

15-0876

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

v.

CASE NO. 94-F-330

CHIP MELTON DAVIDOW,
Defendant.

**ORDER DENYING CHIP MELTON DAVIDOW'S MOTION
FOR ORDER DIRECTING TRANSFER TO LESS
RESTRICTIVE PLACEMENT**

On the 15th day of June, 2015, came the State of West Virginia by Kristen L. Keller, Prosecuting Attorney for Raleigh County, and came the defendant, Chip Melton Davidow, via telephone¹, and by counsel, Christopher S. Morris. Also appearing in this proceeding was Roberta F. Green, as Guardian ad litem for the defendant. The matter before the court was the defendant's previously filed Motion for Order Directing Transfer to Less Restrictive Placement. The court has heard argument on this motion, has considered all the papers in the court file, and has consulted pertinent legal authorities related to the issues at bar. As a result of its deliberations, the court has concluded that the defense motion must be **DENIED**, for the reasons set forth in this opinion order.

1 The original arrangement was for the defendant to attend this hearing by video-conference; however, due to technical difficulties that arose immediately prior to such hearing that precluded the use of the video transmission, the parties and the court elected to go forward by allowing the defendant to participate by telephone. Also on the speaker telephone were Amber Davis, Forensic Director of William R. Sharpe Hospital, and Dr. Marilou Patalinjug Tyner, licensed psychiatrist.

A summary of the underlying facts of this matter follows. On June 23, 1994, the defendant, Chip Melton Davidow, was arrested for the murder of Kenneth Roscoe Dunahoe, who was a delivery truck driver for Aratex Services. The killing, on its face, appeared to be random, brutal and inexplicable.² This incident occurred in the small community of Amigo, in Raleigh County, West Virginia. Defendant was subsequently examined by multiple forensic evaluators, including David Clayman, Ph.D., and Russ Voltin, M.D., and ultimately found Not Guilty by Reason of Mental Illness on December 13, 1996.³ At the time of the court's

2 At his competency evaluation, Mr. Davidow's account of the crime was as follows: "He stated that he felt that people were stealing things from his house and spraying poisons around him. He left his home in his car and was driving down the road when he states that Howard Hughes and J. Edgar Hoover told him to assassinate a man in a panel truck. He subsequently forced the victim's truck off the road and shot him numerous times. He described the scene, stating the man was a 'quick healer', and that this was the reason that he shot and stabbed him as often as he did." Forensic Psychiatric Evaluation, PsyCare, Inc., Russ Voltin, M.D., 7/13/94.

3 Dr. Clayman rendered a conclusion in his Forensic Psychological Evaluation, as follows:

"It is extremely important to recognize that this man is competent to stand trial, but is unlikely to have been responsible for his behavior at the time of the crime. Given this consideration, he is a potential threat to society on an ongoing basis because of the possibility of decompensation at a later date. He now has had one episode of significantly disturbed behavior that has resulted in the death of another individual. It is likely that he could have a similar occurrence even though he claims he would not respond to commands if they were

Judgment Order of December 23, 1996, the defendant had already been transferred by Agreed Order of August 23, 1995, to the Wild Acre Inns, situate in Lexington, Massachusetts, for psychiatric care. Defendant's care and residency in Massachusetts continued, at his own cost, at Wild Acre Inns, for almost twenty (20) years. However, on May 24, 2000, this court entered an Order directing the staff of Wild Acre Inns to transport the defendant from the State of Massachusetts to the State of West Virginia for commitment to the William R. Sharpe Hospital. There was non-compliance with this Order.⁴ As previously indicated, the defendant stayed at Wild Acre Inns, and progressed from a locked ward to a community setting. In this latter venue, the defendant was unsupervised in his movements, had his own apartment, and regularly traveled into the City of Boston to play music in a band. Defendant was continuously medicated during this period, and made visits with his mental health professionals.⁵ Also during this

received. This cannot be assured and even Mr. Davidow states he is not sure of how he could assure society that he would not behave in a harmful manner again. Thus, it is recommended that this man be hospitalized for as long as permitted by the law to protect society, because it is likely he could cause harm again if he should stop his medications or be placed in a situation where he once again is unable to distinguish reality from fantasy."

