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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1421**

State of Minnesota,
Respondent,

vs.

Angela Sophia Councilman,
Appellant.

**Filed July 30, 2018
Affirmed
Peterson, Judge**

St. Louis County District Court
File No. 69DU-CR-15-3724

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

Mark S. Rubin, St. Louis County Attorney, Jonathan D. Holets, Assistant County Attorney,
Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Peterson, Judge; and Reilly,
Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from her conviction of a controlled-substance offense, appellant challenges the district court's pretrial determination that she was competent to stand trial. We affirm.

FACTS

Appellant Angela Sophia Councilman was arrested on a warrant. During a search of Councilman incident to her arrest, police discovered methamphetamine and synthetic marijuana. Councilman was charged with fifth-degree controlled-substance offense, a felony, and possession of a synthetic cannabinoid, a misdemeanor.

Councilman's attorney moved for a rule 20.01 competency examination and a rule 20.02 mental examination to support a possible mental-illness defense. *See* Minn. R. Crim. P. 20.01-.02. The district court suspended criminal proceedings and appointed Dr. Ryan Goldenstein to conduct the examination and issue a written report.

Goldenstein conducted a three-hour interview of Councilman and reviewed other information, including medical notes; a police report; a jail tracking report; a child-protection intake, summary, and case notes; and a child-protection file. Goldenstein also asked Councilman to complete five tests, including a measure of her understanding of basic legal concepts, a competency assessment, an intelligence test, a test of memory malingering, and a personality inventory. Goldenstein completed a 12-page evaluation report that addressed Councilman's mental condition.

As to her competency within the meaning of rule 20.01, Goldenstein concluded that Councilman was “competent to proceed with her criminal proceedings.” Goldenstein opined that Councilman “was not suffering from a mental deficiency and/or illness at the time of commission of the alleged offenses.” Goldenstein also determined that Councilman was “malingering while completing the interview and testing,” and “[a]lthough her testing suggested an inability to effectively participate, the nature of her response was considered to reflect active resistance rather than a true deficit of knowledge.” Goldenstein also found that Councilman had only a minimal to moderate risk of serious danger to herself or others.

Councilman objected to the Goldenstein report, and the district court held a competency hearing that was limited to a challenge of the rule 20.01 competency determination. During the hearing, the district court admitted documents that Councilman presented and heard arguments of counsel, but no witness testified. The district court found Councilman competent to stand trial.

The state dismissed the misdemeanor charge, and the felony charge was tried to the court pursuant to Minn. R. Crim. P. 26.01, subd. 4. The district court found Councilman guilty, stayed imposition of sentence, and ordered Councilman to serve two years on probation. This appeal follows.

D E C I S I O N

“A defendant has a due process right not to be tried or convicted of a criminal charge if he or she is legally incompetent.” *Bonga v. State*, 797 N.W.2d 712, 718 (Minn. 2011).

“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. If a defendant “has sufficient present ability to consult with [her] lawyer with a reasonable degree of rational understanding and has a rational as well as a factual understanding of the proceedings against” her, the defendant is competent. *Bonga*, 797 N.W.2d at 718 (quotation omitted).

“If the court finds by the greater weight of the evidence that the defendant is competent, it must enter an order finding the defendant competent. Otherwise, the court must enter an order finding the defendant incompetent.” Minn. R. Crim. P. 20.01, subd. 5(f). On review of a competency determination, an appellate court “independently review[s] the record to determine if the district court gave proper weight to the evidence produced and if its finding of competency is adequately supported by the record.” *State v. Ganpat*, 732 N.W.2d 232, 238 (Minn. 2007) (quotation omitted).

Councilman challenges Goldenstein’s conclusions that Councilman was competent to stand trial and that she was malingering. Based on our review of the record, we conclude that the district court’s determination that Councilman was competent is adequately supported by Goldenstein’s report.

Before reaching a professional opinion about Councilman’s competency, Goldenstein reviewed relevant documents, interviewed Councilman, and conducted five tests. Goldenstein reported that Councilman was “pleasant” during her interview, but “guarded” and “resistant,” and Goldenstein questioned “the veracity of her statements.” She gave coherent responses, but asked Goldenstein to answer questions she had been asked, sometimes provided “vague” or “conflicting” answers, and when asked about

conflicting information, “she provided additional details,” answered “I don’t know,” or changed topics. Goldenstein did not find this “reaction” “the result of confusion and/or disorganization,” but rather that it was due to her shutting down when he “press[ed] for additional information.”

