

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF WINONA

THIRD JUDICIAL DISTRICT

In the Matter of the Civil Commitment of:

David Austin Russell,

Respondent

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER AUTHORIZING  
TREATMENT WITH  
ELECTROCONVULSIVE  
THERAPY

Court File No. 85-PR-24-46

The above-entitled action came before District Court Judge Carmaine Sturino on May 6, 2024, for hearing on a Petition for Authorization of Electroconvulsive Therapy. Respondent David Austin Russell appeared and was represented by attorney David Jones. Assistant Winona County Attorney Paul Ellison appeared on behalf of the petitioner. Also present were Dr. Travis Tomford, court examiner; Amy Engel, Winona County Health and Human Services; and Dr. Kate Schak, Mayo Clinic. The hearing was conducted by Zoom.

The Court being duly advised, and upon the evidence adduced at the hearing, the petition and its attachments, and all the files, records, and proceedings herein, now makes the following:

### **FINDINGS OF FACT**

1. At a hearing on January 22, 2024, and in a written order dated January 23, 2024, Winona County District Court committed Respondent as a person who poses a risk of harm due to a mental illness to the custody of Prairie St. John's and to the Commissioner of the Minnesota Department of Human Services for a period not to exceed six months.

2. At a hearing on January 22, 2024, and in a written order dated January 23, 2024, Winona County District granted a Jarvis petition authorizing the administration of neuroleptic medications to Respondent without his consent.
3. The Court conducted the May 6, 2024, hearing in accordance with the Minnesota Commitment and Treatment Act.
4. The Court admitted the following exhibits at the May 6, 2024 hearing without objection:
  - a. Exhibit 1: Petition for Authorization of Electroconvulsive Therapy (ECT) from Mayo Clinic filed April 24, 2024 and authored by Katie Mattila, APRN.
  - b. Exhibit 2: 60/90 Day Report dated April 30, 2024 authored by Respondent's county case manager Amy Engel.
  - c. Exhibit 3: Court report dated May 1, 2024 of court examiner Dr. Travis Tomford.
  - d. Exhibit 4: Court report and court order dated April 17, 2024 regarding the revocation of Respondent's provisional discharge.
5. The Court received the testimony of Dr. Kate Schak, Mayo Clinic; Dr. Travis Tomford, court examiner; Amy Engel, Winona County Health and Human Services; and Respondent. The Court finds the testimony of Dr. Schak, Dr. Tomford, and Ms. Engel to be credible. A stipulation was reached that Dr. Tomford and Dr. Schak are expert witnesses for purposes of this hearing and the Court finds that they are expert witnesses.
6. Respondent is hospitalized at Mayo Clinic, Rochester, MN where he has been under the care of a treatment team including Dr. Kate Schak. Respondent has previously been hospitalized and received treatment at Mayo Clinic on multiple occasions.
7. Respondent was provisionally discharged from Prairie St. John's Hospital on April 3, 2024. Respondent was admitted to Mayo Clinic on April 16, 2024. Winona County filed paperwork to revoke Respondent's provisional discharge on April 17, 2024. Exhibits 2 and 4 as well as

Respondent's testimony, describe suicidal ideation and suicidal statements while Respondent was in a community setting. Dr. Tomford, in his testimony, credibly described extreme agitation and threats to kill others by Respondent when Dr. Tomford performed a prior evaluation for the purpose of the initial commitment and neuroleptic medication order.

8. Respondent has a substantial psychiatric disorder, specifically Schizoaffective Disorder.

Respondent has also received the diagnosis of Schizophrenia. Both diagnoses are in the same class of mental health diagnoses. Dr. Tomford, who provided the diagnosis of Schizophrenia, did not disagree with the diagnosis of Schizoaffective Disorder given the high lability of Respondent's mood. Respondent continues to exhibit symptoms and behaviors consistent with his mental illness including delusional and psychotic thinking and disorganized behavior. Respondent has endorsed having telepathic conversations with the military and the endorsement of different conspiracy theories. Respondent disagrees with the mental health diagnoses he has received nor does Respondent see any need for hospitalization. Respondent remains opposed to all first-line, preferred treatment options clinically indicated to manage his mental illness.

9. Respondent is currently prescribed and taking Olanzapine (Zyprexa). Respondent is prescribed 30 mg of Olanzapine per day, which is the maximum dosage level. Despite the level of medication, Respondent continues to be actively symptomatic including delusional and disorganized thoughts.

10. Respondent has failed multiple neuroleptic drug trials. The recommendation of Respondent's medical providers is for the use of ECT. The use of ECT is medically indicated and is the next appropriate medical step in the treatment of Respondent's mental illness following the use of neuroleptic medications which have provided an insufficient therapeutic response.

