

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

THE STATE OF OHIO)	CASE NO. CR 02 428306
)	
Plaintiff)	JUDGE JOHN P. O'DONNELL
)	
-vs-)	<u>JOURNAL ENTRY</u>
)	
YUSEF DEJARNETTE)	
)	
Defendant)	

Yusef Dejarnette was 24 years old when he bought a .380 caliber Hi Point semiautomatic pistol at Atlantic Gun and Tackle in Bedford on August 26, 2002. Four days later in Cleveland Heights he used the gun to shoot at Allison Tassone and Michael Goldner. On September 8, while riding a bicycle on Chagrin Boulevard in Beachwood, he shot Lindsay Swiatkowski. The next day, back in Cleveland Heights and again on his bicycle, Dejarnette shot Nikolai Knerik. Dejarnette did not know any of the victims nor did they know him. The defendant was eventually arrested in late September of that year when a search of his home revealed ammunition consistent with that used in the crimes and other materials tending to suggest the defendant was the shooter.

On September 25, 2002, Dejarnette was charged in a nine-count indictment with crimes including attempted aggravated murder (counts one through four), felonious assault (counts five through eight) and possessing criminal tools (to wit: the bicycle, count nine). After arraignment, the question of the defendant's competence to stand trial was raised immediately and, after a

psychiatric evaluation, both parties stipulated to the admission into evidence of written reports of Dr. Britta Ostermeyer and Dr. Phillip Resnick, both of whom concluded that the defendant was not competent to stand trial because of his “psychotic and delusional state of mind.” Based upon that evidence, the court found on November 6, 2002, that the defendant was not competent to stand trial and he was referred to a psychiatric hospital for restoration to competency. About four months later, on March 20, 2003, the court found that the defendant had been restored to competency and the case began to move toward trial.

Dejarnette eventually asserted a plea of not guilty by reason of insanity. At a hearing on December 2, 2003, both parties agreed the defendant was not guilty by reason of insanity of all counts. Live testimony was not taken at that hearing but the written reports of Drs. Ostermeyer, Resnick and Alcorn were offered into evidence and the court, based upon the available evidence and the parties’ agreement found Dejarnette not guilty by reason of insanity.

Ohio Revised Code section 2901.01(A)(14) provides as follows:

A person is “not guilty by reason of insanity” relative to a charge of an offense only if the person proves, in the manner specified in section 2901.05 of the Revised Code, that at the time of the commission of the offense, the person did not know, as a result of a severe mental disease or defect, the wrongfulness of the person’s acts.

The plea and finding of not guilty by reason of insanity therefore necessarily include an admission by the defendant that he did engage in the conduct alleged in the indictment, albeit without a culpable mental state.

After the not guilty by reason of insanity verdict the court held a hearing under O.R.C. §2945.40 and found that the defendant was a mentally ill person subject to hospitalization by court order, and that the least restrictive treatment alternative consistent with public safety and the treatment needs of the defendant was at Twin Valley psychiatric hospital in Columbus. By

agreement of the prosecution and defendant the court retained jurisdiction over the defendant for 26 years pursuant to O. R. C. §2945.401.

Since then the defendant has continued to be a mentally ill person subject to hospitalization by court order, but the restrictions of his hospitalization were occasionally eased to the point where, on February 14, 2008, the defendant was approved for Level 5 movement. This level of movement allowed the defendant trial visits to a group home with various conditions attached. At the same time, the court denied a request that the defendant be placed on conditional release.

The case was called for a mandatory two-year review hearing on September 3, 2008. From the evidence at that hearing the court found that hospitalization pursuant to the February 14 order remained appropriate, but that the group home day passes had not been implemented because no group home was willing to accept the defendant under those conditions. Because of that, the psychiatric hospital asked that the defendant be placed upon conditional release without first using Level 5 movement under the day passes. The court, pursuant to O.R.C. §2945.401(D)(1)(b), ordered a second opinion evaluation and also granted the state's request for an independent psychiatric evaluation. The hearing on the request for conditional release took place on December 5, 2008.