While some of the test results suggested that Councilman was not competent to stand trial, Goldenstein’s report repeatedly states that Councilman was “resistant” to telling the truth, and that test results were either “invalid” or did “not match her true capabilities” because she made only a “minimal” effort, gave inconsistent responses, or did not take testing seriously. Goldenstein cited examples of how inconsistencies in Councilman’s test answers demonstrated that she was not being truthful. In one instance, Goldenstein noted that although Councilman “was unable to answer ‘what is a balloon,’” “she correctly identified ‘smooth and rough’” as “textures” and recognized that animals show “unconditional companionship.” She also “quickly recognized” similarities between tests, and demonstrated that she was not taking a test seriously by defining vacation as “[h]ot sunny beaches with b--ches in bikinis.” Goldenstein rejected the suggestion that Councilman has an alternate personality, noting that although she appeared to “endorse[] symptoms suggestive of psychosis, she did not exhibit significant confusion, distortion of reality, and/or comprehension difficulties which would be considered consistent with such symptoms.”

In the report’s summary and conclusion, Goldenstein stated that Councilman’s “reported symptoms and presentation were . . . an unsophisticated attempt to appear as though she was suffering from a psychotic disorder.” With regard to whether Councilman

was competent within the meaning of rule 20.01, Goldenstein opined that “Councilman was malingering while completing the interview and testing for this evaluation,” that her participation in the criminal proceedings “would be considered reflective of a personality disruption and not the result of a significant mental illness,” and that she was “competent to proceed with her criminal proceedings.”

The district court properly based its findings and determination of competency on Goldenstein’s evaluation report. *See In re Welfare of D.D.N.*, 582 N.W.2d 278, 282 (Minn. 1998) (stating, “[o]ur review of the record indicates that, notwithstanding appellant’s limited intellectual abilities, the [district] court properly inferred from the evidence presented that appellant was competent to proceed”). In adopting Goldenstein’s conclusion as to Councilman’s competency, the district court stated,

The examiner is, in large part, the Court’s eyes and ears, although with much more experience in making judgments of competency or incompetency. The Court cannot simply rely on test results, because there is some need for those results to be interpreted. That is particularly important in a case like this, where Dr. Goldenstein is in a much better position than the Court to determine whether Ms. Councilman’s inappropriate responses are the result of some incompetency on her part or of intentional manipulation of the system. While the Court does not feel compelled to accept every conclusion an examiner comes to, Dr. Goldenstein has done a thorough job, and explained the reasons for his conclusions in a way the Court finds credible.

Councilman argues that even if it is true that her oppositional behavior and malingering affected the result of Goldenstein’s examination, “that finding by itself is not evidence supporting Goldenstein’s conclusion because the finding of malingering is not the equivalent of a finding of competency.” Citing *Ganpat*, 732 N.W.2d at 237,

Councilman argues that a finding of competency despite malingering must include additional reasons for the competency finding. Councilman contends that “Goldenstein did not point to any facts which showed [she] possessed the intellectual and mental aptitude, or the foundational legal knowledge, necessary for her to effectively and rationally consult with her attorney or to participate in her own defense.”

In *Ganpat*, the forensic psychiatrist who diagnosed Ganpat with malingering “testified that ‘the low scores that [Ganpat] got on his tests were not consistent with the bigger picture of Jairam Ganpat. It didn’t make sense that he’s able to . . . function just fine, have no developmental history, and yet all of a sudden he is mentally retarded.’” 732 N.W.2d at 237 (alteration in original). The district court found that Ganpat was competent and specifically noted:

“Defendant graduated from high school and has demonstrated the ability to obtain and maintain employment, including supervisory positions and other positions that required Defendant to be responsible independently for certain tasks, accounting for money, planning and executing delivery routes and other employment related duties. Defendant has maintained a bank account and has obtained a driver’s license.”

Id.

The fact that there was stronger evidence of malingering in *Ganpat* than here does not persuade us that the evidence of Councilman’s competence was insufficient. Goldenstein specifically stated in his report that “Councilman said her current legal involvement arose due to possession of substances,” which demonstrates that Councilman understood the nature of the charges against her, and Councilman told Goldenstein that, as an adult, she had been arrested a lot, which was consistent with criminal records.

Goldenstein also reported that Councilman “was able to accurately recall previous discussion topics of the interview, her exposure to previous testing information, and she was aware of her hearing timeframe without any prompt and/or discussion from the evaluator,” which all indicate that Councilman had the ability to consult with her attorney with a reasonable degree of rational understanding and had a rational as well as a factual understanding of the proceedings against her.

Affirmed.