

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0737**

State of Minnesota,
Respondent,

vs.

Nicholas Scott Thompson,
Appellant.

**Filed March 20, 2023
Reversed and remanded
Frisch, Judge**

Jackson County District Court
File No. 32-CR-18-159

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

Kristi L. Meyeraan, Jackson County Attorney, Jackson, Minnesota (for respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Jesson, Judge; and Frisch, Judge.

SYLLABUS

The defendant bears the burden of proof in a contested competency proceeding under Minn. R. Crim. P. 20.01 when the defendant asserts their own competence.

OPINION

FRISCH, Judge

Appellant challenges the district court's order finding him not competent to participate in his criminal proceedings. He argues that the district court erred in allocating the burden of proof to establish competence, that he is competent, that the district court ignored evidence of his competence, and that he received ineffective assistance of counsel during the competency proceedings. We reverse and remand to the district court with instructions to conduct a new competency hearing, allocating the burden of proof to appellant to establish his competence and to determine, based on all of the evidence presented, whether appellant established his competence by a preponderance of the evidence.

FACTS

This is the third pretrial appeal in this matter. In September 2018, respondent State of Minnesota charged appellant Nicholas Thompson with one count of second-degree intentional murder and two counts of second-degree unintentional felony murder for allegedly killing his mother. In October, the district court sua sponte ordered a competency evaluation of Thompson pursuant to Minn. R. Crim. P. 20.01. The district court ordered the evaluation based on the court's knowledge of Thompson's "history of mental health issues," which included "evidence of psychosis and hallucinations."

In November 2018, Thompson participated in a competency evaluation conducted by Dr. Matara Wright. Dr. Wright determined that Thompson understood the legal proceedings and charges against him but concluded that Thompson was not competent

because he was not able to rationally assist in his own defense. Thompson filed a pro se objection to Dr. Wright's opinion and requested a contested competency hearing. The state also objected to Dr. Wright's opinion and asked the district court to order a second Rule 20.01 examination, which the district court granted over Thompson's objection.

In February 2019, Thompson participated in the next competency evaluation, conducted by Dr. Dawn Peuschold. Dr. Peuschold likewise concluded that Thompson was not competent because he was "probably incapable of rationally consulting with his defense counsel" or "participating in his defense." The state asked the district court to find that Thompson was not competent. Thompson objected to both reports, asserted that he was competent, and requested a contested competency hearing.

The district court issued an order finding Thompson not competent without conducting a competency hearing. Thompson appealed, and we reversed the district court's order for failing to hold a contested competency hearing as required under Minn. R. Crim. P. 20.01, subd. 5(a)(1). *State v. Thompson*, No. A19-0787 (Minn. App. Mar. 3, 2020) (*Thompson I*) (order op.).

On remand, the district court held a contested competency hearing, and the district court again found Thompson not competent. Thompson appealed and we again reversed, holding that the "the entire [competency] hearing was procedurally invalid" because the district court erred by allowing Thompson to represent himself. *State v. Thompson*, No. A20-1232, 2021 WL 3136728, at *4 (Minn. App. July 26, 2021) (*Thompson II*), *rev. denied* (Minn. Oct. 27, 2021).

During the pendency of these appeals, Thompson was civilly committed as mentally ill and dangerous. *In re Civ. Commitment of Thompson*, No. A21-0785, 2021 WL 5764240, at *1 (Minn. App. Dec. 6, 2021) (*Thompson III*). By July 2020, the district court issued a *Jarvis* order requiring Thompson take certain medication.¹ The district court continued to receive periodic progress reports on Thompson’s competency as required by Minn. R. Crim. P. 20.01, subd. 7.

