

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO)	CASE NO: CR-08-518832-A
)	
Plaintiff)	JUDGE JOHN P. O'DONNELL
)	
vs)	
)	
EUGENE DYCKS, JR.)	<u>JOURNAL ENTRY</u>
)	
Defendant)	

John P. O'Donnell, J.:

On November 24, 2008, Eugene Dycks, Jr., knocked on the front door of Leroy and Delores Robinson at 10823 Morison in the Glenville neighborhood of Cleveland.¹ Leroy Robinson answered the door and Dycks pushed his way through the door, punched Robinson and wrestled him to the floor. Getting up, Dycks strode toward Delores Robinson, passed her and went upstairs.

The Robinsons did not know Dycks and he seemed to them to be “on some real heavy drugs.” Uncertain of his intent, they ran outside to seek help.

Dycks stayed upstairs in the house for about five minutes and then left, walking right past the Robinsons and some other witnesses. He was soon arrested under a bush on a nearby street. The Robinsons returned to their home and found it undamaged with nothing missing, but Dycks had used the upstairs restroom for a bowel movement, as evidenced by the unflushed toilet.

On December 11, Dycks was charged by indictment with one count of aggravated burglary and one count of burglary.

¹ The facts summarized here are taken from the police report admitted as evidence at trial.

After arraignment, the defendant was evaluated for competence to stand trial by Peter M. Barach, Ph.D., a psychologist at the Court Psychiatric Clinic. By written report dated January 15, 2009, Dr. Barach offered the opinion that the defendant was not competent to stand trial. Based on the evidence supporting that conclusion, and Dr. Barach's opinion, the court, on January 22, 2009, found the defendant incompetent to stand trial and he was referred for competency restoration to Twin Valley Behavioral Healthcare's Columbus campus.

By early June, the defendant had been restored to competency and was evaluated by Dr. Barach a second time for sanity at the time of the act. After receiving Dr. Barach's report of that evaluation, the defendant entered a written plea of not guilty by reason of insanity.

After a bench trial, the court found on August 24 that the defendant was not guilty by reason of insanity. Upon that finding, and pursuant to Ohio Revised Code Section 2945.40, the defendant was referred to the Court Psychiatric Clinic for a third time for an evaluation of his present mental condition and eligibility for civil commitment.

O.R.C. § 2945.40 provides, in pertinent part, as follows:

2945.40 Acquittal by reason of insanity.

(A) If a person is found not guilty by reason of insanity, . . . the trial court shall conduct a full hearing to determine whether the person is a mentally ill person subject to hospitalization by court order . . .

(B) The court shall hold the hearing under division (A) of this section to determine whether the person found not guilty by reason of insanity is a mentally ill person subject to hospitalization by court order . . . within ten court days after the finding of not guilty by reason of insanity. . .

(D) . . . (T)he court shall conduct the hearing in accordance with the Rules of Civil Procedure. . . . The court may consider all relevant evidence . . .

(E) Upon completion of the hearing under division (A) of this section, if the court finds there is not clear and convincing evidence that the person is a mentally

ill person subject to hospitalization by court order. . . , the court shall discharge the person, . . .

(F) If, at the hearing under division (A) of this section, the court finds by clear and convincing evidence that the person is a mentally ill person subject to hospitalization by court order. . . it shall commit the person. . . In determining the place and nature of the commitment, the court shall order the least restrictive commitment alternative available that is consistent with public safety and the welfare of the person. In weighing these factors, the court shall give preference to protecting public safety.

The hearing went forward on September 1, 2009. Evidence at the hearing included the testimony of Dr. Barach and the admission of his August 27, 2009, five-page report.

Dr. Barach opined that the defendant has a psychotic disorder that is currently controlled with medication. The defendant had no history of mental health treatment prior to his arrest for this offense. During a psychiatric evaluation at the county jail before being prescribed psychiatric medication, the defendant appeared confused and disorganized. His behavior in jail was aggressive. He was prescribed anti-psychotic medications for the first time while he was in jail, but refused on many occasions to take them.

As recently as January, 2009, before taking psychiatric medications regularly, the defendant was paranoid, delusional, incoherent, and claiming that God talked to him all the time.

During treatment for competency restoration at Twin Valley, it was learned that the defendant's behavior has been increasingly bizarre for several years and that he has been physically menacing toward his ex-wife. The defendant admitted having increasing problems with his mood and thinking since his divorce two or three years before the incident in this case.

While at Twin Valley, the defendant was stabilized on anti-psychotic and anti-anxiety medication. In this manner he was restored to competency to stand trial, but Dr. Kristen E. Haskins of Twin Valley noted that continued compliance with prescribed psychiatric medications would be necessary to maintain the defendant's improved level of mental functioning. After his return from Twin Valley to the county jail and until the present, the defendant, in custody the whole time, has remained compliant with his psychiatric medications.

Dr. Barach is confident that the defendant's psychosis will remain in remission as long as he is compliant with prescribed psychiatric medication and as long as the prescription is managed properly. Based on experience, Dr. Barach believes it may take up to a year for the defendant to begin case management – including a prescription for anti-psychotic medication – with a community mental health agency and that there is a possibility that the defendant's compliance with medication may lapse in the meantime. However, because the defendant is currently in remission while on medications given and monitored by staff of the jail, Dr. Barach offered the opinion that the defendant, although a mentally ill person, is not currently subject to hospitalization by court order.

The authorizing statute, O.R.C. 2945.40, requires that the court “consider all relevant evidence” in considering whether a defendant is a “mentally ill person” who is “subject to hospitalization” by court order. The court, as the finder of fact, does not question the existence of a mental illness here, nor does the court take issue with the expert's opinion on how to control that mental illness: by the current medication regimen, monitored and adjusted as necessary by a treating psychiatrist. This leaves for decision whether the defendant is “subject to hospitalization” for that treatment.

