

2001

# Ward M v. State of Utah : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH  
DEC 6 1975

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IN THE MATTER OF THE  
MENTAL CONDITION OF:  
WARD M.,

:  
: No. 13809  
:  
:

**BRIGHAM YOUNG UNIVERSITY**  
**J. Reuben Clark Law School**

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BRIEF OF APPELLANT

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FILED

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Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

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IN THE MATTER OF THE                   :  
MENTAL CONDITION OF:               : No. 13809  
WARD M.,                               :  
  :

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BRIEF OF APPELLANT

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STATEMENT OF THE CASE

On June 13, 1974 application was filed with the District Court of Salt Lake County, State of Utah, requesting the involuntary hospitalization of the Appellant. (R. 65-66). Thereafter, pursuant to provisions of Utah law and the practices of the Court, a hearing was held before Margaret K. Spratley, Special Commissioner, resulting in an Order of Hospitalization, dated June 26, 1974 (R. 5052).

On June 27, 1974 Appellant, through counsel, petitioned for a new hearing pursuant to Section 64-7-36(L), Utah Code Annotated (1953 as amended) (R. 49). The hearing was held on the 2nd day of August, 1974 before the Honorable Joseph G. Jeppson.

Prior to the Hearing, the Court had appointed three designated examiners, Glen E. Johnson, M.D., Gary Stevenson, M.D. and David Wood, M.D., to examine the Appellant and report their findings to the Court. All three doctors testified that the proposed patient was mentally ill. (Tr. 6, 8, 11). None felt that, as a result of his mental illness, he was an immediate danger to himself or others. (Tr. 11, 14, 15). The doctors believed, however, that he lacked sufficient insight to seek voluntary care. (Tr. 5, 6, and 8). This conclusion was based primarily upon the fact that Appellant felt that

he would only need medication for a six-month period and the fact that he would consider taking LSD if it were legalized. (Tr. 5,6, 8). Appellant testified that he would continue taking medication as long as his doctor felt that it was necessary (Tr. 19) and that he had not taken LSD since 1970 (Tr. 28). He further testified that he had benefited from treatment at the Utah State Hospital (Tr. 19), where he had been sent after the initial Order of Hospitalization.

Appellant's counsel moved for a dismissal of the case because the standards for involuntary hospitalization had not been met beyond a reasonable doubt, and he requested that the court use the reasonable doubt standard of proof. (Tr. 18) He further moved for dismissal because the lack of insight grounds for commitment were unconstitutionally vague. (Tr. 18-19). Dismissal was also urged because Appellant's present condition did not warrant involuntary



hospitalization. (Tr. 19). These motions were denied. (Tr. 24)

The court found that Appellant was mentally ill and "in need of custody, care and treatment in a mental health facility but lacks sufficient insight or capacity by reason of such illness to make responsible decisions with respect to hospitalization" and ordered him hospitalized for an indeterminate period at the Salt Lake Community Mental Health Center. (R.41-42). This Order is the subject of this appeal.

#### ARGUMENT

##### POINT I

THE INVOLUNTARY HOSPITALIZATION PROCEEDING WAS UNCONSTITUTIONAL UNDER THE CONSTITUTIONS OF THE STATE OF UTAH AND THE UNITED STATES AS A VIOLATION OF DUE PROCESS OF LAW BECAUSE THE STATE CANNOT COMMIT A PERSON WITH ITS RESULTANT LOSS OF LIBERTY, WITHOUT MAKING A FINDING BEYOND A REASONABLE DOUBT OF MENTAL ILLNESS AND THE NEED FOR COMMITMENT.

Article I, Section 7, of the Constitution of Utah provides:

No person shall be deprived of life, liberty or property, without due process of law.

This provision, almost identical in language to similar provisions of the Fifth and Fourteenth Amendments to the United States Constitution, has been granted wide application by this Court. See McGrew v. Industrial Comm. 96 Utah 203, 85 P.2d 608 (1938) where the court cited with approval a statement from Rigney v. Chicago, 102 Ill. 64:

The words 'life', 'liberty', and 'property' are constitutional terms and they are to be taken in their broadest sense. They indicate the three great subdivisions of all civil right.  
85 P.2d at 610.

The Utah Mental Health Services Act, Utah Code Annotated under Title 64 is silent with regard to the necessary burden of proof the Court must use to determine whether a hospitalization Order should be entered, although the trial court denied appellant's motion to determine

the case by a reasonable doubt standard.  
(Tr. 24).

Appellant contends that his commitment was a violation of Due Process of Law, however, because there was no judicial finding of the statutory requirements for commitment "beyond a reasonable doubt." The gulf between the rights guaranteed in criminal proceedings and those applicable to non-criminal proceedings is narrowing, due to the United States Supreme Court decisions in In re Gault 387 U.S. 1 (1967), and in Goldberg v. Kelly, 397 U.S. 254 (1970), applying some due process protections where there is a potential deprivation of liberty or other important rights.

Subsequent to Gault, the Supreme Court has ruled that a juvenile is constitutionally entitled to proof beyond a reasonable doubt of the charges against him because of the due process clause. In re Winship, 397 U.S. 358 (1970). The court later found the

reasonable doubt standard of sufficient constitutional importance to give it retroactive application in juvenile cases. Ivan V. v. City of New York, 407 U.S. 203 (1972). This Court has held that the United States Supreme Court decisions on Federal Due Process clauses are " 'highly persuasive' as to the application of that clause of our State Constitution." Untermeyer v. State Tax Comm, 102 Utah 214, 129 P.2d 881,885 (1942 .

