

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: E.J.D.

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: E.J.D.

No. 505 MDA 2012

Appeal from the Order Entered February 3, 2012
In the Court of Common Pleas of Berks County
Civil Division at No(s): 23 Feb 79 MH

BEFORE: SHOGAN, J., MUNDY, J., and OTT, J.

MEMORANDUM BY OTT, J.:

Filed: February 12, 2013

E.J.D. appeals from the order entered by the trial court on February 3, 2012 which affirmed the mental health review officer's finding that E.J.D. is severely mentally disabled and in need of continued involuntary commitment at Wernersville State Hospital for a period not to exceed 365 days. For the following reasons, we affirm.

The trial court has summarized the facts and procedural history underlying this appeal as follows:

On or about November 15, 1972, [E.J.D.], Appellant herein brutally[] murdered both of his parents. [E.J.D.] stabbed his father forty-seven (47) times with a butcher knife and did the same to his mother approximately twelve (12) times.

[E.J.D.] was found to be incompetent to stand trial, and was committed to Farview State Hospital for treatment. [E.J.D.'s] mental status was reviewed at appropriate hearings in

both 1973 and 1974, after which hearings he was recommitted to Farview State Hospital, having been found incompetent to stand trial.

In March of 1975, the Superintendent of Farview State Hospital petitioned the Court of Common Pleas of Berks County for Defendant's discharge from that facility. After hearing held on March 24, 1975, the Defendant [E.J.D.] was determined to be capable of standing trial, and he was committed to Berks County Prison.

On June 10, 1975, jury trial commenced in the Court of Common Pleas of Berks County, Pennsylvania, wherein [E.J.D.] was charged with the November 1972 murders of his mother and father. On June 13, 1975, the jury empanelled in [E.J.D.'s] case returned a verdict of not guilty by reason of insanity to both charges.

On June 20, 1975, a petition was filed and hearing was held on the question of whether [E.J.D.] was severely mentally disabled and required involuntary inpatient treatment for his condition. President Judge Eshelman who conducted the hearing, determined that [E.J.D.] was severely mentally disabled and in need of involuntary inpatient treatment and ordered his commitment to Farview State Hospital. Beginning in 1976 or 1977, yearly hearings were held pursuant to the Mental Health Procedures Act in order to determine whether [E.J.D.] required further involuntary inpatient treatment. Annually since that time, [E.J.D.] has been adjudged to be severely mentally disabled and a clear and present danger to himself and others, and in need of involuntary inpatient treatment. In either 1976 or 1977, [E.J.D.] was transferred from Farview State Hospital to Wernersville State Hospital, where he has resided since.

On January 13, 2012, hearing was held pursuant to the Mental Health Procedures Act before Mental Health Review Officer Brett A. Huckabee, Esq., to determine whether [E.J.D.] remained in need of continued involuntary treatment. Review Officer Huckabee, after hearing testimony from Dr. Sasikala Ravi, and from [E.J.D.], determined that [E.J.D.] remained in need of continued involuntary inpatient treatment.

Appeal of that order was taken to this Court. On February 3, 2012, after review of the record before Review Officer

Huckabee, we affirmed the Review Officer's decision to the effect that [E.J.D.] remains severely mentally disabled and in need of continued involuntary commitment and treatment for a period not to exceed three hundred sixty-five (365) days. On or about March 5, 2012, [E.J.D.], by and through his counsel, filed an appeal to the Superior Court from this Court's order of February 3, 2012. On March 7, 2012, this Court ordered [E.J.D.] to file a concise statement of errors complained of on appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b)(1).

On or about March 26, 2012, [E.J.D.] through his counsel, filed a statement of matters complained of on appeal. The statement raises a single issue:

1. The Court erred in finding that [E.J.D.] was severely mentally disabled and in need of continued involuntary commitment under 50 P.S. § 7304(g)(2)(ii), where there was insufficient evidence to establish that [E.J.D.] would still be a clear and present danger to himself or others if he were released, as the only basis for the doctor's opinion to the contrary was [E.J.D.'s] past history since his hospitalization.

Trial Court Opinion, 6/13/2012 at 1-2.

We have thoroughly reviewed the record in this case, as well as the arguments provided by counsel in their respective briefs, and we find no basis upon which to disturb the decision of the trial court. Therefore, we affirm the order based upon the comprehensive analysis provided by the learned Judge Paul M. Yatron in his Rule 1925(a) opinion entered on June 13, 2012.