4 The undersigned cannot ascertain from the court file whether or not the authorities at Wild Acre Inns actually received a copy of this Order.

5 This court was not provided with progress notes or reports of the defendant's

time, the defendant did not engage in any acts of violence toward any person. In August of 2014, the court was notified that the Wild Acre Inns Lexington Program, the facility where the defendant resided, was closing. On August 29, 2014, the court held an emergency status hearing regarding such impending closure. At the status hearing, the court requested detailed information from the defendant's treating psychiatrist and the defendant's social worker, as well as a copy of the defendant's forensic evaluation. Alarmed by the defendant's demonstrated freedoms, the court invoked the following restriction in the confirmatory order:

The Court further Orders that the defendant shall be *under around-the-clock supervision by a qualified and responsible mental health staff member until further Order of the Court*, with costs of such supervision to be borne by the defendant. Defense counsel forthwith shall provide verification to the Court that such supervision is in place.

Then, on September 12, 2014, the court conducted an evidentiary hearing in the matter, and pursuant to West Virginia Code §§27-14-1 and 27-15-1, et seq., the court ordered that the defendant be returned to this jurisdiction for immediate transport to William R. Sharpe Hospital, with the same round-the-clock supervision requirement. The court further declared that the Interstate Compact Administrator shall determine whether an interstate compact for future treatment of this defendant would be appropriate. Defendant was transported to Sharpe

condition. Nor was the court aware that the defendant enjoyed complete freedom of movement, coming and going more or less as he pleased.

Hospital, and shortly after his arrival, he was given a Dangerousness Risk Assessment by Dr. Kari-Beth Law.⁶ Ms. Law rendered her conclusion in a Forensic Psychiatry Evaluation Dangerousness Risk Assessment of September 29, 2014, as follows:

At the time of this evaluation, Mr. Davidow's risk factors are similar. Notably, his risk factors for future violence are most significantly static and unchangeable including his gender, his history of violence, his history of criminal charges, and his history of a psychotic disorder diagnosis. Many of his risk factors have been addressed including his substance use and psychosis such that both of these have symptomatically improved or resolved. Importantly, Mr. Davidow's risk factors that are absent include no recent history of treatment noncompliance, no history or supervision failure, lacking of insight, negative attitude, current symptoms of psychosis, a diagnosis of personality disorder, diagnosis of dementia or brain injury, low intelligence and socioeconomic status.

Ms. Law recommended that the defendant be advanced to the next Sharpe privilege level, as a reasonable progression in his treatment. On November 3, 2014, the defendant was administered a forensic evaluation pursuant to West Virginia Code §27-6A-4, by Dr. Timothy Saar, Ph.D., Licensed Psychologist. In his Forensic Evaluation of April 9, 2015, Dr. Saar opined that the defendant presents a low risk to the community and for future violence. Dr. Saar expressed concern that West Virginia is a state with a paucity of resources for the treatment of

⁶ While experts cannot accurately predict long-term future events of violence, a dangerousness evaluation may assist in providing information about static or dynamic risk factors for future dangerousness.

patients such as Mr. Davidow. Dr. Saar also stated that the ideal setting would be for Mr. Davidow to be allowed to reside at the Belmont House program, which would be similar to his previous level of care. Forensic Evaluation, Saar Psychological Group, PLLC, April 9, 2015, p. 8.

At the hearing of June 15, 2015, the State called as a witness, Georgette Bradstreet, the Department of Health and Human Resources' ("DHHR") Statewide Forensic Coordinator. Ms. Bradstreet testified that her responsibilities are to oversee the forensic patients who are incompetent to stand trial, and those who are not guilty by reason of mental illness, throughout the State of West Virginia. She stated that her principal goal in these cases is to determine the least restrictive environment for patients in the State in a manner that is consistent with the public safety. The DHHR through the Behavioral Health Division designates certain facilities, including group homes, to receive West Virginia patients. The Belmont Wild Acre Inns facility is not designated by the DHHR to receive forensic patients from the State of West Virginia. Ms. Bradstreet testified that there was no necessity to transport Mr. Davidow out of the State of West Virginia to fulfill the joint goals under West Virginia Code §27-6A-5, of the least restrictive alternative and public safety. She emphasized that our West Virginia facilities are well-suited to meet such goals, using not only secure facilities but also approved group homes and supported apartments.