Between June 2019 and November 2021, the district court received eight written competency reports from four different examiners. Thompson refused to participate in most of the evaluations. All but one of those reports concluded that Thompson was not competent. The outlier report did not set forth a conclusion about Thompson’s competence because Thompson refused to be interviewed, and the examiner concluded there was not adequate information to render an opinion with sufficient certainty. And in the November 2021 competency report, the examiner concluded based on historical records that Thompson was not competent but noted that she could not assess Thompson’s competence with any degree of certainty because his lack of participation in the evaluation limited her ability to evaluate him.

In January 2022, following our second remand, the district court held another contested competency hearing. Thompson was represented by counsel. At the hearing, Thompson argued that he was competent. The state informed the district court that it “has

¹ A *Jarvis* order is a court order authorizing the administration of certain neuroleptic medications to an individual subject to civil commitment who otherwise may be refusing neuroleptic medication. *See Jarvis v. Levine*, 418 N.W.2d 139 (Minn. 1988); Minn. Stat. § 253B.092, subd. 8 (2022).

no dog in this fight” and that it was “not asserting a position one way or the other” as to competence. The district court received testimony only from Thompson at the contested hearing but also received all the competency reports.

Thompson testified about his ability to rationally consult with his trial counsel in the underlying criminal prosecution, his appellate counsel, and his counsel in the competency proceeding. He testified that he was taking his medication and participating in group therapy. On cross-examination, the state elicited testimony from Thompson about certain delusional or conspiratorial beliefs and his refusal to cooperate in successive evaluations. At the conclusion of the hearing, Thompson’s counsel represented to the district court that Thompson was able to rationally consult with counsel in the current proceeding.

The district court issued an order concluding that Thompson was not competent. It found that Thompson had not provided any information apart from answering “leading questions from his attorney” about his ability to rationally consult with counsel. The district court noted Thompson’s criminal trial counsel did not testify at the competency hearing. The district court found that “there is no evidence before the court that [Thompson] is currently able to rationally discuss with his counsel any potential defenses or the possible outcomes of his case.” The district court also stated, “it is not clear where the burden lies when the defendant objects to evaluations finding him incompetent and the State takes no position on his competency.” The district court concluded “[i]f the State is not seeking to have Thompson be found competent, it should not bear the burden of proving his competency.” The district court immediately continued, stating “[t]he greater weight

of the evidence must show that Thompson is competent to stand trial.” The district court determined that “[w]ithout a concrete medical opinion, no affirmative opinions of competency, and Thompson’s testimony the Court cannot find that there is clear and convincing evidence that Thompson is currently competent to proceed.” The district court issued an order concluding that Thompson was not competent because he was not then-able to consult with and assist his counsel in the criminal proceeding.

Thompson appeals.

ISSUES

- I. Did the district court err in its allocation of the burden of proof in determining Thompson’s competence?
- II. Did the district court clearly err in finding Thompson was not competent?

ANALYSIS

I. The district court erred in its allocation of the burden of proof.

Thompson argues that the district court erred in placing the burden on him to prove his competence. The state argues that the district court did not place the burden of proof on Thompson to establish his competence, but rather made competency findings without resolving the question of which party bears the burden of proof. We first resolve who bears the burden of proof to establish competence in a contested competency proceeding where the defendant seeks a determination that they are competent and then consider the district court’s allocation of the burden of proof in the underlying proceeding. The “determination of which party bears the burden of proof[] and the interpretation of the competency rule of

procedure are questions of law that we review de novo.” *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018).

The question of which party bears the burden of proof in a contested competency proceeding when a defendant asserts their own competence has not been resolved in Minnesota. In *Curtis*, the supreme court left open the question of the allocation of the burden of proof when a defendant’s competence has been questioned and the state is not the party asserting that a defendant is competent. *See id.* at 347 n.4 (“[I]n this case, the State is the party advocating that the defendant is competent. Accordingly, it is not necessary for us to decide whether the allocation of the burden of proof would be different if the State were the party *challenging* the defendant’s competence.”). But the reasoning in *Curtis* appears dispositive of the burden-of-proof issue here.

