating.” Gilbertson also testified that he did not believe that Todd was malingering and that he does not need to rely on specific malingering tests to determine whether an individual is malingering. Winskowski testified that she had not heard of psychologically retreating and that she believed Todd was malingering. Peuschold testified that she believed Todd was malingering and that Todd’s functioning was inconsistent with the results of Gilbertson’s reports. Todd’s attorney testified that Todd “will shut down” when meeting with her, but also testified that she and Todd had a “good working relationship.”

The district court concluded that Todd was competent to stand trial because it found the evaluations of Winskowski and Peuschold more persuasive than Gilbertson’s evaluation. Todd pleaded guilty to two counts of first-degree assault.

Todd appeals.

D E C I S I O N

Todd argues that the state did not prove by a fair preponderance of the evidence that Todd was competent to stand trial.

A criminal defendant is incompetent to stand trial if the defendant lacks the 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. The state must show the defendant's competence by a fair preponderance of the evidence. *State v. Ganpat*, 732 N.W.2d 232, 238 (Minn. 2007). We independently review the record to determine if the district court gave "proper weight to the evidence produced and if the finding of competency is adequately supported by the record." *Id.* (quotations omitted).¹

A district court's findings of fact may be implicit so long as those implicit findings are supported by sufficient evidence. *State v. Alvarez*, 820 N.W.2d 601, 620 (Minn. App. 2012), *aff'd*, 836 N.W.2d 527 (Minn. 2013). We defer to the district court's credibility findings and weighing of conflicting evidence. *See State v. Schluter*, 653 N.W.2d 787, 793 (Minn. App. 2002), *review denied* (Minn. Feb. 18, 2003); *see also State v. Miller*, 659 N.W.2d 275, 279 (Minn. App. 2003), *review denied* (Minn. July 15, 2003).

Ability to Rationally Consult with Counsel

The first issue is whether the district court's finding that Todd did not lack the ability to rationally consult with counsel is supported by a preponderance of the evidence. The district court did not doubt that Todd "may be a difficult client with whom to communicate, or that her counsel may need to explain legal concepts multiple times and in a variety of ways for [Todd] to understand the proceedings and her own legal options." But the district court also found that Todd had an "ongoing motivation to 'shut down' during these proceedings," implying that she had actively avoided working with counsel because she

¹ The district court's findings of fact are labelled as conclusions of law in its order. "[A] fact found by the court, although expressed as a conclusion of law, will be treated upon appeal as a finding of fact." *Big Lake Lumber, Inc. v. Sec. Prop. Invs., Inc.*, 836 N.W.2d 359, 366 n.8 (Minn. 2013) (quotation omitted).

was malingering. The district court concluded that Todd had the ability to rationally consult with counsel.

A finding that a defendant lacks the ability to rationally consult with counsel is generally founded on a defect of reason and not the defendant's uncooperative nature. *See State v. Mills*, 562 N.W.2d 276, 281-83 (Minn. 1997) (affirming a district court's finding that defendant was able to rationally consult with her attorney where she was clearly aware of the participants of the court proceedings, was directable, and had a good relationship with one of her attorneys). In *Ganpat*, the Minnesota Supreme Court affirmed a district court's finding that the defendant was able to rationally consult with counsel where the two psychologists found the defendant to be malingering. 732 N.W.2d at 238. Of the three psychologists who examined the defendant in *Ganpat*, two concluded that the defendant was malingering and exaggerating the severity of his intellectual disabilities, and one concluded that the defendant was not competent to stand trial after finding that the defendant was intellectually disabled. *Id.* at 236-37. The Minnesota Supreme Court affirmed because the district court's finding of competency was supported by the testimony and conclusions of two of the psychologists. *Id.* at 238.