The parties shall attach a redacted copy of the trial court's Rule 1925(a) opinion in the event of further proceedings.

Order affirmed.

In re: F J. D.

: IN THE COURT OF COMMON PLEAS
: BERKS COUNTY, PENNSYLVANIA
: ~~CRIMINAL DIVISION~~
: NO. 236 Feb-79MH
:
: PAUL M. YATRON, JUDGE

Alan S. Miller, Esq.
Attorney for the County of Berks
Eric J. Taylor, Esq.
Attorney for the Appellant on appeal

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1925(a) Opinion

June 13, 2012

On or about November 15, 1972, E. J. D., Appellant herein brutally, murdered both of his parents. E. J. D. stabbed his father forty-seven (47) times with a butcher knife and did the same to his mother approximately twelve (12) times.

E. J. D. was found to be incompetent to stand trial, and was committed to Farview State Hospital for treatment. E. J. D.'s mental status was reviewed at appropriate hearings in both 1973 and 1974, after which hearings he was recommitted to Farview State Hospital, having been found incompetent to stand trial.

In March of 1975, the Superintendent of Farview State Hospital petitioned the Court of Common Pleas of Berks County for Defendant's discharge from that facility. After hearing held on March 24, 1975, the Defendant E. J. D. was determined to be capable of standing trial, and he was committed to Berks County Prison.

On June 10, 1975, jury trial commenced in the Court of Common Pleas of Berks County, Pennsylvania, wherein E. J. D. was charged with the November 1972 murders of his mother and father. On June 13, 1975, the jury empanelled in E. J. D.'s case returned a verdict of not guilty by reason of insanity to both charges.

On June 20, 1975, a petition was filed and hearing was held on the question of whether Defendant was severely mentally disabled and required involuntary inpatient treatment for his condition. President Judge Eshelman who conducted the hearing, determined that E. J. D. was severely mentally disabled and in need of involuntary inpatient treatment and ordered his commitment to Farview State Hospital. Beginning in 1976 or 1977, yearly hearings were held pursuant to the Mental Health Procedures Act in order to determine whether E. J. D. required

further involuntary inpatient treatment. Annually since that time, E.J.D. has been adjudged to be severely mentally disabled and a clear and present danger to himself and others, and in need of involuntary inpatient treatment. In either 1976 or 1977, E.J.D. was transferred from Farview State Hospital to Wernersville State Hospital, where he has resided since.

On January 13, 2012, hearing was held pursuant to the Mental Health Procedures Act before Mental Health Review Officer Brett A. Huckabee, Esq., to determine whether Appellant remained in need of continued involuntary treatment. Review Officer Huckabee, after hearing testimony from Dr. Sasikala Ravi, and from Appellant, determined that Appellant remained in need of continued involuntary inpatient treatment.

Appeal of that order was taken to this Court. On February 3, 2012, after review of the record before Review Officer Huckabee, we affirmed the Review Officer's decision to the effect that Appellant remains severely mentally disabled and in need of continued involuntary commitment and treatment for a period not to exceed three hundred sixty-five (365) days. On or about March 5, 2012, E.J.D., by and through his counsel, filed an appeal to the Superior Court from this Court's order of February 3, 2012. On March 7, 2012, this Court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b)(1).

On or about March 26, 2012, Appellant, through his counsel, filed a statement of matters complained of on appeal. The statement raises a single issue:

1. The Court erred in finding that Appellant was severely mentally disabled and in need of continued involuntary commitment under 50 P.S. § 7304(g)(2)(ii), where there was insufficient evidence to establish that Appellant would still be a clear and present danger to himself or others if he were released, as the only basis for the doctor's opinion to the contrary was Appellant's past history since his hospitalization.

Counsel for the Appellant and counsel for the County of Berks entered a stipulation to the effect that a transcription of the tape recorded hearing of January 13, 2012, constitutes the record for purposes of adjudicating this appeal. A true and correct copy of the transcription is attached hereto, made part hereof, and designated Exhibit 1. We now proceed to our adjudication.