In *Curtis*, the supreme court held that, “[w]here a defendant’s competency is disputed,” Minn. R. Crim. P. 20.01, subd. 5, creates “a presumption of incompetence.” *Id.* at 348. The supreme court concluded that “by creating a presumption of incompetence, the rule necessarily requires that the State—the party claiming *Curtis* is competent to stand trial—must actually prove the defendant’s competence to stand trial.” *Id.* (emphasis added). The supreme court reasoned that Rule 20.01, subdivision 5, “is consistent with our conclusion in *Ganpat* that *when the State is the party asserting that the defendant is competent, the State bears the burden of proving competency.*” *Id.* (emphasis added). It further stated that “who bears the burden” under Rule 20.01, subdivision 5, “can only be ascertained once a party affirmatively asserts that a defendant is competent to stand trial during the process set forth in Minn. R. Crim. P. 20.01, subd. 5.” *Id.* at 347 n.5.

Consistent with these conclusions, we hold that, when a defendant asserts their own competence in a contested competency proceeding under Rule 20.01, the defendant bears the burden to prove competence.² This conclusion is also compelled by the practical reality that the burden of proof to establish competence should not be assigned to the state where, as here, it elects not to affirmatively advocate for that position or chooses not to take a position at all.³ And we note that allocating the burden of proof to the party challenging the presumption in a competency proceeding is consistent with the practice of other jurisdictions. *See, e.g., State v. Coley*, 326 P.3d 702, 709 (Wash. 2014) (en banc) (recognizing a defendant is presumed competent under state law and holding that “implicit in the statutes addressing competency to stand trial is placement of the burden of proof by a preponderance of evidence on the party challenging competency”); *People v. Blacksher*,

² Rule 20.01 also provides: “The party that requested the competency hearing must present evidence first.” Minn. R. Crim. P. 20.01, subd. 5(a)(2). Thus, the structure of the presentation of evidence supports the conclusion that the burden of proof lies with the party challenging the presumption of incompetency.

³ For the first time at oral argument, counsel for Thompson argued that the state *must* take a position in a contested competency proceeding. We do not consider issues raised for the first time at oral argument and decline to address the issue as it is inadequately briefed. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (recognizing that appellate courts generally do not decide issues not raised before the district court); *State v. Bursch*, 905 N.W.2d 884, 889 (Minn. App. 2017) (recognizing that arguments that are inadequately briefed are forfeited). Even so, we are unaware of any authority that compels such a conclusion. Binding authority in fact counsels against a requirement that the state take a position on competence. *See Medina v. California*, 505 U.S. 437, 443, 449 (1992) (considering a state’s burden allocation in competency hearings and stating that “[o]nce a State provides a defendant access to procedures for making a competency evaluation” the court “perceive[d] no basis for holding that due process further requires the State to assume the burden of vindicating the defendant’s constitutional right by persuading the trier of fact that the defendant is competent to stand trial”).

259 P.3d 370, 397 (Cal. 2011) (“A defendant is presumed competent unless the contrary is proven by a preponderance of the evidence by the party contending he or she is incompetent.”); *State v. Hill*, 228 P.3d 1027, 1046 (Kan. 2010) (“The party who raises the issue of competence has the burden of going forward with the evidence”); *cf. Cooper v. Oklahoma*, 517 U.S. 348, 366 (1996) (addressing constitutionality of state’s competency procedures and noting “the difficulty of ascertaining where the truth lies may make it appropriate to place the burden of proof on the proponent of an issue”).

Against this backdrop, we consider the party to which the district court allocated the burden of proof at the contested competency hearing. The district court stated in its order that “it is not clear where the burden lies when the defendant objects to evaluations finding him incompetent and the State takes no position on his competency.” It continued, “If the State is not seeking to have Thompson be found competent, it should not bear the burden of proving his competency.” The district court then concluded, “The greater weight of the evidence must show that Thompson is competent to stand trial.” The district court’s order does not appear to have placed the burden of proof on Thompson. The district court appears to have improperly determined competency based on the “weight of the evidence without regard to the burden of proof.” *Curtis*, 921 N.W.2d at 343-44 (reversing ruling that competency should be determined based on the greater weight of the evidence without regard to burden of proof). Thus, the district court’s determination of competency without allocation of the burden of proof to either party was erroneous.