Section 5122.01(B) of the Ohio Revised Code defines a mentally ill person subject to hospitalization by court order as follows:

(B) “Mentally ill person subject to hospitalization by court order” means a mentally ill person who, because of the person’s illness:

(4) Would benefit from treatment in a hospital for the person’s mental illness and is in need of such treatment as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or the person.

The evidence shows that the defendant’s mental illness is in remission only because he is medicated. The evidence of his most recent conduct while unmedicated is that he forced his way into the Robinsons’ home and could have injured or killed them. He has been belligerent toward his jailers. He is paranoid and delusional. He is a threat to his ex-wife. Dycks is also a risk to himself if only by virtue of causing somebody else to hurt him in self-defense.

“Grave” means serious and “imminent” means about to happen. The evidence – the defendant’s reluctance or outright refusal to take legitimately prescribed psychiatric medication and the low likelihood that he will continue mental health treatment without a commitment – supports a conclusion that the defendant will no longer take his prescribed medications if released directly from jail to the community. Therefore the threat posed by the defendant is both grave and imminent upon his release from custody, the only place he has ever voluntarily taken the medication keeping his psychosis in remission.

Based upon the evidence presented at the hearing, the court finds by clear and convincing evidence that the defendant would benefit from treatment in a hospital and without that treatment he represents a grave and imminent risk to the substantial rights of others and himself. Having already found that the defendant is a mentally ill person, the court therefore finds that he is a mentally ill person subject to hospitalization by court order.

The court recognizes that its conclusion is contrary to the only expert testimony of record. However, the court does not believe it is bound to accept the expert's opinion as the only possible conclusion on the evidence. Dr. Barach presumably considered the four possibilities under O.R.C. § 5122.01(B) that would justify hospitalization and found that none of them were supported by clear and convincing evidence. This opinion, however, is not a clinical diagnosis that only an expert is qualified to make. Instead, it only represents the doctor's view – informed by his education, training and experience, but not conclusive because of that – that the defendant does not represent any of the kinds of risk set forth in the statute. The court, considering the same evidence, has simply arrived at a different result: that the evidence (for the reasons explained above) does support a factual finding that the defendant is subject to hospitalization by court order.

While the court may have to rely on an expert's opinion to determine whether a defendant is a mentally ill person in the first place² and the best treatment for the illness, the court, although not an expert, may differ with the testifying expert over the setting for the administration of the most appropriate treatment, especially as in this case where there is a risk that the defendant's mental illness, and its attendant manifestations, may recur in the event he is left to fend for himself to procure, or not, the necessary psychiatric treatment.

The court's conclusion that it is not bound by the expert's opinion that this defendant is not subject to hospitalization by court order is supported by the reasoning in *State v. Traywick* (1991), 72 Ohio App. 3d 674. Traywick had been found not guilty by reason of insanity and was ordered committed to a psychiatric hospital. After a course of treatment, the psychiatric hospital

² Although not an issue in this case, the court's having to rely on the expert to decide whether a defendant is mentally ill is a debatable proposition considering the Ohio Supreme Court's comment, in *State v. Sullivan* (2001), 90 Ohio St. 3d, 502, 509 at footnote 4, that "a person's mental illness may meet the statutory definition of 'mental illness' provided in R.C. 5122.01(A), regardless of whether his or her condition meets the clinical definition of mental illness."

felt the defendant had derived maximum benefit from his commitment and that he should be conditionally released to a less-restrictive residence facility.

Evidence at the conditional release hearing included opinion testimony of two evaluating experts and a three-person panel of the psychiatric hospital's staff psychologists. All of the experts agreed that conditional release was appropriate. The trial court declined to adopt that opinion and ordered the defendant's continued commitment at the psychiatric hospital.

In affirming the trial court's action, the Cuyahoga County Court of Appeals, by implication, found that the trial court, as a finder of fact, was free to reject the opinions of the experts when reaching its ultimate conclusion on the matter of the most appropriate conditions of a civil commitment. Although that case involved a defendant who was already committed, the same principle applies: the finder of fact, considering "all relevant evidence" as required by statute, may reach a different conclusion about the risk the defendant would represent if not hospitalized. As has been said in the context of uncontradicted expert testimony in a personal injury case: "We note the jury is not required to give any additional weight to the opinion of an expert, if any weight at all. Rather, an expert's opinion is admissible, as is any other testimony, to aid the trier of fact in arriving at a correct determination of the issues being litigated. Expert testimony is permitted to supplement the decision-making process of the fact finder not to supplant it."³

Having found that the defendant is a mentally ill person subject to hospitalization by court order, the court must determine the least restrictive treatment alternative consistent with public safety and the defendant's treatment needs. The court finds that commitment to the Northfield Campus of Northcoast Behavioral Healthcare is appropriate. Although no evidence of the treatment at Northcoast was presented at the hearing, the court is familiar with

³ Sawyer v. Duncan, (Dec. 14, 2000), Cuyahoga Co. App. No. 78056, 2000 WL 1844758, unreported.

Northcoast's capabilities and limitations based upon past experience and is fully confident that the defendant's treatment there will be considered, compassionate, efficient and effective.

Therefore, the Sheriff is ordered to transport the defendant to Northcoast's Northfield Campus immediately upon receipt of notice that a treatment bed is available.

IT IS SO ORDERED:

Date: _____

Judge John P. O'Donnell

SERVICE

A copy of this Journal Entry was sent by regular U.S. mail, this 10th day of September, 2009, to the following:

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Judge John P. O'Donnell