Appellant was initially diagnosed to suffer from schizophrenia. That diagnosis has been consistent up to the present. At the January 13, 2012, hearing, Dr. Ravi testified that the Appellant suffers from undifferentiated schizophrenia and that during the past twenty years no

significant changes to his condition have been noted. (Transcript of January 13, 2012, hereinafter [Transcript] at Page 1.) Dr. Ravi emphasized the need for continuing treatment. "We are actually requesting to continue the treatment because of his history and lack of insight and poor judgment issues. Without the treatment, he can be a risk." (Transcript Page 2.) Dr. Ravi also stated that the Appellant would be a danger to himself and others if released without treatment. (Transcript Page 2.) She also indicated that the Appellant suffered from delusions, and that without continued treatment, Appellant would be a danger to himself or others. (Transcript Page 2.) Dr. Ravi noted that she had been observing the defendant for almost two years and has seen no significant change in his condition. (Transcript Page 3.) Further, she opined that the setting at Wernersville State Hospital would be the least restrictive environment for Appellant, given his condition and treatment needs. (Transcript Page 3.)

Perhaps most tellingly, Appellant testified on his own behalf at the January 13 hearing. His delusions are apparent from his testimony. "Yes, I am in total fear when going into treatment team, ask me if I am happy the answer is no. Please release me, oh I am not homicidal or suicidal, I really would like to join the United States Army." (Transcript Page 3.) In his testimony, Appellant made many complaints against the institution and the staff thereof, and spoke of his intentions if he were discharged. "...If I would get out, I am pretty well educated. I thought at first I would work for the police or the FBI, maybe even some small job as a forensic scientist. But then I thought no, because poor people shouldn't kill police in all forms of law enforcement for revenge. Then this horrible thought, say I am discharged, me being a full blooded Italian, what if I am captured by the Italian mafia, forced into the mafia, who knows what could happen. In the end anything from murder, prostitution, drugs or gambling, or some form of violent death could come my way." (Transcript Page 4.)

Counsel for the Appellant contends that the commitment is unjustified claiming that the only basis for Dr. Ravi's opinion that Appellant is still a clear and present danger to himself or others was Appellant's past history since hospitalization. This contention ignores both the evidence adduced at the January 13 hearing, and the law.

For an individual to be adjudicated a clear and present danger to himself or others, in the context of these proceedings, it need only be shown that the conduct that led to the criminal proceedings against the subject occurred, and that there is a reasonable probability that it will occur again. It is sufficient to show a reasonable probability that some form of violent conduct will occur. Commonwealth v. Helms, 506 A.2d 1384 at 1388. There is no dispute regarding the

horrific acts committed by Appellant which led to his commitment to Wernersville State Hospital. Thus, the first prong of the requisite test is established.

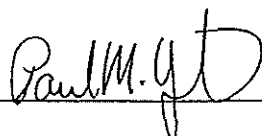
In *Helms*, Superior Court first construed the statutory phrase "reasonable probability" as is used in the statute regarding the patient's dangerousness. This second prong is satisfied by evidence "...demonstrating a substantial likelihood that an insanity acquittee will act violently if he is not involuntarily committed." *Helms* at 1389. The *Helms* court's analysis as to the means of establishing clear and present danger were recently cited with approval in In re: R.G. Appeal of R.G. 11 A.3d 513, 518 (Pa. Super. 2010).


Further, there is no requirement that the record contain evidence that a patient must have engaged in violent behavior within thirty days of the recommitment hearing. Commonwealth v. Romett, 538 A.2d 1339 (Pa. Super. 1988, at 1341). The Mental Health Procedures Act, at 50 P.S. § 7301(b), provides that clear and present danger to others can be established by demonstrating that within thirty days of the hearing the patient in question inflicted or attempted to inflict serious harm on another, and that there is a reasonable probability that such conduct will be repeated. (emphasis added) But for Appellant, however, who has been acquitted by reason of lack of criminal responsibility of a double homicide, the application for commitment for involuntary inpatient treatment may proceed so long as hearing is held within thirty days of the acquittal. Appellant's original commitment after his acquittal in 1975 satisfies this test.

Where, as here, Appellant was already subject to involuntary treatment, "...it shall not be necessary to show the recurrence of dangerous conduct, either harmful or debilitating, within the past thirty days." 50 P.S. § 7304(a)(2). It is necessary, however, that the patient's conduct in the most recent period of institutionalization demonstrate the need for continuing involuntary treatment. *Romett* at 1342.

The record in the case at bar clearly establishes that the Appellant is severely mentally disabled and remains in need of continued treatment. We conclude that his condition is largely unchanged from what it was in 1972. The evidence also clearly establishes that Appellant remains a clear and present danger to himself and others and thus should remain in involuntary inpatient treatment at Wernersville State Hospital, at least until it is time for review of his present commitment. We, therefore, respectfully request that the Appellant's appeal be denied.

