STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0011

State of Minnesota,
Respondent,

vs.

Terry Allynn Carlson,
Appellant.

Filed November 15, 2021
Affirmed
Florey, Judge

Carlton County District Court
File No. 09-CR-19-1200

Keith Ellison, Attorney General, Ed Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Lauri A. Ketola, Carlton County Attorney, Carlton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Connolly, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

In this appeal from his conviction of fourth-degree assault of an employee of a secure treatment facility, appellant argues that the district court violated his due-process

rights by denying his requests for a rule 20 competency evaluation. Minn. R. Crim. P. 20.01, subd. 3. We affirm.

FACTS

Appellant Terry Allynn Carlson was indeterminately civilly committed to the Minnesota Sex Offender Program (MSOP) as a sexually dangerous person in 2007. At that time, appellant was diagnosed with paraphilia, antisocial-personality disorder, and borderline intellectual functioning.

In 2019, respondent State of Minnesota charged appellant, who remains civilly committed at MSOP, with fourth-degree felony assault of a secure-treatment-facility employee for ejaculating onto his primary clinician's (the victim's) pants during a game of dominoes with the victim and two other MSOP clients.

Appellant attended numerous proceedings throughout the course of this matter. At an early hearing, the state noted that appellant refused to comply with two search warrants for his DNA. Appellant's attorney stated that she advised her client that the warrants were valid and that he should comply. But appellant argued that law enforcement already has his DNA sample because he is a registered sex offender and was "discriminating" against him by failing to investigate the other clients.

At an intermediate settlement conference, defense counsel requested a rule 20 competency evaluation; however, she clarified that it was appellant, not her, requesting the evaluation. The state did not object to a competency evaluation but noted that it saw no evidence supporting the need for an evaluation. The district court denied the request without discussing its merits, noting that appellant could raise it again later.

At a final settlement conference, appellant asked to proceed as self-represented. He explained disagreements, lack of communication, and other issues with his attorney. He asked about standby counsel and whether he would have to submit exhibits before trial. He again requested a competency evaluation, which the district court denied. Appellant asked whether the district court might rule differently if he presented evidence such as low IQ, mental illness, or other past issues. The district court said that it might.

Subsequently, several hearings were held on multiple motions that appellant submitted while representing himself, including motions to remove the district court judge, dismiss the case, have a speedy trial, reappoint counsel, have a competency evaluation, and address various discovery and evidentiary issues. At the hearings, appellant clarified and defended his motions.

The district court denied appellant's motion to remove the judge[1] but granted his motion to reappoint an attorney. It then continued appellant's remaining motions, including his motion for a competency evaluation, to a subsequent hearing at which appellant was represented by the same attorney who had initially represented him. At that hearing, the district court noted that appellant behaved well throughout the proceedings. It denied his motion for a competency evaluation, seeing no evidence that he did not understand his rights or the proceedings. It also noted that defense counsel could still request a competency evaluation. Defense counsel never did.

[1] Appellant's motion to have a different judge did not state any for-cause reasons.

At a jury trial, appellant confirmed that he understood the new trial protocols due to the COVID-19 pandemic and acknowledged that those protocols might affect the trial. He stipulated to the element of the crime requiring that he be a civilly committed sex offender and confirmed that he understood that the prosecution would therefore not be able to offer evidence of his civil commitment. He consulted with his attorney often throughout the voir dire process and reviewed juror questionnaires on his own for an hour.

During the trial, appellant had opportunities to consult with his attorney regarding witness cross-examination. He also consulted with his attorney regarding whether he would testify. Both his attorney and the district court examined him about his decision to testify, and he acknowledged understanding his rights, the risks of testifying, and that he must tell the truth. It does not appear that appellant's behavior caused any disruptions during the proceedings.

Finally, appellant testified that his relationship with the victim was previously good. He testified that he lifted his shirt after the incident to show that everything was in his pants with his zipper zipped. He asserted that the video footage of the incident did not show that he was masturbating; instead, it showed only that he put his hand under the table for a minute. He further pointed out that another client's hands were not visible on the video. Finally, appellant testified that even though DNA evidence showed that his semen was found on the victim's pants, he did not purposefully ejaculate on the victim, thus negating the element of intent.

The jury found appellant guilty. The district court convicted him and sentenced him to one year and one day in prison. This appeal follows.

DECISION

Appellant asserts three reasons to doubt his competency: he (1) has been civilly committed since 2007; (2) has a diagnosed mental illness; and (3) had himself "questioned whether he was competent to stand trial." We are not persuaded.

A defendant has a due-process right to not be tried or convicted if the defendant is legally incompetent. *Bonga v. State*, 797 N.W.2d 712, 718 (Minn. 2011). A defendant is incompetent if "due to mental illness or cognitive impairment, [the defendant] 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; *Dusky v. United States*, 362 U.S. 402, 402 (1960). If the district court, prosecutor, or defense attorney have "reason to doubt" the defendant's competency, they must raise the issue. Minn. R. Crim. P. 20.01, subd. 3; *Bonga*, 797 N.W.2d at 718. If the district court determines that "reason to doubt" competency exists in a felony matter, it "must order an examination of the defendant's mental condition," among other procedures. Minn. R. Crim. P. 20.01, subd. 3(b).