The evidence at the hearing included testimony by Laura Brooks, the conditional release program manager, that the Flores group home had been unwilling to accept the defendant on day passes as requested, and allowed, in February for reasons that appear to the court to be based more on the agency's bureaucratic needs than clinical considerations. Brooks testified that nevertheless the new plan would "mimic the effect" of the day pass proposal. Dr. Emmanuel Nwajei's testimony also allowed for an inference that conditional release was under

consideration in part because of the group home's financial considerations, but he agreed with Brooks that the conditional release plan under consideration is the practical equivalent of the Level 5 day pass plan already approved by the court. Dr. Nwajei also testified that the defendant's psychosis has been under control for quite some time and that he probably would have been recommended for discharge two years ago if not for his "high profile."

In considering a request for movement to non-secured status, *i.e.* conditional release, the court is guided by O.R.C. §2945.401, which provides, in pertinent part, as follows:

(E) In making a determination under this section regarding nonsecured status or termination of commitment, the trial court shall consider all relevant factors, including, but not limited to, all of the following:

- (1) Whether, in the trial court's view, the defendant or person currently represents a substantial risk of physical harm to the defendant or person or others;
- (2) Psychiatric and medical testimony as to the current mental and physical condition of the defendant or person;
- (3) Whether the defendant or person has insight into the defendant's or person's condition so that the defendant or person will continue treatment as prescribed or seek professional assistance as needed;
- (4) The grounds upon which the state relies for the proposed commitment;
- (5) Any past history that is relevant to establish the defendant's or person's degree of conformity to the laws, rules, regulations, and values of society;
- (6) If there is evidence that the defendant's or person's mental illness is in a state of remission, the medically suggested cause and degree of the remission and the probability that the defendant or person will continue treatment to maintain the remissive state of the defendant's or person's illness should the defendant's or person's commitment conditions be altered.

The court is persuaded that consideration of some of these factors weighs in favor of approving the request for non-secured status. For example, the psychiatric and medical testimony is that the defendant, while still mentally ill, hasn't been psychotic for quite some time

and his current mental condition is stable. However, other factors cannot be said to support a conditional release. First, even the psychiatrist seems to concede that the defendant's high profile – which the court takes to be a reference to the seriousness of his conduct and not to the degree of public interest in the case – mitigates in favor of proceeding more cautiously than might otherwise be appropriate for a defendant whose conduct was not as randomly and dangerously violent as Dejarnette's. Second, the defendant's past history of non-conformity to society's rules and values counsels for extreme caution. The defendant's conduct included: toxic written ruminations on race relations and on stalking and "man hunting;" accumulating written materials describing various ways to modify and use handguns; displaying posters of a terrorist; and acquiring a handgun. These things surely did not happen in one day. The defendant then used the gun to terrorize innocent victims over the course of ten days. Notwithstanding the agreement by the prosecutor that the conduct took place during a psychotic episode, the fact remains that the episode went undiscovered for weeks. There is no assurance that a similar psychotic episode while on conditional release will be detected before any harm can be done. Moreover, the defendant has never revealed the ultimate disposition of the handgun. Possible access to the weapon while on conditional release also raises the court's level of concern for future violence. Finally, the conditional release proposal has the air of expediency. Nothing changed from the late 2007 recommendation that conditional release be considered only after the successful use of day passes until the mid-2008 recommendation to go directly to conditional release other than the discovery that the group home would not accommodate the defendant on day passes because, apparently, it would not be paid. While the court does not expect any provider of a service to work for free, the court is not inclined to accept practical administrative impediments to carrying out the original clinical plan to justify a short-cut of that plan.

Upon consideration of all factors, the court hereby **denies** the application for conditional release. The defendant is, however, reminded that the journal entry of February, 2008, granting Level 5 movement on day passes with conditions remains in effect.

IT IS SO ORDERED:

Date: April _____, 2009

JOHN P. O'DONNELL, JUDGE

SERVICE

A copy of the foregoing Journal Entry was sent by regular U.S. mail, this ____ day of April, 2009, to the following:

Blaise Thomas, Esq.
Assistant County Prosecutor
Cuyahoga County Prosecutor's Office
The Justice Center
1200 Ontario Street
Cleveland, OH 44113
Counsel for Plaintiff

and

Kenneth Mullin, Esq.
Assistant Public Defender
Public Defender's Office
310 Lakeside Avenue
Suite 400
Cleveland, OH 44113-1021
Counsel for Defendant

and

Northcoast Behavioral Healthcare
1756 Sagamore Road
P.O. Box 305
Northfield, OH 44067