

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-100130
Plaintiff-Appellee,	:	TRIAL NO. B-0908438
vs.	:	<i>JUDGMENT ENTRY.</i>
STEFAN REVELY,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Stefan Revely appeals the trial court's entry of judgment that found him incompetent to stand trial, retained jurisdiction, and ordered his commitment to the Southwest Ohio Developmental Center. We affirm the judgment of the trial court.

Revely was indicted for attempted rape. His trial counsel requested an evaluation of Revely's competency to stand trial. Based on a Court Clinic report, the trial court found that Revely, who is moderately mentally retarded, was incompetent to stand trial. And based on further evaluation by the Ohio Department of Developmental Disabilities, the trial court found that there was not a substantial probability that Revely would be restored to competency within one year, if at all. The state moved for the court to retain jurisdiction over Revely and to commit him to a hospital operated by the department of health, pursuant to R.C. 2945.39.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Following a hearing, the trial court found that Revely had committed the attempted rape and that Revely was a “mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order.”² The court then entered judgment retaining its jurisdiction and committing Revely to the Southwest Ohio Developmental Center.

In his sole assignment of error, Revely now asserts that the trial court erred when it denied his motion to dismiss the indictment and instead found by clear and convincing evidence that he had committed the attempted rape. During the hearing, Revely’s counsel challenged the constitutionality of R.C. 2945.39, but the Ohio Supreme Court has since held that “[a]n involuntary commitment under R.C. 2945.39 does not violate principles of equal protection or due process.”³

Under R.C. 2945.39(A)(2), “the court may retain jurisdiction over the defendant if, at a hearing, the court finds * * * by clear and convincing evidence: (a) [t]he defendant committed the offense with which the defendant is charged [and] (b) [t]he defendant is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order.” Because the court need only find the elements by clear and convincing evidence, a proceeding under R.C. 2945.39(A)(2) is civil in nature.⁴ Revely challenges the trial court’s finding under subsection (a).

During the hearing, the trial court reviewed reports from two psychologists and heard the testimony of Silverton Police Officer Ryan Faehr and Julianne Franklin, who was a service facilitator with the Hamilton County Developmental Disabilities Services. Faehr testified that he had responded to a report of a domestic disturbance at an apartment in Silverton. According to Faehr, when he arrived on the scene, he observed a naked man running up to the top bedroom apartment floor of the building and a naked woman running across the street. At the hearing, Faehr

² See R.C. 2945.39(A)(2).

³ *State v. Williams*, 126 Ohio St.3d 65, 2010-Ohio-2453, 930 N.E.2d 770, paragraph one of the syllabus.

⁴ *Id.*

identified Revely as the man whom he had seen. Faehr testified that the woman ran up to his car and stated, "Help me. He's trying to rape me." According to Faehr, the woman had some light bruising and some scratches. The woman was later identified as Revely's stepsister.

Faehr testified that, after securing the woman in his police cruiser, he had entered the apartment where Revely was. Faehr stated that the apartment was in disarray, that there was broken glass on the floor, and that Revely had scrapes on his knees and elbows. Faehr also found women's underwear and a nightgown, which were torn, on the floor of the living room. Franklin testified that she had previously assessed Revely's functionality and that there was no difference in his functionality before and after the incident.

Revely argues that given that he had been found to be incompetent to stand trial and that his functionality had not changed from the date of the incident, the state had not established that he had the mens rea to commit attempted rape. We disagree. We conclude that the state presented sufficient evidence that Revely had committed attempted rape. Further, the trial court's finding by clear and convincing evidence was not against the manifest weight of the evidence. The sole assignment of error is overruled.

Therefore, we affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on February 11, 2011

per order of the Court _____.

Presiding Judge