The motion before the bar, filed on behalf of the Defendant Chip Melton

Davidow, is to order that he now be removed from the care of the DHHR and placed out-of-state at the Belmont Wild Acre Inns program in Massachusetts.

II

“[B]oth by statute and case law, a trial court has broad discretion to determine the appropriate disposition of those found not guilty by reason of insanity.” State v. Catlett, 207 W.Va. 740, 745, 536 S.E.2d 721, 726 (1999).

West Virginia Code §27-6A-4(e) states, in relevant part, “[t]he court shall commit the acquitee to a mental health facility designated by the department that is the least restrictive environment to manage the acquitee and that will allow for the protection of the public.” Here, the requested placement is not the designated commitment of the DHHR, nor is it even a designated facility to receive West Virginia forensic patients.

Defendant relies, in his present motion, on State v. Robertson, 230 W.Va. 548, 741 S.E.2d 106 (2013), to support his argument that the court has the discretion to direct that Mr. Davidow be placed at the Belmont Wild Acre Inns program, despite the fact that it is an out-of-state placement and not designated to receive West Virginia forensic patients. Interestingly enough, the key witness and common element in both Robertson and the present case is Georgette Bradstreet, DHHR Statewide Forensic Coordinator. The trial judge in Robertson, the Honorable John A. Hutchison, based his decision squarely upon Ms. Bradstreet’s testimony presented in that case; similarly, this court will rely upon the testimony

she delivered in our case.

In the matter at bar, Ms. Bradstreet succinctly made a distinction between the underlying facts of the two cases, which she characterized as complete opposites. She explained that in Robertson, she had to search out-of-state for an appropriate placement for the acquitee, because there are no maximum security facilities in the State of West Virginia designed to address Mr. Robertson's demonstrated propensity for violence.⁷ But in the instant case, there is no necessity to transport Mr. Davidow out-of-state to fulfill the joint goals mandated by West Virginia Code §27-6A-5 of least restrictive alternative and public safety. Ms. Bradstreet emphasized that the DHHR is well-equipped to provide a less restrictive environment in this case that will also provide for the safety of the general public. She was confident that there are a multitude of stepped-down facilities that would be appropriate to consider in this case, including residential group homes and supported apartments. She also disputed defense counsel's characterization of

⁷ Mr. Robertson suffered from severe and on-going psychotic episodes and a deteriorating mental health condition. He was a person for whom no classic mental illness appears, and he made more effort to harm others than to improve himself. He presented an extreme danger to himself and to others. He was combative with staff, threatening to shoot them in the head. Robertson attacked patients and threatened to assault others. Judge Hutchison emphasized that his paramount concern was placing Mr. Robertson in a facility that would treat his mental illness. There were simply no treatment options available in the State of West Virginia for this particular type of mental illness; therefore, the court transferred Mr. Robertson to a South Carolina psychiatric hospital. Robertson, pp. 109-112, 551-554. Clearly, there is a stark contrast between the acquitee in Robertson and Mr. Davidow, in terms of their respective mental health conditions and treatment requirements.

Highland Hospital as a “warehouse” or a “maximum security prison”, and described Highland simply as a lesser secure facility to Sharpe Hospital. Ms. Bradstreet assured the court in her testimony that the State of West Virginia is able to meet the defendant’s needs, and that the system in place can properly oversee his care, all the while maintaining public safety. She further stated that it would not be a good use of our assets to send a forensic patient all the way to Massachusetts. It would be her responsibility to monitor a patient via a comprehensive treatment plan, which would be very difficult to do if that patient were in Massachusetts.⁸ Lastly, Ms. Bradstreet indicated that entry into an interstate compact with the State of Massachusetts for the defendant’s case would be inappropriate in this case because his needs can be fully addressed and met in this State.

