# IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
v.	) Case Nos.:	1103021323 1012010967 1002007523
FRANCES D. FAIRLEY,	) )	
Defendant.	)	

Submitted: June 1, 2011 Decided: June 28, 2011

Timothy Terranova, Esquire Assistant Public Defender 900 North King Street Wilmington, Delaware 19801 Attorney for Defendant Danielle Brennan, Esquire Deputy Attorney General Department of Justice Criminal Division 820 N. French Street, 7<sup>th</sup> Floor Wilmington, Delaware, 19801 Attorney for State of Delaware

### DECISION AFTER HEARING ON COMPETENCY OF DEFENDANT TO STAND TRIAL

This matter is before the Court on defense's motion for competency determination and whether an order may issue for treatment and restoration. The facts indicate Francis D. Fairley ("Fairley") was arrested on February 18, 2010 on two charges of Aggravated Menacing, (11 Del. C. § 602) and two charges of Criminal Mischief (11 Del. C. § 811). The charges arise out of an incident where it is alleged she threatened her neighbors with a hammer. Following a waiver of her preliminary hearing on March 1, 2010, the case was bound over to the Superior Court, and she was released on \$2,000.00 unsecured bail. On April 30, 2010, the State reduced the felony Aggravated Menacing charges to misdemeanor Menacing offenses and filed Informations in the Court of Common Pleas.

On June 26, 2010, Fairley was arrested on two charges of Aggravated Menacing (11 Del. C. 602) and one charge of Criminal Mischief (11 Del. C. 811). The charges arise out of an incident where she allegedly entered the rear door of a restaurant, approached customers inquiring if they had called her while possessing a machete under arm. These charges were reduced and filed in the Court of Common Pleas on September 1, 2010.

On March 24, 2011, Fairley was arrested for Possession of Marijuana (16 Del. C. 4754); Menacing (11 Del. C. § 602); Disorderly Conduct (13 Del. C. 1301); Loitering (11 Del. C. § 1321); Loud Music (21 Del. C. § 4306); Criminal Impersonation (11 Del. C. 907); Resisting Arrest (11 Del. C. 1257); and Carrying a Concealed Dangerous Instrument (box cutter/razor blade) (11 Del. C. 1443). These charges arise out of an incident where she was allegedly in a vehicle in a business parking lot preparing to smoke a marijuana cigarette.

All of the criminal charges against Fairley were initially scheduled for trial on February 13, 2012 when defense Counsel moved the Court to order an evaluation to determine if Fairley was competent to stand trial. The Court entered an order directing that Fairley be evaluated no later than March 13, 2012 and rescheduled the trial to May 21, 2012. Fairley's condition did not improve and a hearing was scheduled for June 1, 2012 to determine: (1) whether Ms. Fairley is competent to stand trial; and (2) whether the Court should order involuntary administration of medication to restore competency.

The parties informed the Court that on April 28, 2011, the Superior Court ordered Ms. Fairley to undergo a competency evaluation in an unrelated criminal case. On December 1, 2011, Andrew Donahue, D.O., a forensic psychiatrist, conducted a competency evaluation at the Delaware Psychiatric Center ("DPC"). In Mr. Donahue's report dated December 8, 2011, he concluded Ms. Fairley was suffering from a psychotic disorder, and was not competent to stand trial.<sup>1</sup>

State's Exhibit #1.

The Superior Court conducted a hearing on February 14, 2012 and found Ms. Fairley not competent to stand trial and ordered she be transported to the DPC for treatment.<sup>2</sup>

On April 5, 2012, Clarence Watson, J.D., M.D., of the DPC filed a letter with this Court related to the pending criminal charges against Ms. Fairley in this Court.<sup>3</sup> In this letter, Dr. Watson stated that Ms. Fairley has refused medications and treatment intended to restore her competency. Dr. Watson then requested that the Court issue an order permitting him to involuntarily administer medications to Ms. Fairley in order to restore her to competency.