Relevant considerations for determining whether "reason to doubt" a defendant's competency exists include the defendant's irrational behavior, trial demeanor, and prior medical opinions on competence. *Bonga*, 797 N.W.2d at 719 (citing *Drope v. Missouri*, 420 U.S. 162, 179, 95 S. Ct. 896, 907 (1975)). But there is no specific amount or type of evidence that establishes "reason to doubt" competency. *Id.* The correctness of the district court's decision whether to conduct further inquiry into a defendant's competency depends on the circumstances of each case. *Id.*

When, as here, a defendant argues that the district court failed to provide adequate procedures, the question is not whether the defendant is competent, but whether the district court should have inquired further into whether the defendant is competent. *Id.* at 718. If the parties do not dispute the evidence relevant to competency, we review de novo the district court's decision whether to conduct further inquiry, asking whether the district court gave "proper weight to the information suggesting incompetence."[2] *Id.* at 710; *State v. O'Neill*, 945 N.W.2d 71, 77-78 (Minn. App. 2020).

Our de novo review of the record shows that appellant had the ability to rationally consult with counsel, understand the proceedings, and participate in his defense. Appellant asked the district court questions to clarify the proceedings and his obligations. He submitted numerous motions that were tailored to the facts and issues in his case. He coherently explained and clarified his position on his motions. At trial, his testimony showed that he understood the weaker points of the state's case, including proof of intent, that the video evidence did not show his hands moving, and that another client's hands were also out of view. These circumstances provide no reason to doubt that he understood the proceedings.

Additionally, the record shows that, while represented, appellant consulted with his attorney about evidence, the validity of the state's search warrants, his request for a competency evaluation, his desire to represent himself, voir dire issues, and whether he

[2] The state disputes the evidence relevant to competence by arguing that appellant cannot rely on the district court's 2007 and 2008 orders regarding appellant's civil commitment because those orders are not part of the record. We need not resolve the disputed-evidence issue because, even if we accept all of appellant's evidence, his arguments fail.

would testify, among other things. These facts provide no reason to doubt his ability to rationally consult with his attorney and participate in his defense.

The district court did not err by giving little weight to (1) appellant's indefinite civil commitment; (2) his diagnoses of mental illness and cognitive impairment; and (3) his own doubt about his competence.

First, prior civil commitment "is not a judicial determination of legal incompetency." Minn. Stat. § 253B.23, subd. 2(a) (2020); *see also* Minn. Stat. 253D.03 (2020) (incorporating section 253B.23 for purposes of commitment of sex offenders). Additionally, appellant was committed as a sexually dangerous person, not because of mental illness alone. Commitment of a sexually dangerous person requires the district court to find that the offender's mental condition inhibits the offender's ability to control sexual impulses. Minn. Stat. § 253D.02, subd. 16 (2020); *In re Linehan*, 594 N.W.2d 867, 876 (Minn. 1999). Appellant's commitment as a sexually dangerous person who also suffers from certain mental illnesses demonstrates that the committing court found that his mental conditions inhibited his ability to control his sexual impulses, not that his mental conditions inhibited his ability to rationally consult with his attorney, understand the proceedings, or participate in his defense. Further, appellant's behavior during the proceedings *in this case* is more probative of his "present abilit[ies]" than 13-year-old commitment orders.[3] *See Dusky*, 362 U.S. at 402 (noting that competence is test of

[3] Appellant argues that, although he was found competent to enter a civil commitment stipulation in 2007, "that finding did not alleviate doubt that he was competent" in 2020. But it does not appear that the district court relied on the 2007 competency finding for its decision to deny appellant's requests for a competency evaluation in this case.

"sufficient *present* ability" to consult with attorney and understand proceedings (emphasis added)).

Second, neither mental illness nor cognitive impairment alone make a defendant incompetent. *See Harris-Franklin v. State*, No. A20-0770, 2021 WL 1082332, at *5 (Minn. App. Mar. 22, 2021), *rev. denied* (Minn. June 15, 2021).[4] Those conditions must instead cause the defendant an inability to rationally consult with his attorney, understand the proceedings, or participate in his defense. Appellant suggests no reasons why his current mental conditions limit those abilities.

Third, "courts have ruled that mere conclusory assertions are insufficient to avoid an adverse ruling." *In re Civil Commitment of Poole*, 921 N.W.2d 62, 68 (Minn. App. 2018) (citing cases in a variety of contexts and applying this principle to reduction-in-custody civil-commitment cases). Appellant's conclusory assertion that he doubts his own competency is insufficient to show reason to doubt his competency.

In sum, the district court did not err by denying appellant's requests for a competency evaluation.

Affirmed.

[4] We cite to this nonprecedential opinion for its persuasive value. Minn. R. Civ. App. P. 136.01, subd. 1(c).