

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1601**

State of Minnesota,
Respondent,

vs.

Jude Thomas Mary O'Neill,
Appellant.

**Filed August 29, 2022
Affirmed
Reyes, Judge**

Sherburne County District Court
File No. 71-CR-20-124

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Kathleen A. Heaney, Sherburne County Attorney, George R. Kennedy, Assistant County Attorney, Elk River, Minnesota (for respondent)

Travis M. Keil, Keil Defense, Eden Prairie, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

REYES, Judge

In this appeal from convictions of theft of a motor vehicle, fleeing in a motor vehicle, and driving after revocation, appellant challenges the district court's determination that he was competent to stand trial. We affirm.

FACTS

In January 2020, respondent State of Minnesota charged appellant Jude Thomas Mary O'Neill with theft of a motor vehicle in violation of Minn. Stat. § 609.52, subd. 2(a)(17) (2018), fleeing a police officer in a motor vehicle in violation of Minn. Stat. § 609.487, subd. 3 (2018), and driving after revocation in violation of Minn. Stat. § 171.24, subd. 2 (2018).

At his omnibus hearing, appellant requested that the district court evaluate his competency to stand trial. The district court ordered psychological evaluations under Minn. R. Crim. P. 20.01 and 20.02 to determine his competence. The court-appointed examiners, Dr. Patricia McCormick and Dr. Adam Milz, filed a joint report concluding that appellant was competent. Appellant requested and received a contested hearing after raising additional concerns about his developmental disorders and Fetal Alcohol Syndrome Disorder (FASD).

At the contested hearing, the district court heard testimony from appellant's counsel, his mother, and four experts including the two court-appointed examiners and two experts retained by appellant. Appellant's experts were Dr. Ronald Federici and Dr. Paul Reitman. Only Dr. Reitman expressed a legal opinion that appellant was incompetent to stand trial. We summarize the relevant portions of each expert's testimony.

Dr. Federici's Evaluation

Dr. Federici is a board-certified clinical neuropsychologist. He has evaluated appellant several times, first at the request of appellant's adoptive mother in 2009, and most recently in 2021. In his 2021 evaluation, Dr. Federici concluded that appellant's attention,

memory, and language skills had deteriorated. The most notable deterioration to Dr. Federici was appellant's decline in language skills, where appellant tested below the first percentile for his age. Dr. Federici testified that appellant has no functional or working memory, little comprehension and logic, and shows "a pattern of global brain damage due to his alcohol and drug related birth defect." Dr. Federici testified that he stopped certain tests during his 2021 evaluation because of appellant's lack of comprehension or short attention span. As for appellant's "higher level comprehension," Dr. Federici testified that he believed that any knowledge displayed by appellant is because of his "rote" knowledge, or knowledge based on repetition, and not understanding.

Although Dr. Federici reported in 2009 that he believed appellant intentionally suppressed his scores, Dr. Federici testified that he did not believe that appellant feigned lack of knowledge, also called malingering, in his most recent evaluation. He instead attributed appellant's speech to "confabulation," which he defined as "a means of filling in the gaps when you don't have good memory or learning or understand what's going on. You just kind of throw out any type of sentence or garbage or statement as a way of filling in when you don't understand."

Because he is not a forensic psychologist, Dr. Federici expressed no opinion on appellant's legal competency when asked by the district court.

Dr. Reitman's Evaluation

Dr. Reitman is a licensed forensic psychologist and has conducted four rule 20 evaluations of appellant on unrelated matters. While Dr. Reitman interviewed appellant for previous rule 20 evaluations, Dr. Reitman did not do so in this case. Instead,

Dr. Reitman based his opinion on a recent interview he conducted with appellant's adoptive mother as well as prior written reports. Dr. Reitman last interviewed appellant in 2018.

Dr. Reitman concluded in his report that appellant is legally incompetent. Dr. Reitman testified that he did not believe appellant was malingering.

Appellant's counsel asked Dr. Reitman if he had listened to any of the recorded phone calls that appellant made while in jail. Dr. Reitman had not. During these phone calls, appellant appeared to understand specific details about his case, legal issues that might arise, and potential sentences he could face. In response to questioning about these recordings, Dr. Reitman testified that "if I was told that he was observed having telephone conversations or talking to other people and was recalling things, that would cause me a great deal of consternation." Dr. Reitman then concluded that he didn't see appellant "as having that capacity" to recall those concepts.

Dr. McCormick's Evaluation

Dr. McCormick, a post-doctoral fellow, conducted the court-ordered evaluation under the supervision of Dr. Milz, a forensic psychologist. In preparing her evaluation, Dr. McCormick reviewed the previous forensic evaluations and neuropsychological reports, interviewed appellant twice for approximately six total hours, and listened to recordings of appellant's phone calls from jail.

Dr. McCormick concluded that appellant "present[ed] himself as more cognitively impaired and more impaired in terms of legal knowledge than he was self-reporting during the clinical interview." Dr. McCormick stated that she tested appellant for malingering

based in part on Dr. Federici's 2009 report and another psychologist's 2018 report expressing concern for appellant's lack of diligence, effort, and motivation during that evaluation. Dr. McCormick administered the Structured Inventory of Malingered Symptomology (SIMS) test. This test showed that appellant was "feigning symptoms of mental illness." Further, after Dr. McCormick reviewed appellant's phone calls from jail, she concluded that appellant "demonstrated very sophisticated legal knowledge." Dr. McCormick testified that the phone calls showed that appellant had a "very good memory" of personal information and previous conversations, including detailed recollections of conversations appellant had with his attorney. Thus, while appellant "has a documented history of true impairments," Dr. McCormick concluded that appellant "has sufficient ability to consult with a reasonable degree of rational understanding with defense counsel, understand the proceedings, and participate in his defense."