We conclude that Thompson had the burden to prove he was competent, and the district court was required to allocate the burden accordingly. The state had withdrawn its objection to Dr. Wright's report and its request for a contested hearing. Thompson was the only party objecting to the finding that he was not competent, requesting a contested competency hearing, and affirmatively asserting his competence. During the competency hearing, the state repeatedly indicated it was not asserting a position as to Thompson's competence. Thus, Thompson bore the burden of proving his competence and overcoming the presumption of incompetence in Rule 20.01. *See id.* at 348.

Despite the reasoning of *Curtis*, Thompson argues the burden of proof should not be placed on a defendant because "placing the burden of proof on a defendant would infringe on the constitutional right to a jury trial"; "the Minnesota Rules of Criminal Procedure do not place the burden on a defendant to prove competence"; and "other jurisdictions presume a defendant is competent to stand trial." We disagree and address each basis for Thompson's argument in turn.

First, Thompson asserts that "[p]resuming a defendant is not competent to stand trial, and then requiring the defendant to prove his competence to stand trial, impedes on the fundamental right to a jury trial."⁴ We are not persuaded.

⁴ Thompson argues that, "[a]s such," we should conclude "that when a defendant's competency is questioned, and the defendant believes he is competent to exercise his right to a jury trial, it is presumed that the defendant is competent to exercise his constitutional right to a jury trial and does not bear the burden of proving competency." This proposition is contrary to binding precedent set forth in *Curtis*. 921 N.W.2d at 346-48. We also observe that, notwithstanding a defendant's own purported belief as to their competence, the plain language of Rule 20.01 requires the district court, the state, and defense counsel to take affirmative action if a defendant's competence is doubtful and provides that a

To the extent Thompson objects to the present presumption that he is not competent, his argument reflects a misunderstanding of the Rule 20.01 procedures and discounts the constitutional necessity of ensuring the due-process guarantee that a defendant may only be tried when competent. While it is true that a criminal defendant has a constitutional right to a jury trial under the Sixth Amendment to the United States Constitution, the vindication of that right must comport with principles of due process. Both the United States and Minnesota Supreme Courts recognize that “[a] defendant has a due process right not to be tried or convicted of a criminal charge if he is legally incompetent.” *Curtis*, 921 N.W.2d at 346 (citing *Drope v. Missouri*, 420 U.S. 162, 171-72 (1975); *Bonga v. State*, 797 N.W.2d 712, 718 (Minn. 2011)). “A district court’s failure to observe procedures adequate to protect a defendant’s right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial.” *Bonga*, 797 N.W.2d at 718 (quotation omitted). Rule 20.01 sets forth the procedures designed to protect that right. *Id.* If a concern about a defendant’s competence is raised under Rule 20.01, a defendant is presumed not competent. *See Curtis*, 921 N.W.2d at 348 (interpreting Rule 20.01, subdivision 5, as imposing “a presumption of incompetence”). This presumption protects a defendant’s due-process right not to be tried while not competent. *See Bonga*, 797 N.W.2d at 718-19 (describing the procedures for suspending criminal proceedings to determine competence).

“defendant’s consent is not required” for the initiation of competency proceedings. Minn. R. Crim. P. 20.01, subd. 3.

