STATE OF LOUISIANA IN THE INTEREST OF B.E.	*	**NO. 2000-CA-2427**
	*	**COURT OF APPEAL**
	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
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APPEAL FROM
JUVENILE COURT ORLEANS PARISH
NO. 99-235-06-QB, SECTION "B"
HONORABLE C. HEARN TAYLOR, JUDGE
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JUDGE MICHAEL E. KIRBY
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(Court composed of Chief Judge William H. Byrnes III, Judge Miriam G. Waltzer, Judge Michael E. Kirby)

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The State of Louisiana appeals the decision of the Juvenile Court judge, dismissing the State's case against the minor, B.E.

The facts in this case are disputed and the record does not substantiate some of the assertions made in the parties' briefs. However, the record does reveal the following: On August 23, 1999, the State filed a petition alleging that B.E. is a delinquent child pursuant to La. Ch.C. art. 804(3), based on a violation of La. R.S. 14:37 relative to aggravated assault. According to the petition, B.E. attempted to commit a battery or intentionally placed the victim in reasonable apprehension of receiving a battery, committed with a dangerous weapon, i.e. a vacuum cleaner, on August 22, 1999. On August 23, 1999, the Juvenile Court conducted a hearing for consideration of possible detention or release of the juvenile. The Orleans Indigent Defender Program was appointed to represent B.E. and defense counsel stipulated as to probable cause. After the hearing, B.E. was released to the custody of his parents pending further hearing.

The minute entry of August 25, 1999 shows that the Juvenile Court judge noted that B.E. was now in the custody of the Department of Social Services, Office of Community Services ("OCS"). B.E. denied the charges against him and was released to his guardian pending further hearing. When

this matter came for trial on January 18, 2000, the court noted that the attorney for the Mental Health Advocacy Service filed a motion for a lunacy commission to determine whether B.E. was competent to stand trial. The judge appointed Dr. Jody Holloway, C.S.E., and Dr. Sara Deland, M.D. to evaluate B.E. Defense counsel subsequently requested that Dr. Holloway be replaced on the lunacy commission due to the fact that she informed counsel of a conflict of interest.

Dr. Deland evaluated B.E. at Southeast Louisiana State Hospital where he was hospitalized on an in-patient basis and filed a letter and report with the Juvenile Court. Dr. Deland stated her opinion that B.E. suffers from a mental disease, Intermittent Explosive Disorder, and from a mental defect, Moderate Mental Retardation. Her opinion is also that because of these mental health problems, B.E. is not competent to stand trial due to his inability to understand the proceedings against him and his inability to assist his attorney. She further stated that it was her opinion, with reasonable medical certainty, that B.E. will not attain competency to proceed to trial in the foreseeable future. Regarding B.E.'s dangerousness, Dr. Deland stated that B.E. has a long history of aggressive behavior involving both destruction of property and violence directed at others. She said that although B.E.'s records at Southeast Hospital showed some improvement in

his behavior, her recommendation was that B.E.'s hospitalization at Southeast Louisiana State Hospital should be continued.

On July 27, 2000, the Juvenile Court judge appointed Dr. Mark Zimmermann, Ph.D., to evaluate B.E. Although the judge referred to the fact that he reviewed evaluations from more than one doctor (Drs. Deland and Zimmermann were the two that were ordered to evaluate B.E.), Dr. Zimmermann's report was not included in the original Juvenile Court record in this matter. The defense claims that it was misfiled but that the State stipulated to its introduction. The State denied that it agreed to such a stipulation. However, after this appeal was lodged in this Court, the defense filed a motion to supplement the record with Dr. Zimmermann's report. The motion was granted on February 26, 2001 and the report is now part of the record.

In Dr. Zimmermann's report, he states his opinion that B.E. is not competent to proceed to trial, and that it is unlikely that treatment will bring him to a point where he is competent to stand trial. He further opined that B.E.'s mental condition would deteriorate significantly under the stress of a trial.

On September 28, 2000, a lunacy commission/status hearing was held. In the transcript of that hearing, the Juvenile Court judge stated that based on

the doctors' reports, he found that B.E. is not competent to stand trial. He ordered that this case be dismissed and that B.E. continue to be in the custody of OCS. The State now appeals the dismissal of this case.

On appeal, the State first argues that the Juvenile Court judge did not have sufficient information before determining that defendant was not competent to stand trial. The State suggests that the judge relied on the mental evaluation of only one doctor, rather than at least two as required by La. Ch.C. art. 834.

It is important to note that the State's brief that raised this argument was filed on December 1, 2000, which was before the defense filed the motion in this Court to file Dr. Zimmermann's report into the record. As stated above, this motion was granted. In any event, Dr. Zimmermann's report is proof that B.E. was evaluated by one physician (Dr. Deland) and one psychologist (Dr. Zimmermann.) Thus, the sanity commission that evaluated B.E. met the requirements of La. Ch.C. art. 834.

Dr. Zimmermann's report was dated September 4, 2000 and was stamped received by the Juvenile Court on September 7, 2000. The explanation offered by the defense for the absence of this report from the record was that it was incorrectly placed in another file. Given the fact that the judge ruled on B.E.'s competency to proceed on September 28, 2000,

and referred to the reports of doctors (plural), it is obvious that the Juvenile Court judge had the reports of both Drs. Deland and Zimmermann when he made his decision.

The State also objects to the lack of any live testimony by the physician or psychologist that evaluated B.E. Given the fact that both of these doctors concluded that B.E. is not competent to stand trial and will not be competent to stand trial in the foreseeable future demonstrates that the reports of these doctors gave the judge sufficient (and uncontroverted) information on which to base his decision and that the testimony of these doctors was unnecessary.

This argument has no merit.

The State's other argument is that even if B.E. were not competent to stand trial, the Juvenile Court judge should not have dismissed the case. Citing La. Ch.C. arts. 837 and 838, the State argues that once a minor is found to lack the competency to stand trial, the case should only be suspended until such time that the minor regains the mental capacity to proceed to trial. The State also argues that the judge should have held a hearing to assess the dangerousness of the minor in order to determine an interim disposition while waiting for the minor to regain the capacity to stand trial.

In addition to the procedures outlined in La. Ch.C. arts. 837 and 838, the Childrens' Code also provides rules for the dismissal of a petition. La. Ch.C. art. 876 states that "[f]or good cause, the court may dismiss a petition on its own motion, on the motion of the child, or on motion of the petitioner." In this matter, mental health professionals have diagnosed B.E. as suffering from "Intermittent Explosive Disorder." Dr. Deland stated in her report that B.E. is presently a danger to either himself or others and has a long history of aggressive behavior involving both destruction of property and violence directed at others. Given the uncontroverted evidence in the medical reports that B.E. is dangerous, is in need of continued hospitalization at a mental hospital, and has a limited mental capacity that precludes his ability to become competent to stand trial for the foreseeable future, we find that holding another hearing to assess facts already demonstrated unequivocally would have been a vain and useless act in this particular case. There is no suggestion by either mental health professional that evaluated B.E. that he will ever reach a point where he will be mentally competent to stand trial.

Under the particular circumstances of this case, we find that the Juvenile Court judge's decision to dismiss the State's case against B.E. and continue OCS custody of B.E. was within his discretion under La. Ch.C. art.

876. Accordingly, we find no merit in the State's argument that the Juvenile Court judge erred in dismissing this case.

For these reasons, we affirm the decision of the Juvenile Court.

AFFIRMED