In Robertson, the transfer of the acquitee was made pursuant to the Interstate Compact on the Mentally Disordered Offender, West Virginia Code §27-15-1. This compact was enacted to “improve...the care and treatment of mentally disordered offenders.” West Virginia Code §27-15-1 art. I(a). The goal of the compact is to allow cooperation between the states and to utilize treatment facilities in other states that can provide effective treatment to mentally disordered offenders. The Court concluded that there was nothing in the compact that would

⁸ Ms. Bradstreet explained that it would be much more efficient to address any problems that might arise with Mr. Davidow, if he were maintained close by in the State of West Virginia under the direct jurisdiction of a West Virginia circuit judge.

forbid Mr. Robertson's transfer to the South Carolina facility to receive treatment, and that the circuit court's order to send said acquittee out-of-state was not in violation of the Interstate Compact on the Mentally Disordered Offender, West Virginia Code §27-15-1. Robertson, at 560, 118.

III

But just because a circuit court has the discretion to transfer a mentally disordered offender to another state does not necessarily mean that the court should do it. The Robertson case was unusual to the extent of almost being an anomaly. Mr. Robertson experienced such extremely violent psychotic episodes during his placement confinement in all West Virginia facilities that Ms. Bradstreet testified in that case that: (1) there was not a treatment option available to him in West Virginia, and (2) the South Carolina treatment facility was an appropriate placement for Mr. Robertson because it had more staff and greater security than the facilities in West Virginia. Robertson, at 554, 112. In contrast, Mr. Bradstreet testified in the case at bar that the State of West Virginia is well-equipped to provide for Mr. Davidow a less restrictive environment, and to appropriately meet his needs. Thus, there would be no necessity to look for an out-of-state placement for this defendant.

A close look at the defense motion reveals that although it is styled as a motion to transfer this acquittee to a less restrictive placement, it is actually a motion to have the defendant placed in a specific, pre-selected, private facility

which happens to be situate 750 miles away. It must be remembered that both Dr. Clayman and Dr. Voltin opined that due to his psychotic condition and schizophrenia, combined with the horrific nature of the underlying violent act, it would never be safe to return Mr. Davidow to the community. Furthermore, in her dangerousness evaluation of this defendant, Dr. Law recommends continued placement within an inpatient psychiatric facility. Lastly, Ms. Bradstreet commented in her testimony that as a psychotic patient ages there is the risk that dementia will exacerbate symptoms.

Although a long history of violence or non-violence may be a significant indicator of the likelihood that a patient will exhibit similar behavior in the future, it is only one factor to be considered in the total evaluation of a patient. We must focus upon the person, not just the history of the case. We cannot trust our instincts and hope that nothing bad will happen.

The undersigned was quietly horrified to learn that Mr. Davidow was, in essence, returned to the general population while he was at the Wild Acre Inns Lexington Program.⁹ To allow acquitees to designate their own placements is a

⁹ "He [Mr. Davidow] reported that he went out by himself unaccompanied by staff during the time of his placement there. He participated in the music group 'Tunefoolery', which was comprised of multiple members all with mental health diagnoses. He reported that he played the classical guitar with them as well as the bass guitar in another band and took a local bus to 'gigs'. He reported that he speaks with his brother in California by phone approximately once per week and speaks with a cousin in Oklahoma approximately 1-2 times per year. While Mr. Davidow reportedly has no significant other, he has friendships with ladies as a

highly questionable practice, very much akin to letting the tail wag the dog. In the instant case, the undersigned is simply unwilling to assume further risk in this case by reinstating this acquittee to the unrestricted lifestyle that he enjoyed in Massachusetts. Instead, the court will place its confidence in the DHHR system developed in our own State, and will regularly monitor this matter in the future to ensure that no statutory infractions occur and that the requirements of law are fully satisfied.

WHEREFORE, based upon the foregoing, it is **ORDERED, ADJUDGED** and **DECREED** that Defendant Chip Melton Davidow's Motion for Order Directing Transfer to Less Restrictive Placement be, and it is, hereby **DENIED**. This is a final order. Defendant's exceptions to the findings and conclusions set forth in this order are fully preserved for the possibility of review upon appeal.

ENTER this **ORDER** this the 5th day of August, 2015.


JUDGE

The foregoing is a true copy of an order entered in this office on the 5th day of August, 2015.
PAUL H. FLANAGAN, Circuit Clerk of Raleigh County, West Virginia
By:  Deputy

result of his social outings while playing music.” Forensic Psychiatry Evaluation Dangerous Risk assessment, September 29, 2014, Kari-Beth Law, M.D., p.4.