11. Respondent is incapacitated and incompetent and is unable to consent to the administration of ECT treatment.

- a. Respondent has demonstrated a lack of insight into his mental health needs and his need for treatment. With the exception of talk therapy, Respondent is strongly opposed to any forms of mental health treatment. Respondent has a long and significant history of a chronic mental illness.
- b. Respondent does not demonstrate an understanding of ECT treatment including the risks and benefits of ECT. Respondent is difficult to engage in conversation about treatment options. Respondent strongly endorses potential, real or imagined, negative effects from the use of mental health treatments. Respondent does not acknowledge any benefit from the use of neuroleptic medications or potential benefits from the use of ECT. Respondent has a long history of treatment noncompliance, which has resulted in revocations of provisional discharges as well as the commencement of commitment proceedings.
- c. Respondent continues to be actively symptomatic with significant mental health symptoms including delusions. Respondent was only in a community setting for a brief period of time before a return to a hospital level of care was required.
- d. Respondent lacks awareness of his chronic mental illness or the need for further stabilization to ensure his safety. Respondent's opposition to forms of treatment is not a reasoned opinion and is based in his mental illness and mental health symptoms.
- e. Dr. Kate Schak, Mayo Clinic and Dr. Travis Tomford, court examiner credibly opined that Respondent lacks capacity and competency to provide consent to the administration of ECT.

12. Mayo Clinic filed a petition requesting authorization to administer up to 30 ECT treatments over the period of the next 6 months. The number of treatments is within the effective range for the treatment of Respondent's condition.
  - a. The 30 treatments is a maximum number of treatments. Dr. Schak credibly testified to an initial phase of treatment with ECT administered 2 to 3 times per week. Medical staff will closely monitor Respondent's condition and the effectiveness of the ECT. The number of treatments required, and whether maintenance ECT is required, will depend on Respondent's clinical response to ECT.
13. Mayo Clinic has determined that ECT is medically necessary for Respondent. Top level, maximum dosages of neuroleptic medications have not been sufficient to meet Respondent's mental health treatment needs. The requested range of treatments has generally been shown to be effective for Respondent's psychological condition.
14. The use of ECT is generally accepted in the medical community for the treatment of Respondent's mental illness. ECT is not experimental. This procedure is reasonable.
15. The objective of ECT is to treat the symptoms of Respondent's mental illness that interfere with his functioning. This specifically includes a reduction in Respondent's delusions as well as a hopefully accompanying improvement in Respondent's overall mood. Dr. Schak credibly testified that there is a good chance that there will be dramatic benefits for Respondent. Respondent has not previously received ECT.
16. There are no less restrictive alternatives to treatment with ECT nor any alternatives which are less intrusive. The evidence presented credibly established that Respondent requires treatment with ECT. There are no realistic alternatives to the use of ECT given Respondent's multiple failed neuroleptic drug trials.

17. There are side effects associated with ECT. The side effects include achiness and memory loss. Hospital staff will monitor Respondent and will treat Respondent for any side effects. As described credibly by Dr. Schak, Mayo Clinic has extensive safety precautions and monitoring for patients who undergo ECT. Mayo Clinic is an appropriate facility to administer ECT and monitor the effects.
- a. If ECT is not used, the next step would be the use of medications with the potential for significant side effects and need for monitoring. The request for ECT credibly seeks to avoid the use of such medications. ECT remains the preferred treatment option at this time.
18. The benefits of treatment with ECT outweigh the risks and possible side effects. Treatment with ECT is necessary and reasonable to treat Respondent's mental illness. Without the use of ECT, Respondent's prognosis would be poor including continued significant mental health symptoms and risk of harm. Respondent's ongoing mental health symptoms and behaviors interfere with his ability to be discharged to a less restrictive setting.
19. The Court has heard, acknowledged, and duly noted the strong opposition of Respondent to the administration of ECT. The testimony of Dr. Schak credibly supports that Mayo Clinic is also aware of the strong feelings of Respondent and has only made this request for ECT due to the level of need of Respondent and the failure of other types of treatment. The Court does not make the decision contained in this Order lightly and recognizes Respondent's distrust and fear of ECT.
20. Respondent endorsed the benefits of talk therapy. This Order encourages the use of talk therapy for Respondent when requested by Respondent or suggested as an option by medical staff, in addition to pharmacological and ECT treatment, but talk therapy alone would clearly be insufficient to meet Respondent's significant and immediate medical needs.

**CONCLUSIONS OF LAW**

1. Applying the standards set forth in Minnesota law, including Minnesota Administrative Rules 9515.0500 and 9515.0600 as well as *Price v. Sheppard*, administration of ECT is authorized pursuant to the contents of this Order.

**NOW, THEREFORE, IT IS ORDERED:**

1. Mayo Clinic, Rochester, Minnesota and any other facility with the appropriate levels of training and staff, are authorized to administer electroconvulsive therapy (ECT) treatments to Respondent.
2. The administration of ECT is limited to the following as requested in the Petition for Authorization of Electroconvulsive Therapy:
  - a. Up to 30 treatments over a period of the next 6 months
  - b. ECT may be administered in the frequency per week deemed medically necessary and appropriate by Respondent's medical providers.
3. Mayo Clinic or other appropriate facility shall provide access for Respondent to talk therapy, as Mayo Clinic or other appropriate facility deems appropriate.

**BY THE COURT:**

05/08/2024 12:53:13 PM



**Carmaine Sturino**  
**Judge of District Court**