BY THE COURT:



NOTICE IS HEREBY GIVEN OF THE ENTRY OF THIS ORDER OR DECREE PURSUANT TO RULE P.C.P. 236 YOU ARE NOTIFIED THAT THIS ORDER/DOCUMENT HAS BEEN FILED IN THE PROTHONOTARY'S OFFICE OF BERKS COUNTY AND THIS IS AN EXTRACT FROM THE RECORD OF SAID COURT CERTIFIED THIS
14TH DAY OF June 2012
Marianne B. Sutton, Prothonotary
 Deputy

In re: E.J.D.

: IN THE COURT OF COMMON PLEAS
: OF BERKS COUNTY, PENNSYLVANIA
:
: TERM NO.: 236Feb-79MH
:
: PAUL M. YATRON, JUDGE

CERTIFICATION OF DISTRIBUTION

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CLERK

By Court order dated September 8, 2008, this matter was reassigned from Judge Peter W. Schmehl to Judge Stephen B. Lieberman; and on September 12, 2008, this matter was reassigned from Judge Stephen B. Lieberman to Judge Paul M. Yatron.

The Honorable Paul M. Yatron
Judge
Berks County Services Center
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I certify I have delivered sufficient copies of the attached document and request services as set forth above.

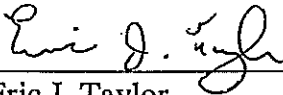



Rebecca Malsnee-Fossett

In re: E.J.D.

: IN THE COURT OF COMMON
: PLEAS OF BERKS COUNTY,
: PENNSYLVANIA
: CIVIL SECTION
:
: Term No. 236 Feb. 79 MH
: Judge: PAUL M. YATRON

Eric Taylor, Attorney of Appellant, E.J.D., and opposing counsel, Alan S. Miller, stipulate that the attached transcript is an accurate transcription of the mental health hearing that occurred on January 13, 2012 in the instant case. The attached transcript will be the only transcript of proceedings to be used in the instant appeal, and satisfies Pa.R.A.P. 1921 and Pa.R.A.P. 1922. Both parties verify the accuracy of this attached transcript.


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Assistant Public Defender
Attorney for Appellant


Alan S. Miller, Esquire
Solicitor for the County of Berks
Attorney for Appellee

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Transcription of E.J. D. 's Mental Health Hearing on January 13, 2012

Participants

HO: Hearing Officer

ED: E. J. D.

DR: Doctor Ravi

Atty: Kathryn Schweitzer, Edward Damario's attorney

HO: I'll proceed with that to determine whether E J D is in need of continued involuntary treatment for a period of time not to exceed 1 year. Mr. D: you or your lawyer may ask questions of the Doctor or of any witness and you can testify on your own behalf.

ED: OK, I'd like to.

HO: Okay, you will. If you're not satisfied with my recommendation you have a right to have it reviewed.

ED: Okay, like an appeal?

HO: Yes. First we will hear from Dr. Ravi. Doctor you're still under oath will you present your testimony please.

DR: It is undifferentiated schizophrenia during the past twenty years no significant changes were noted, distinct limited (inaudible) insight and judgment issues especially about what led him into the hospital, he still believes that what happened in the past is all the doctors' fault with the treatment and medications that we did, he acted that way, even now he is resistant with some of the treatment recommendations like going to appointments and getting tests done, uhm as an example, like cardiac monitoring, colonoscopy, he believes that in the past, I will use this as an example, like when he was in prison the Dr. told him that, uhm after he got hit he was going to lose his eyesight if he doesn't get checkup, which never happened. He believes that we say things which are not going to happen and are not true. Uhm it is also noted by staff and myself to some inappropriate laughter, he will be sitting by himself and laughing as if he was responding to internal stimuli and also noted to laugh sometimes when there is something on TV which is not like a laughable thing. He is compliant with his medication uhm he does attend his programs he is able to do his ADLs with some reminders, Uhm

he doesn't have any family involvement. We are actually requesting to continue the treatment because of his history and lack of insight and poor judgment issues. Without the treatment he can be a risk.

HO: Ms. Schweitzer.

Atty: Doctor do you believe he is a danger to himself or others?

DR: Without the treatment, yes.