Before this Court could act this application, on May 16, 2012, Ms. Fairly was involuntarily committed to the DPC pursuant to the provisions of 16 *Del. C.* § 5003,<sup>4</sup> by Dr. Clarence Watson. On May 30, 2012, the Superior Court scheduled an Involuntary Civil Commitment Hearing for July 11, 2012.<sup>5</sup>

On June 1, 2012, this Court held a hearing to determine (1) whether Ms. Fairly is competent to stand trial; and (2) assuming Ms. Fairly is not competent to stand trial, whether the Court should issue an order permitting the State to involuntarily administer medications to Ms. Fairly to restore competency. <sup>6</sup> Before the hearing, the parties stipulated that Ms. Fairley was not competent to stand

<sup>&</sup>lt;sup>2</sup> State's Exhibit # 3.

<sup>&</sup>lt;sup>3</sup> State's Exhibit # 2.

<sup>&</sup>lt;sup>4</sup> State's Exhibit # 4.

<sup>&</sup>lt;sup>5</sup> State's Exhibit # 5.

<sup>&</sup>lt;sup>6</sup> Ms. Fairley was present for a majority of the hearing on competency. However, at the beginning of the hearing, after Ms. Fairley noticed Dr. Watson in the courtroom, Ms. Fairley became extremely agitated, and began yelling and cursing at Dr. Watson. After this incident, the Court took a short recess so that Mr. Terranova could speak to Ms. Fairley and see if she was able to proceed with the hearing. After the recess, Ms. Fairley returned to the hearing. Later, during Dr. Watson's testimony, Ms. Fairley again became extremely agitated and again began yelling and cursing at Dr. Watson. The Court directed Ms. Fairley to stop behaving in this manner. At that point, Ms. Fairley voluntarily asked to be removed from the courtroom, insisting that she believed that Dr. Watson was testifying

trial, and that the Superior Court's February 12, 2012 Order finding Ms. Fairley not competent to stand trial binding on this Court. However, the parties were uncertain of whether the Superior Court granted the DPC the authority to involuntarily medicate Ms. Fairley. Accordingly, the Court held an evidentiary hearing pursuant to *United States v. Sell* 7 to determine whether DPC may involuntarily medicate Ms. Fairley. The Court heard testimony from two witnesses, Dr. Clarence Watson (Dr. Watson'') and Charlotte Selig ("Ms. Selig"), and received documentary evidence provided by the parties. This is the Court's decision after the hearing.

#### Facts & Procedural Posture

Dr. Watson, Director of Forensic Services at the DPC, testified Ms. Fairley was admitted to the DPC in February 2012, he evaluated her and has been treating her mental illness since her admission.

Dr. Watson testified in his opinion, Ms. Fairley suffers from a psychotic disorder known as "schizo-effective disorder." Persons suffering from "schizo-effective disorder" experience delusional ideas, have fixed false beliefs, misperceive the intent of others, suffer from paranoia, and often become agitated and aggressive. Dr. Watson stated his diagnosis is based upon the fact that Fairley has not been cooperative with treatment or evaluations, she is quick to anger, is often agitated and hostile, believes that she was arrested by "fake" police officers and is currently being prosecuted by a "fake" court on false charges. Further, Fairley recently threatened to "beat" Ms. Selig in the head and told Dr. Watson she will not listen to him because she is "Bob Marley's daughter." Dr. Watson

falsely under oath. The Court informed Ms. Fairley that she had a right to be present at the hearing. Ms. Fairley again asked the Court to remove her from the courtroom. The Court honored Ms. Fairley's request and had her removed from the courtroom. Ms. Fairley was not present for the remainder of the hearing.

<sup>&</sup>lt;sup>7</sup> 539 U.S. 166, 179-83 (2003).

testified Ms. Fairley yells, screams, curses, has threatened to assault DPC staff, and is considered dangerous to herself and others.

Dr. Watson testified his attempt to restore Ms. Fairley to competency is not progressing because Fairley refuses educational programs, and has refused to meet with doctors. Other doctors have attempted to institute educational programs and meetings with Ms. Fairley, but she refuses to meaningfully participate. Dr. Watson testified medications are often extremely effective in treating psychotic disorders, including schizo-effective disorder, but Fairley has refused to even discuss the possibility of voluntary medication.

Dr. Watson testified that he would like to administer antipsychotic medications to Ms. Fairley in order to return her to competency. However, his preferred course of action is to sit down with Ms. Fairley, discuss her medical history and medication preferences, in order to create a tailored treatment plan. He attempts to engage in such dialogue with every patient, even those which the DPC has been granted by court order authorizing the administration of involuntary medication.