We do not consider the allocation of the burden of proof to a defendant asserting their competence to amount to a *deprivation* or *infringement* of the right to a jury trial; rather, the procedural allocation of the burden of proof vindicates the due-process right of a defendant not to be forced to trial if not competent and protects their right to a jury trial when competent.⁵ And the allocation of burdens does not deprive or impede a defendant’s right to a jury trial on the criminal charges at all—a not-competent defendant retains that right at all times and may exercise that right upon restoration to competency. Minn. R. Crim. P. 20.01, subd. 7 (directing continuing supervision and stating the district court must resume criminal proceedings if a defendant is restored to competency). We acknowledge that the process by which a defendant’s competence may be assessed could *delay* a jury trial on criminal charges. But we do not equate that “delay” to an unconstitutional deprivation or impediment to the right to a jury trial, and we evaluate a delay in bringing a defendant to trial under a different constitutional framework.⁶ *See State v. Taylor*, 869 N.W.2d 1, 19 (Minn. 2015) (explaining the test in *Barker v. Wingo*, 407 U.S. 514 (1972), applies to speedy-trial challenges). Accordingly, the procedures to determine

⁵ We observe that in his brief, Thompson cites *United States v. Jackson*, 390 U.S. 570, 581 (1968), for the proposition that “[a] defendant has a fundamental right to a jury trial and has no duty to bring himself to trial,” and describes the opinion as “concluding that a provision would be unconstitutional if it had no other purpose or effect than to chill the assertion of [a defendant’s] constitutional right to demand a jury trial.” The allocation of the burden of proof to a defendant asserting competence serves the purpose of protecting their due-process right and is therefore not an unconstitutional procedure designed only to chill a defendant’s assertion of the constitutional right to demand a jury trial.

⁶ Thompson has not asserted a violation of his right to a speedy trial on appeal.

competence—including a defendant having the burden of proof when challenging the presumption of incompetence—adequately ensure the protection of the constitutional due-process right not to be tried while not competent which, in turn, secures the right to a fair jury trial.⁷

Second, Thompson seems to assert that Rule 20.01, subdivision 5, cannot be interpreted to place the burden of proof on a defendant because, according to *Curtis*, the state always bears the burden to establish competence in a contested proceeding. This is a fundamental misreading of *Curtis*. The supreme court in *Curtis* explicitly left open the question of the allocation of the burden of proof if the state challenged competence (i.e., advocated in favor of the presumption of incompetence), and thus implicitly left open the question of the allocation of the burden of proof when the state takes no position on competence. See 921 N.W.2d at 347 n.4. The supreme court's holding in *Curtis* as to the allocation of the burden appears limited to the circumstance involving the state's assertion of competence. Thus, Thompson's argument that *Curtis* forecloses placing the burden of proof on a defendant is unpersuasive.

⁷ In the same vein, to protect a defendant's due-process right to a fair trial, a not-competent defendant's ability to waive the constitutional right to representation is also limited. See *Godinez v. Moran*, 509 U.S. 389, 395-402 (1993) (holding the legal standard for competence to waive counsel is the same as the legal standard for competence to stand trial); *State v. Camacho*, 561 N.W.2d 160, 170-72 (Minn. 1997) (applying *Godinez* to a defendant's waiver of his right to counsel). Indeed, we reversed and remanded in *Thompson II* because the district court improperly allowed Thompson, whose competence was questioned, to represent himself at the competency hearing. 2021 WL 3136728, at *2-4.

Third, Thompson asserts that placing the burden on a defendant to prove competence is error because “[w]hile the Minnesota Legislature and Minnesota Courts have not articulated that a defendant is presumed competent to stand trial, every state court, state legislature, and federal court that has addressed the issue has presumed that a defendant is competent to stand trial.” Thompson asks us to “follow [these] other jurisdictions and conclude that a defendant is presumed to be competent to stand trial and therefore does not bear the burden of proving he is competent to stand trial.”

Thompson’s reasoning ignores the Rule 20.01 presumption and contradicts caselaw. Under *Curtis*, an implicit presumption of incompetence exists only *after* a concern about a defendant’s competence has been raised. *Id.* at 348. As is relevant here, once concerns about Thompson’s competence were raised, the presumption of incompetence embedded in Rule 20.01 attached. *Id.* And that presumption of incompetence exists under *Curtis* regardless of whether a defendant is presumed competent before concerns are raised.