Atty: To both, self and others?

DR: Yes.

Atty: And that's based on past history and delusions?

DR: Yes.

Atty: And you believe that these behaviors would be repeated if he was released into the community?

DR: Yes.

Atty: And that his life or someone else's life could be in danger within 30 days if released?

DR: Yes, without the treatment, yes.

Atty: Any assaultive or self abusive behaviors?

DR: Nothing recently.

Atty: Nothing within the past year?

DR: One time he had been (inaudible) but other than that nothing recently.

Atty: Is he compliant with medication?

DR: He is.

Atty: Is full time care needed?

DR: Yes.

Atty: Any progress since being here?

DR: I have known him for the past almost one, two years and I haven't seen anything significantly different.

Atty: Is he cooperative with treatment?

DR: With certain things yes.

Atty: And do you believe that this is the least restrictive facility?

DR: Yes.

Atty: I have nothing further for the doctor.

HO: Do you have any other evidence; I understand that Mr. Damario wants to testify.

DR: I have no further evidence.

HO: Okay. Would you raise your right hand please. Do you swear the testimony you are about to give in this proceeding is true so help you God?

ED: I do.

HO: Thank you.

ED: The whole truth so help me God, I went as soon as possible a home discharge please the following is what I do all collectively every day. I do not go awol, I do not consume street drugs or any form of alcohol, I do not hit the staff, I do not hit fellow patients, I consume all my medicine daily, I wash my clothes, I go to all the programs, I make my bed, I usually eat three meals a day. I greatly am sorry I cannot work in the workshop I am so old, I am in pain at times. I am still more healthy at 63 years old. I have been here three times, this is my third admission, I am here over 35 years. This admission, I have been recovered for seven years. I still love to smoke cigarettes, I know they are deadly but still a complete pleasure. I am divorced and still only love women. I know how to cook meals. I was a short order cook and a chef years ago. I know how to follow directions and cook them, I do not overeat, I exercise as much as possible. I try to be helpful to others when possible. Yes I am in total fear when going into treatment team, ask me if I am happy the answer is no. Please release me, Oh I am not homicidal or suicidal, I really would like to join the United States Army. Page two, in the past 35 years I have been here, I say everyday staff was discriminating against me. Also they were, I believe the word is, prejudiced towards me. My quality of life always very poor. I would most definitely say that 65% of the time, I was treated here inhumanely. For

example, staff assaulted me, not being able to sleep all night because of a wrong (inaudible) condition that only a few know about called restless leg syndrome, plus the staff and patients and CEO owe me 400 dollars for a large amount of my property which was stolen which I worked for in the South Mountain Workshop years ago. Uhm, that is all, once again all these papers are true. Here is another part three, If I would get out, I am pretty well educated. I thought at first I would work for the police or the FBI, maybe even some small job as a forensic scientist. But then I thought no, because poor people shouldn't kill police in all forms of law enforcement for revenge. Then this horrible thought, say I am discharged, me being a full blooded Italian, what if I am captured by the Italian mafia, forced into the mafia, who knows what could happen. In the end anything from murder, prostitution, drugs or gambling, or some form of violent death could come my way. Those are all my statement, I would please like to be made inpatient, outpatient or as soon as possible discharged from this institution.

HO: Okay, Doctor did anything that Mr. D. say cause you to change your opinion of anything at this moment?

DR: No, I just want to add, that E did request, patient did request a CSP meeting, community support plan meeting that we do for all patients. In that meeting, He, himself, could not stay more than 5 minutes, I have to go for my walk, go for something, he could not participate in any meaningful manner (inaudible), even the discharge plan. At this point we are asking for continued treatment at Wernersville.

HO: And were there any additional questions?

Atty: Yes, When was the CSP meeting?

DR: It's been a few months

Atty: Are there any plans for discharge?

DR: Not at this point in time.

Atty: What would he have to do for that to become a possibility to be discharged?

DR: Uhm he gets fixated in this idea that we are responsible for everything that is happening. We would like to see him take more responsibility for his actions and participate in his treatment in the sense that even if we think a cardio thing (inaudible), he doesn't have any insight into things (inaudible) not able to follow basic self-care things.

Atty: I have nothing further.

HO: Okay, then what I am going to do is sign a recommendation to the Berks County Court that E D continue to receive inpatient treatment here at the Wernersville State Hospital under the care of the staff here for as long as the next 365 days. That will close the hearing.