Dr. Watson testified that since Fairley was admitted to the DPC in February 2012, she has remained steadfast in her refusal of all forms of medical care offered. However, he regularly attempts to discuss treatment with Fairley and instructs other staff members to attempt to discuss treatment with Fairley, which she consistently refuses.

Dr. Watson concluded that if he could properly treat Fairley, with a course of action which includes medication, Ms. Fairley likely would successfully be restored to competency. Based on his review of Ms. Fairley's medical records, he understands that Ms. Fairley has responded well to anti-psychotic medications in the past. Also, at this point there is no less intrusive means available to restore her to competency other than by forced medication. He has tried speaking with Ms. Fairley on several occasions, as have several other DPC therapists, but "there is no talking a person out of psychosis." Dr. Watson testified that if the Court grants DPC's request to involuntarily medicate Ms.

Fairley, he would attempt to administer the medication orally. However, that if she refused oral medication, he would administer the medication by injection.

Dr. Watson testified that if left untreated, Ms. Fairley's psychosis and her prognosis for recovery will worsen. Moreover, in his professional medical opinion, Fairley's condition has grown worse in the time she has been under his care. This is evident by her becoming more hostile, aggressive toward others, becoming increasingly more reclusive and refuses to speak to staff. Dr. Watson testified that patients that suffer from psychotic disorders feel "tortured." Last, Dr. Watson testified regarding the scope of the powers to involuntarily medicate granted by civil commitment. Dr. Watson testified that it is DPC internal policy to obtain a second opinion from a second psychiatrist before administering involuntary medications pursuant to a civil commitment order.

Ms. Selig, a forensic psychologist employed by the DPC, testified that on May 11, 2012, she suggested treatment to Ms. Fairley, and Ms. Fairley responded by following Ms. Selig and making threats – including a threat to strike her in the head. Also, Fairley's psychosis has become "more episodic recently," in that she has become more threatening and aggressive. She indicated Ms. Fairley believes that the legal proceedings against her, including the police, lawyers, and court in this proceeding are "fake."

Selig concluded that if Fairley took anti-psychotic medicine, either willingly or involuntarily, she could likely be restored to competence, and would have a substantially better quality of life. Ms. Selig explained Fairley's current condition makes interaction with others extremely intermittent and that socialization and interaction with others are critical to psychological well being – and she is not currently socializing or interacting with anyone.

#### **Discussion**

As a threshold matter, at the beginning of the hearing, the parties stipulated that pursuant to the requirements of 11 Del. C. § 404(a), Gibson v. State, and the Superior Court's February 14, 2012 order, Ms. Fairley is currently not competent to stand trial. The Superior Court order submitted as part of these proceedings specifically concludes that the State met its burden of proof under the statute. Therefore, the sole issue presently before the Court is whether the State has met its burden to establish a basis for DPC to involuntarily administer medication to Ms. Fairley for competency restoration purposes as required by United States v. Sell. 10

In Sell, the United States Supreme Court held that the government may involuntarily administer antipsychotic drugs to a mentally ill criminal defendant in order to render the defendant competent to stand trial if: (1) there is an important governmental interest at stake, which includes bringing an individual accused of a serious crime to trial; (2) the administration of antipsychotic drugs "is substantially likely to render the defendant competent to stand trial;" (3) involuntary medication is necessary to further the governmental interest(s) because "less intrusive treatments are unlikely to achieve substantially the same results;" and (4) "administration of the drugs is medically appropriate, i.e., in the patients best medical interest in light of his medical condition." 11

First, there is an important government interest at stake in this case. Ms. Fairley is accused several serious crimes in the three criminal cases presently before the court which include resisting

<sup>&</sup>lt;sup>8</sup> 981 A.2d 554, 558 (holding that once a criminal defendant raises the issue of competency, in order to find the defendant competent to stand trial, the State must prove by a preponderance of the evidence that the defendant has the ability to: (1) consult with defense counsel rationally, (2) to assist in the preparation of the defense, and (3) to have both a rational and factual understanding of the criminal proceedings). See also, State v. Gibson, 2008 WL 2428191, at \*1 (Del. Super. June 16, 2008).