Thompson’s reference to other jurisdictions is therefore unavailing. We apply only Minnesota law. We have explained that Minnesota law directs the district court to presume a defendant is not competent after a party questions competency and directs the party challenging that presumption to disprove it. We add that Thompson fails to discuss whether the foreign jurisdictions he cites allocate the burden of proof on that same basis. His referenced foreign authority is simply inapposite, and we therefore do not discuss it further.

Thus, we conclude that allocation of the burden of proof to Thompson as the party asserting his competence in a contested proceeding does not violate his constitutional rights, contravene Minnesota caselaw, or offend Rule 20.01.

II. The district court must conduct a new competency proceeding.

Because we conclude that the district court did not properly allocate the burden of proof at the contested competency hearing, we reverse and remand for a new contested competency proceeding. Although we do not specifically resolve each of the errors in the district court's competency order as identified by Thompson, we take this opportunity to provide additional direction to the district court on remand.

First, the district court shall apply the correct standard of proof in a competency proceeding, a "fair preponderance of the evidence."⁸ *Curtis*, 921 N.W.2d at 347 (quotation omitted). Second, the district court must determine whether Thompson is *currently* competent. *See* Minn. R. Crim. P. 20.01, subd. 7 (requiring continuous reporting on a defendant's competence and resumption of criminal proceedings if a district court finds that a defendant is competent). We have acknowledged that an individual may have periods of competence interspersed with periods of incompetence. *State v. Coughlin*, 731 N.W.2d 862, 865 (Minn. App. 2007) (stating that periods of incompetence may alternate with periods of competence), *rev. denied* (Minn. Aug. 7, 2007). That Thompson may not have been competent at some previous point in the proceedings is not dispositive of his current competence. We emphasize that contested competency hearings under Rule

⁸ The district court stated in its order that "the Court cannot find that there is clear and convincing evidence that Thompson is currently competent to proceed."

20.01 do not *require* medical evidence of competence. *See* Minn. R. Crim. P. 20.01, subd. 5(a)(3) (“Evidence of the defendant’s mental condition *may* be admitted, including the court-appointed examiner’s report.” (emphasis added)). We note that Rule 20.01 does not specifically require a defendant to cooperate in competency assessments, but the district court may in its discretion consider such matters in weighing the evidence. *See* Minn. R. Crim. P. 20.01, subd. 4(b)(4) (stating that the court-appointed medical examiner’s report must include whether the examination could not be conducted because of the defendant’s unwillingness to participate). We also note that if Thompson chooses to testify again at the new competency hearing, the district court must consider his testimony as evidence and weigh that evidence in determining Thompson’s competence. *Cf. In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 223 (Minn. 2021) (“[T]he role of an appellate court is not to weigh, reweigh, or inherently reweigh the evidence when applying a clear-error review; *that task is best suited to, and therefore is reserved for, the factfinder.*” (emphasis added)). Finally, we emphasize that for purposes of the competency determination and potential appellate review, the district court must specifically weigh all of the evidence presented, including any testimony from Thompson, and, as may be appropriate, make credibility findings. *See State v. O’Neill*, 945 N.W.2d 71, 78-79 (Minn. App. 2020), *rev. denied* (Minn. Aug. 11, 2020) (stating a district court making a competency determination “is tasked with actually making factual findings on contested evidence”).

DECISION

We hold that when a defendant asserts their own competence in a contested competency proceeding under Minn. R. Crim. P. 20.01, the defendant bears the burden of

proof. Because the district court failed to properly allocate the burden of proof, we reverse and remand for a new competency proceeding to determine whether Thompson is currently competent. In light of the disposition, we do not reach the remaining issues.

Reversed and remanded.