

**THE STATE OF NEW HAMPSHIRE**

**HILLSBOROUGH, SS.  
NORTHERN DISTRICT**

**SUPERIOR COURT**

State of New Hampshire

v.

Akwasi Owusu

Docket No. 216-2020-CR-00202

**Order**

Defendant Akwasi Owusu was convicted by a jury of one count of attempted murder and two counts of first degree assault with a deadly weapon when he stabbed three Manchester Police Officers in 2020. Defendant pled not guilty by reason of insanity. The Court held a bench trial on Defendant’s criminal responsibility on May 9, 2023. At the conclusion of the trial, the Court found Defendant not guilty by reason of insanity based on Defendant’s expert witness testimony that Defendant suffered from a mental impairment—schizophrenia—and his actions underlying his criminal convictions was the product of that mental condition. As required under RSA 651:8-b, the Court held a committal hearing on June 14, 2023. Based on the testimony at the hearing, and for the following reasons, the Court finds that Defendant’s release from the Secure Psychiatric Unit (“SPU”) is warranted under RSA 651:8-b.

RSA 651:8-b provides the following:

If, after the hearing, the court finds by clear and convincing evidence that the acquitted person is presently suffering from a mental disease or defect as a result of which his or her release would create a substantial risk of bodily injury to himself or herself or another, or serious damage to the property of another, the court shall commit the person

pursuant to the provisions of RSA 651:9-a and RSA 651:11-a. The court shall supply a copy of the report ordered pursuant to paragraph III to the secure psychiatric unit or other treatment facility in which the person is confined. The existence of clear and convincing evidence that a person's release would create a substantial risk of bodily injury to himself or herself or another person or serious damage to the property of another shall be presumed, subject to rebuttal by the acquitted person, where the person has been found not guilty by reason of insanity of an offense involving bodily injury or serious damage to property of another, or substantial risk of such injury or damage.

Thus before committing a defendant, the statute requires the Court to find by clear and convincing evidence that Defendant (1) suffers from a mental disease and (2) that release of the Defendant would create a “substantial risk of bodily injury to himself or herself or another person. . . .” The statute creates a presumption of the second factor if the underlying offense involved bodily injury, which Defendant’s convictions clearly did. However, as explained below, if and when Defendant rebuts the presumption, the burden of persuasion remains with the State.

Defendant presented two witnesses at the June 14, 2023 hearing. First, Dr. Shannon Bader, formerly chief of the Office of the Forensic Examiner (“OFE”) and currently of Silverlake Psychological Associates, testified that Defendant’s release from the SPU would not create a substantial risk of bodily harm to Defendant, others, or another’s property. Dr. Bader based her opinion on the fact that Defendant’s schizophrenia is currently well managed with psychotropic medications and that he presented no acute symptoms of schizophrenia. Dr. Bader also testified that she conducted a risk assessment of Defendant, utilizing the HCR-20, version 3. The HCR Index provides twenty historical, clinical, and risk management factors for evaluators to use when determining how likely it is that a person poses a significant risk to the

community. Dr. Bader identified four risk factors that Defendant possesses, including a history of violence, a history of substance abuse, a major mental illness, and a lack of important clinical insight of his condition. Dr. Bader further testified that of the four risks she identified, Defendant was successfully managing all of his risk factors except his lack of clinical insight. Dr. Bader concluded that Defendant would not present a risk to others while living in the community, provided that he continued with his outpatient mental health care.

Jeffrey Davis, a case manager at the Mental Health Center of Greater Manchester ("Manchester Mental Health"), also testified for Defendant in his capacity as manager of Defendant's outpatient care team. Davis testified that he meets with Defendant approximately two times per week. He also spoke to Defendant's ability to engage in his own symptom management. Davis testified that because Defendant is currently under a probate court outpatient committal order until October 2023, Defendant's care team could easily commit Defendant for inpatient care if he exhibited any resurgence of acute symptoms of his schizophrenia. Additionally, Davis testified that Manchester Mental Health often asks for extensions on committal orders and suggested that they would likely seek one for Defendant. Davis also emphasized that Defendant was been doing very well and has been in full compliance with his treatment.

Defendant argues that both Dr. Bader's and Davis's testimony clearly rebuts the statutory presumption of RSA 651:8-b as their testimony plainly shows that Defendant's schizophrenia is well-managed and under control. Defendant also emphasized that he lived successfully in the community for nearly two years while out on bail and managed to maintain a full-time job while also complying with bail and outpatient committal

conditions. The State argues that Defendant failed to rebut the statutory presumption. However, the State failed to present any affirmative evidence showing that Defendant would create a substantial risk of bodily harm or damage to property if he were to be released. Instead, the State contends that because Defendant's symptoms manifested violently in the past, they are likely to manifest violently again in the future. The State also argued that the statutory presumption was intended to protect the citizens of New Hampshire and the best way to accomplish that goal is to keep Defendant at a ward of the State to ensure he has constant supervision and management of his symptoms.

Neither party disputes that Defendant currently suffers from a mental disease. Thus, the Court's primary inquiry will be whether Defendant presents a substantial risk to cause bodily harm or property damage if he were to be released. As an initial matter, the Court notes that the crux of the State's argument is that Defendant's release from the SPU would contravene the purpose of the statutory presumption in RSA 651:8-b. However, in New Hampshire "a presumption is not evidence—its sole function is to take the place of evidence. When the latter appears, if only to the extent that an inference may be drawn from it, the presumption vanishes." *Jodoin v. Baroody*, 95 N.H. 154, 156–57 (1948). Defendant presented strong evidence showing that he is not dangerous and does not pose a substantial risk of bodily harm or property damage, thus shifting the burden to the State to present affirmative evidence of Defendant's dangerousness. See *N.H. R. Ev.* 301 (presumptions do not shift the burden of persuasion); *Cunningham v. City of Manchester Fire Dept.*, 129 N.H. 232, 235–36 (1987). The State, on the other hand, presented no evidence of any kind, making it difficult for the Court to find in favor of the State.