Dr. Milz's Evaluation

Dr. Milz, a forensic psychologist, testified that he and Dr. McCormick administered the SIMS test because it was easier to administer given COVID restrictions. Dr. Milz concluded that appellant had a "notably impaired" reading ability. Dr. Milz also testified that appellant's performance in the second interview seemed to be "a bit declined [as] compared to the first," because "[t]here were more instances in which [appellant] said he didn't know answers or he gave more vague answers to even the questions where he demonstrated some knowledge in the first interview." Even so, Dr. Milz supported Dr. McCormick's conclusions, especially that appellant was malingering. Dr. Milz

testified that even with the “clear documentation of [appellant’s] communication relationship issues,” appellant was legally competent.

Appellant’s counsel and adoptive mother also testified and both supported Dr. Federici and Dr. Reitman’s conclusions. Appellant’s adoptive mother also testified that she believed appellant’s condition was worsening.

The district court found appellant competent to stand trial. Appellant and the state then agreed to a stipulated-facts trial. Following trial, the district court found appellant guilty of all three counts. The district court sentenced appellant to stayed concurrent sentences of 17 months in prison on his conviction of theft of a motor vehicle, and 15-months for his conviction of fleeing a police officer in a motor vehicle. This appeal follows.

DECISION

We note that all of the testifying experts agree on appellant’s FASD diagnosis and that appellant has cognitive limitations. The only issue on appeal is whether the district court clearly erred by finding that appellant’s diagnosis and limitations did not rise to the level of legal incompetence.

The prosecution of a defendant who is incompetent to stand trial violates that defendant’s due-process rights. *See State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018). The Minnesota Rules of Criminal Procedure thus require the suspension of criminal proceedings when a defendant is not legally competent. Minn. R. Crim. P. 20.01, subd. 2. “A defendant is incompetent and must not . . . be tried . . . if the defendant due to mental illness or cognitive impairment lacks [the] ability to: (a) rationally consult with counsel; or

(b) understand the proceedings or participate in the defense.” *Id.*; see *Bonga v. State*, 797 N.W.2d 712, 718 (Minn. 2011). “[W]hen the State is the party asserting that the defendant is competent, the State bears the burden of proving competency” by the greater weight of the evidence. *Curtis*, 921 N.W.2d at 348 (discussing Minn. R. Crim. P. 20.01, subd. 5).

On review of a competency finding, we defer to the district court’s factual findings unless those findings are clearly erroneous. *State v. O’Neill*, 945 N.W.2d 71, 82 (Minn. App. 2020), *rev. denied* (Minn. Aug. 11, 2020). Factual findings are clearly erroneous when “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted). When reviewing for clear error, we “independently review 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.” *Curtis*, 921 N.W.2d at 346 (quotations omitted). Showing clear error is a “high threshold.” *Bobo v. State*, 860 N.W.2d 681, 684 (Minn. 2015) (quotation omitted).

Appellant raises two arguments on appeal. He first challenges the district court’s weighing of the evidence, arguing that that the greater weight of evidence established that appellant is incompetent. We disagree. Both Dr. McCormick and Dr. Milz determined that appellant was competent to stand trial. They based this determination on two interviews with appellant, a review of previous psychological evaluations, testing, and recordings of appellant’s jail phone calls. They also testified to their conclusion that appellant was malingering based on appellant’s SIMS test results, the recordings of appellant’s jail phone calls, and previous evaluations expressing similar concerns.

The district court also found Dr. Federici's and Dr. Reitman's opinions "of limited value in assessing competency." The district court explained that Dr. Federici did not provide an opinion on appellant's legal competency and Dr. Reitman's opinion relied on "dated evaluations" and a "wholesale adoption" of Dr. Federici's nonforensic evaluation. The district court instead determined that Dr. McCormick's and Dr. Milz's opinions "comprehensively addressed the legal competency standard and considered all relevant evidence, including evidence of feigning and [appellant's] extensive communication while incarcerated." The district court also found the recorded phone calls appellant made from jail persuasive. And, to the extent that appellant challenges the district court's credibility determinations, we defer to the district court's conclusions in resolving conflicting testimony. *See State v. Miller*, 659 N.W.2d 275, 279 (Minn. App. 2003), *rev. denied* (Minn. July 15, 2003); *see also State v. Roberts*, 876 N.W.2d 863, 868 (Minn. 2016) (stating that appellate courts defer to district court's weighing of expert testimony). Thus, the district court's finding that appellant was competent to stand trial is not manifestly contrary to the weight of the evidence.

Second, appellant argues that the district court discounted his FASD diagnosis. We agree with appellant that district courts must carefully evaluate the competency of a defendant with a FASD diagnosis. But the district court did so. Dr. McCormick and Dr. Milz acknowledged that appellant had FASD, along with other impairments, but they also testified that those impairments did not prevent appellant from consulting his counsel, understanding the proceedings, or participating in his defense. The district court explicitly

found that conclusion credible. And the district court found the recordings of appellant's phone calls particularly persuasive, evidence that neither of appellant's experts considered.

All parties and the district court agree that appellant has cognitive limitations. But the district court correctly noted that the cognitive limitations alone do not require a finding of incompetence to stand trial unless the limitations also prevent the defendant from rationally consulting with counsel, understanding the proceedings, or participating in his defense. Minn. R. Crim. P. 20.01, subd. 2. And the district court's conclusion that appellant's limitations did not impair his ability to stand trial is amply supported by the record. We therefore conclude that the district court did not clearly err by finding appellant competent to stand trial.

Affirmed.