<sup>&</sup>lt;sup>9</sup> State's Exhibit # 3.

<sup>10 539</sup> U.S. at 179-83.

<sup>11</sup> Id. at 179-81.

arrest, several counts of menacing, and several counts of criminal mischief. The menacing charges involve threats by use of a hammer and possession of a machete. In *Sell*, the Court noted that "serious crimes," for purposes of involuntary administration of medication analysis includes crimes against a person or property, because "in both instances, the Government seeks to protect through the application of the criminal law the basic need for security." The pending charges are crimes against persons, and Fairley's lengthy charge history also includes crimes against person and property which is sufficient for the Court to conclude the State has a substantial interest in her timely prosecution. This conclusion is further justified by Ms. Fairley's conduct since her February 2012 admission to DPC, specifically her threatening conduct towards Ms. Selig. Further, Dr. Watson testified that if left untreated, this conduct is likely to worsen with time.

Second, the administration of drugs to Ms. Fairley is substantially likely to render her competent to stand trial. Both Dr. Watson and Ms. Selig testified that if Ms. Fairley receives medication, it is likely that she will successfully complete the competency restoration process. Ms. Fairley has responded well to antipsychotic drugs in the past. There is no evidence, testimony, or argument in the record which disputes either Dr. Watson or Ms. Selig's testimony in this area.

Third, the Court finds that less intrusive alternatives are substantially less likely to restore Ms. Fairley to competency. Dr. Watson testified that in his professional medical opinion, Ms. Fairley is currently suffering from schizo-effective disorder. Since the date of her admission, Ms. Fairley has refused all medical treatment, including educational programs, talk therapy, and medication. Dr. Watson testified that Ms. Fairley's psychosis has continued to worsen since her admission, and as her condition worsens over time, it will become more unlikely that she can be restored to competency. Dr. Watson testified that it is unlikely that Ms. Fairley can be restored to competency

<sup>&</sup>lt;sup>12</sup> Id. at 180.

without medication. Dr. Watson testified that whenever medication is administered at the DPC, he attempts to include the patient in the process, and always tries to convince the patient to take the medication orally, regardless of whether a court order exists allowing involuntary medication by injection. In short, the record establishes that there are no less intrusive alternatives available because Ms. Fairley has refused all forms of therapy. Additionally, Dr. Watson will attempt to administer this medication in the least intrusive method possible.

Finally, the administration of drugs is medically appropriate in this case. Both Dr. Watson and Ms. Selig testified that Ms. Fairley suffers from a deep rooted psychological disorder. The testimony at the competency hearing establish that persons suffering from schizo-effective disorder feel "tortured," have essentially no social interaction with anyone, and constantly misinterpret the intent of others, making them near unable to maintain social interactions. Dr. Watson testified that it is unlikely that Ms. Fairley will be restored to competency without medication. This evidence establishes Ms. Fairley is suffering from a severe mental illness, from which she has little chance to recover without medication. Moreover, Ms. Fairley's prognosis for recovery will substantially improve if she is medicated. Therefore, the evidence establishes by the preponderance that the administration of drugs is medically appropriate to restore Ms. Fairley to competency.

#### Conclusion

Based on the record, the conclusion reached under "Sell" and the reasons set forth in this opinion, I hereby find and order that Ms. Fairley is not competent to stand trial and authorize the Delaware Psychiatric Center to administer antipsychotic medication(s) to Ms. Fairley involuntarily.

IT IS SO ORDERED

Alex J. Smalls Chief Judge

cc: Dr. Clarence Watson DPC

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FRANCES D. FAIRLEY,	Ś	
Defendant.	, )	

#### **ORDER**

Based upon the attached Opinion issued herewith, it is hereby ordered:

- 1) The defendant is hereby, pursuant to 11 Del. C. § 404, found incompetent to stand trial;
- 2) The defendant is confined to the Delaware Psychiatric Center for the purposes of treatment and restoration of the competency;
- The Delaware Psychiatric Center is authorized to administer such treatment, voluntarily or involuntarily to restore competency; and
- The Delaware Psychiatric Center shall submit a report to the Court every sixty days (60) outlining the defendant's progress and any recommendation for treatment or discharge.

SO ORDERED this 28th day of June 2012

Chief Judge Alex J. Smalls