

Posted on Sun, Feb. 23, 2014

Judge: Psychiatrist knew mentally ill inmate should be hospitalized

By Tim Potter
The Wichita Eagle

A federal judge hearing a civil rights lawsuit over alleged abuse at the Sedgwick County Jail says evidence shows a psychiatrist in charge of treating a mentally ill inmate knew he should be hospitalized for his psychotic condition.

But the psychiatrist failed to help get the inmate transferred before a jail deputy severely beat him, the judge said, based on evidence introduced in the case so far.

At the time of the beating, the 59-year-old inmate, Edgar Richard Jr., had been in and out of state hospitals. Richard heard voices, talked to himself, suffered from hallucinations, called himself "Black Jesus," cursed at others and said and did sexually inappropriate things, sometimes in public. He ended up in the Sedgwick County Jail for a three-and-a-half-month stretch from late 2007 to early 2008, awaiting trial on an alleged probation violation. In jail, Richard would throw his tray, clog his toilet and refuse to take his medication. Deputies kept him largely confined to his cell, separated from other inmates. On the day a deputy punched him into a bloody mess – the incident that prompted the lawsuit – Richard had danced around a pile of torn toilet paper and urinated under his cell door.

Before the beating, Paul Murphy, the psychiatrist working for the jail medical contractor, didn't tell jail officials that he thought Richard needed to be hospitalized, U.S. District Judge Monti Belot said in an 83-page court document filed Tuesday summarizing the case so far. Belot said the failure to take steps to get Richard transferred to a state hospital could be reason for a jury to find that Richard "needlessly incurred both physical pain and serious psychological harm as a result."

Murphy's attorney, Jim Hernandez, on Friday said he couldn't comment because of the pending lawsuit.

On Feb. 15, 2008, Deputy Manuel Diaz came to Richard's cell and punched him in the face an estimated 15 to 20 times, fracturing Richard's jaw and leaving some of his teeth floating in a pool of his blood, the judge's document says. Diaz pleaded no-contest to reckless aggravated battery, a felony. At his sentencing, he received 18 months of probation. Diaz apologized and said, "What I did that day was unreasonable and uncalled for."

The lawsuit, brought by Richard's son and seeking damages of \$4.5 million, is scheduled to go to trial March 25, more than six years after Diaz knocked Richard unconscious. The

lawsuit has alleged wider abuse of the mentally ill, who comprise a large portion of the jail population.

Concerns over treatment of inmates became a major issue in the 2012 election in which police Capt. Jeff Easter defeated Sheriff Robert Hinshaw.

On Feb. 17, the jail opened the first section of a pod focused on dealing with mentally ill inmates. So far, about a dozen inmates are housed there. Eventually, the mental health pod will have four sections to deal with up to 48 inmates.

"Everybody is new to this, so we're going to do it in slow steps so we can make sure that everything goes smoothly," sheriff's Maj. Glenn Kurtz said Friday. The deputies who will work in the unit will be trained in how to deal with the mentally ill, sheriff's Capt. Sharon Willits has said.

In May, Easter told county commissioners that having a special area to manage mentally ill inmates could limit the risk of lawsuits.

In his detailed opinion, Belot explained why he ruled that Murphy should remain as a defendant in the lawsuit. The other defendants are Diaz, Deputy Saquisha Nelson and the office of the sheriff.

The judge noted that "Murphy admitted 'early on' in Richard's incarceration (i.e. by early December 2007) that Richard needed to be hospitalized for treatment of his psychotic condition. Yet he notified no one of that conclusion.

"Dr. Murphy correctly points out that he had no authority to order a transfer on his own, but he offers no explanation for not at least notifying jail officials of his conclusion. Jail officials had the ability to seek court approval for a transfer through appropriate channels."

The jail's written policy said "arrangements would be made" when an inmate's medical need couldn't be met at the jail, the judge said. Jail deputies "could not have been expected to know that Richard's psychotic condition required psychiatric hospitalization rather than treatment at the jail."

So Murphy was "a gatekeeper with responsibility to relay information to ensure that Richard's serious medical needs were met," the judge said.

What it means in legal terms, the judge said, is that a jury could be left to decide whether Murphy showed "deliberate indifference."

The judge noted that Murphy contended that he tried to get Richard transferred to a hospital "by telling someone on the staff – he could not recall who – to contact the attorneys in Richard's case and ask them to request a competency evaluation." But Belot noted that Richard's public defender testified that "no one ever contacted her with such a request."

"Moreover, as Richard sat in the jail week after week and continued to deteriorate, Dr. Murphy took no additional steps and did not follow up to see why Richard had not been transferred. Dr. Murphy was clearly aware that Richard remained in the jail after this alleged attempt at a transfer."

Gary Austerman, local attorney for the jail medical provider Conmed, said Conmed had contracted with Murphy to oversee mental health services at the jail and that Murphy had resigned that position "to go back to his private practice, as I understand it. It was perfectly amicable. He just moved on," Austerman said.

Under his agreement with Conmed, which has been dismissed as a defendant in the Richard case, Murphy had to visit the jail a minimum of four hours each week to conduct psychiatric examinations, the judge's document said. He was to be on-call at all times.

Austerman said of the ongoing case: "My view of it is it always should have been about what Manuel Diaz did or didn't do."

Larry Wall, the lead lawyer bringing the lawsuit against the defendants, said Friday that he disagreed that it was only about Diaz, the former deputy.

"It's always been about the lack of mental health care," Wall said.

Diaz's attorney, Don Peterson, said he couldn't comment.

This is what the judge's document said about Diaz's actions:

About 8:40 p.m. Feb. 15, 2008, Diaz, Deputy Nelson and a Conmed aide went to Richard's cell to bring him his medication. When Diaz opened the cell door and the aide handed the medication to Richard, he became upset and cussed at the aide, who retreated to her cart outside his cell. Diaz warned Richard not to talk that way to staff.

Later, the aide and Diaz testified, Richard grabbed Diaz's throat. Nelson, however, "indicated she did not see any choking and thinks that Diaz pushed Richard back in the cell and told him to get back, after which Richard tried to push Diaz out of the way as if he wanted to get out of the cell."

Diaz started punching Richard in the face, and Richard staggered back. Nelson hit her panic pager as she tried to help Diaz, who kept punching Richard after taking him to the floor. Diaz ordered Richard to give his arm to Nelson and hit him in the arm when he didn't.

Nelson saw that Richard was unconscious "and that there was blood everywhere. Despite this, Diaz continued to punch Richard in the face." Nelson "dazed off" before she "came back to reality" and heard inmates yelling that Diaz was "beating ... that old man!"

Richard was 59, 5-foot-8 and weighed 150 pounds. Diaz was 26, 5-foot-9 and weighed 220 pounds. Nelson was 19, 5-foot-2 and weighed 108 pounds.

"Nelson told Diaz to stop, but Diaz 'looked totally out of it' and hit Richard in the face two or three more times before he stopped," according to documents.

Nelson estimated that Diaz hit Richard 15 to 16 times with his fist. The aide estimated it was "20 times as hard as he could, and said she could hear bones breaking as Diaz hit Richard in the face."

The judge concluded: "A reasonable jury could find that Diaz applied force amounting to cruel and unusual punishment almost from the outset of his encounter with Richard. It could further find that Nelson must have realized shortly thereafter that Diaz was acting for the purpose of causing harm and was not engaging in a good-faith effort to restore order."

Reach Tim Potter at 316-268-6684 or tpotter@wichitaeagle.com.

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