However, even if the Court were to assume that the burden of persuasion did not shift to the State, the Court would find that Defendant satisfied that burden in persuasively overcoming RSA 651:8-b's presumption. The Court first notes that it finds both of Defendant's witnesses very credible. Dr. Bader has evaluated Defendant multiple times over the past three years and is in a good position to determine the effectiveness of Defendant's treatment. Further, the report produced by the chief of the OFE, Dr. Richelle Barb, confirmed Dr. Bader's findings. In her June 9, 2023 report, she stated "It is my opinion that the acquitted person would not create a substantial risk of bodily injury to himself or herself or another if released from inpatient level of care. However, he still requires a high level of mental health treatment and support." Like Dr. Bader, Dr. Barb emphasized Defendant's "good adherence to his prescribed medications, and this has resulted in a two-year period of psychiatric stability."

Davis's testimony demonstrates that Defendant will continue to have a high level of outpatient supervision from Manchester Mental Health. Specifically, Davis represented that Defendant would have no gap in care if he were to be released and that his care team has procedures in place to quickly assist Defendant if he experiences any violent regressions. In fact, Davis testified that he could seek police assistance in involuntarily committing Defendant if his condition worsened or he otherwise presented troubling signs. The Court is also particularly struck by the fact that Defendant has successfully lived in the community for nearly two years with no reported incidents or violations of his bail conditions. Even further, Dr. Bader and Davis's testimony reveals that Defendant has a robust support system in place that has helped Defendant live in the community with his major mental condition without incident.

Moreover, the Court is not persuaded by the State's arguments. As previously noted, the State did not call any witnesses and otherwise failed to present any evidence indicating that Defendant's release would cause a substantial risk of bodily harm or property damage. The State emphasized that Defendant is very young and does not fully understand the ramifications of his schizophrenia diagnosis on his life, as Dr. Bader testified. Thus, the State argues, the safest place for Defendant to be is in an inpatient setting with constant, twenty-four-hour supervision. The State relies on *State v. Westcott*, 134 N.H. 692 (1991) for the proposition that the New Hampshire supreme court is hesitant to release individuals found not guilty by reason of insanity because of concerns about future violence. In *Westcott*, the supreme court, despite medical experts agreeing that he did not pose a present risk of dangerousness, affirmed the trial court's denial of greater privileges in his inpatient confinement given the court's concern about the defendant violently regressing. *Id.* at 694–96. The Court finds that Defendant's situation is distinct from that of *Westcott* because in *Westcott*, there was testimony that the defendant was prone to violent episodes of decomposition. *Id.* at 696. Here, there was no equivalent testimony, as Dr. Bader made it very clear that Defendant currently did not suffer any acute symptoms of schizophrenia and that his medications managed his violent manifestations of his symptoms very well.

The State also emphasized that it was very concerned that if Defendant experienced decomposition in an outpatient setting, there would be no mechanism to protect public safety. Davis's testimony in particular rebuts this concern. For example, Davis made it clear that Defendant is still considered a patient of Manchester Mental Health and would not need to re-enroll to resume his treatment. In fact, Davis testified

that he would likely meet with Defendant within a day of his release. Davis's testimony that Defendant would call him when he had concerns over side-effects of his medications further shows that Defendant has the ability to recognize when he needs medical assistance and Davis's testimony demonstrates that Defendant's care team is ready to assist Defendant whenever he needs. Ultimately, both Dr. Bader and Davis's testimony shows that the State's concerns over Defendant's risk level are unsupported based both on Defendant's level of care and his positive response to treatment.

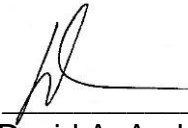
Lastly, the Court notes that the thrust of the State's argument is that Defendant should be committed and should remain committed because of his past violent attack regardless of the evidence of multiple years of stabilization. This argument ignores the unanimity of the experts in this case as well as the modern-day understanding of mental health issues as reflected in current New Hampshire law. RSA 651:8-b, IV clearly contemplates that a person found not guilty by reason of insanity can overcome the presumption of dangerousness. The very strong evidence in this case shows that though there is no cure for schizophrenia, there are tried and true ways to manage it and people can live fulfilling lives with schizophrenia. The overwhelming evidence in this case shows that Defendant is one of those people. He has responded well to his medications and, equally important, there is a very strong safety net in place to ensure that he continues to receive the care he needs to live a full life that does not endanger the safety of the citizens of New Hampshire.

Accordingly, the Court finds (1) that Defendant has overcome the presumption that he would pose a substantial risk of causing bodily harm or property damage in RSA 651:8-b and (2) that the State has not shown by clear and convincing evidence that

release of the Defendant would pose a substantial risk of bodily injury to himself or others. Therefore, the Court orders that Defendant shall be released from SPU into the outpatient care of his care team at Manchester Mental Health.

SO ORDERED.

June 15, 2023



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David A. Anderson  
Presiding Justice

Clerk's Notice of Decision  
Document Sent to Parties  
on 06/15/2023