Similar to *Ganpat*, here, two evaluators—Winskowski and Peuschold—opined that Todd was competent to stand trial and was malingering. Todd's attorney testified that Todd had a tendency to "shut down" during interviews, but that they had a "good working relationship" and Todd had been "candid" about her concerns. Todd's attorney testified that she did not become concerned about Todd's ability to consult with her until January or February 2015. Winskowski's November 2014 report showed that Todd understood

legal concepts when explained to her and was able to understand and evaluate legal options when presented with hypotheticals. During Winskowski's January 2015 evaluation, Todd presented as more disabled than before—which Winskowski later diagnosed as malingering—but, once confronted, was again able to understand basic legal concepts and evaluate legal options. Winskowski and Peuschold testified that Todd was malingering and that she was therefore incentivized to exaggerate her intellectual disabilities to appear incompetent. Peuschold further testified that the attorney's difficulty communicating with Todd was consistent with malingering. Sufficient evidence supports the district court's findings that Todd had the ability to rationally consult with counsel and that any difficulties in communication were the result of Todd's malingering and not her intellectual disability.

Ability to Understand the Proceedings and Participate in the Defense

The second issue is whether the district court's finding that Todd did not lack the ability to understand the proceedings and participate in the defense due to mental illness or deficiency is supported by a preponderance of the evidence. The district court relied on Winskowski's and Peuschold's evaluations in finding that Todd was malingering and found that Gilbertson's conclusions were "likely less reliable" because Gilbertson did not administer malingering tests. The district court found that Todd understood basic legal concepts, had abilities consistent with someone who was competent, and therefore had the ability to understand the proceedings and participate in the defense.

Todd argues that the evidence does not support the district court's finding that she had the ability to understand the proceedings. Winskowski's first report shows that Todd understood the charges against her, the seriousness of the charges, the roles of attorneys

and the judge, and plea bargaining. Todd was able to understand unfamiliar concepts after Winskowski explained them to her. Todd performed similarly during Winskowski's second evaluation. Sufficient evidence supports the district court's finding that Todd was able to understand the proceedings.

Todd argues that the district court did not make any findings regarding Todd's ability to "participate in the defense." Minn. R. Crim. P. 20.01, subd. 2(b). In its order, the district court entitled this part of its analysis, "Mental Illness or Deficiency Affecting Defendant's Ability to Understand the Proceedings." Todd correctly notes that the title to this part makes no mention of Todd's ability to participate in the defense. Nevertheless, in its conclusion, the district court concluded, "[Todd] is able to rationally consult with counsel and is able to understand the proceedings and participate in her defense." This conclusion is supported by sufficient findings. In its analysis of whether Todd was able to rationally consult with counsel, the district court found that Todd understood basic legal concepts, had a good working relationship with her attorney, and had the ability to evaluate her legal options. The district court implicitly incorporated these findings into its determination that Todd was able to participate in her defense. *See Alvarez*, 820 N.W.2d at 620. In addition, in the part entitled "Mental Illness or Deficiency Affecting Defendant's Ability to Understand the Proceedings," the district court found, based on Peuschold's report, that Todd was able to pay bills, use public transit, and advocate for her needs. These abilities are evidence that a defendant, particularly one who is malingering and not forthcoming about the severity of her disabilities, is able to participate in the defense. *See*

Ganpat, 732 N.W.2d at 238. Sufficient findings support the district court’s conclusion that Todd did not lack the ability to participate in the defense due to mental illness or deficiency.

Todd also argues that the district court should have given more weight to the testimony of Todd’s attorney and Gilbertson. With respect to Todd’s attorney, a court need not “accept without question a lawyer’s representations concerning the competence of his client.” *Drope v. Missouri*, 420 U.S. 162, 177 n.13, 95 S. Ct. 896, 906 n.13 (1975). With respect to Gilbertson’s conclusion that Todd was not malingering and had a severe intellectual disability, the district court found Gilbertson’s conclusions unpersuasive. Gilbertson testified that Todd was “psychologically retreating.” Winskowski testified that she had never heard of this diagnosis. Gilbertson testified that he determined that Todd was not malingering without conducting any malingering tests. Peuschold conducted three malingering tests, all of which indicated that Todd was malingering, and testified that clinical intuition without specific malingering tests was an unreliable measure of malingering. We defer to the district court’s weighing of the testimony of Todd’s attorney and Gilbertson. *See Miller*, 659 N.W.2d at 279; *Schluter*, 653 N.W.2d at 793.

We conclude that the district court did not err in concluding that Todd was competent to stand trial.

Affirmed.