The Winship court disposed of several arguments submitted on behalf of requiring a lesser standard of proof in juvenile cases, all of which are applicable to involuntary commitment situations like those presently before this Court. It was argued that the criminal burden of proof should not apply because delinquency status is not a crime and the proceedings are not criminal. The Court, citing Gault, noted that a civil label will not save proceedings from

constitutional protections and that the possibility of loss of liberty is the crucial factor. Using similar rationale, the Court also rejected a claim that the criminal standard of proof should not apply because the purpose of the juvenile hearing is to save the child and not to punish him. Winship at 365.

The Court also found that the use of the reasonable doubt standard would not destroy the beneficial aspects of the juvenile process. The Court reasoned that requiring the higher burden of proof at the fact finding stages of the proceeding is not tantamount to an interference with the treatment goals. Winship at 366.

The similarities between the juvenile proceedings and commitment proceedings require that the same standard of proof apply to both. A person found to be committable for mental illness may sometimes be getting a life sentence to a mental institution. (See "The Administration of Psychiatric Justice: Theory and Practice in

Arizona," 13 Ariz. L.Rev. at 207-236).

Indeed, prior to Winship, the United States Supreme Court had applied the Due Process clause to commitment proceedings, finding that the the availability of due process turned upon the possibility of indeterminate incarceration rather than whether it is labeled "civil" or "criminal." Sprecht v. Patterson, 386 U.S. 605 (1966). See also Baxtrom v. Herold, 383 U.S. 107 (1965). The Tenth Circuit Court of Appeals in Heryford v. Parker, 396 F.2d 393 (1968) similarly held that due process applied to a civil commitment proceeding for a mentally deficient individual and, as a result, there was a constitutionally protected right to counsel.

If, where there is a deprivation of liberty, Due Process includes the reasonable doubt standard of proof, and if due process applies to commitment hearings, then the reasonable doubt standard should apply. Several courts have recognized this fact. The Kentucky Supreme Court, in

Denton v. Commonwealth, 383 S.W.2d 681

(1964) held that subjects of lunacy proceedings were entitled to the same burden of proof and rules of evidence as are available in criminal cases and stated:

Although lunacy inquests are not concerned with criminal intent or criminal acts, they may result in depriving this defendant of his liberty and his property. This deprivation should be obtained only by due process of law under constitutional guarantees.

We have, therefore, concluded that when a proceeding may lead to the loss of personal liberty, the defendant in that proceeding should be afforded the same constitutional protection as is given to the accused in a criminal prosecution.  
383 S.W.2d at 682.

In Lessard v. Schmidt, 349 F.Supp. 1087 (E.D. Wis. 1972), vacated and remanded on other grounds, \_\_\_\_\_ U.S. \_\_\_\_\_, 94 S.Ct. 713 (1974), a three-Judge Federal District Court held that the reasonable doubt standard was required by the magnitude of the deprivations involved in commitments. Accord, In re Ballay, 482 F.2d 648 (D.C. Cir. 1973); In re Pickles' Petition,

170 So.2d 603 (Fla.App. 1965); Ex parte Perry, 137 N.J. Eq. 161, 43 A.2d 885 (1945), and Schneider v. Radack, (So. Dakota Cir. Ct. First Judicial Circuit, decision dated May 3, 1974, 2 Pov. L. Rep. para. 19,349).

The Supreme Court of the State of Washington, citing Winship, *supra*, and Lessard, *supra*, found that the clear, cogent and convincing evidence standard, or the civil counterpart of the criminal reasonable doubt standard, was required in mental illness proceedings and stated:

Any lesser standard of proof permits a deprivation of personal liberty through improper suspension of the strict requirements of due process. In re Levias, 517 P.2d 588,590,591 (1973).

Another compelling reason for application of the reasonable doubt standard is the fact that the Utah procedure, as a practical matter, allows for very little affirmative presentation of a defense to commitment. The Statute con-



templates the primary responsibility for presentation of evidence is that of the designated examiners, and the proposed patient's defense often consists almost entirely of cross-examination of these expert witnesses. The danger of requiring a less stringent standard of proof is apparent, particularly where the expert opinion may prove to be incorrect. (See e.g. Rosenham, "On Being Sane in Insane Places, Science, January 19, 1973, at 250, where eight normal or sane persons gained admission to twelve different psychiatric hospitals and, in eleven of the twelve cases were incorrectly diagnosed as schizophrenic although they acted normally in all cases. The length of hospitalization of these individuals ranged from 7 to 52 days, with an average stay of 19 days.)

Thus, the reasons justifying a strict standard of proof in commitment hearings is compelling. Each of the bases cited for such a standard by the Winship Court is present:

The requirement of proof beyond a reasonable doubt has this vital role in our criminal procedure for cogent reasons. The accused during a criminal prosecution has at stake interests of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction . . . . As we said in Speiser v. Randall.. . .: "There is always in litigation a margin of error representing error in fact finding, which both parties must take into account. Where one party has at stake an interest of transcending value--as a criminal defendant has his liberty--this margin of error is reduced as to him by the process of placing on the other party the burden of . . .persuading the factfinder at the conclusion of the trial of his guilt beyond a reasonable doubt." 387 U.S. at 363-364 (1970). (Emphasis added).

Involuntary commitment does involve a loss of liberty and a stigma and a factual judgment with a significant margin of error and proof beyond a reasonable doubt should be required.

## POINT II

THE LACK OF CAPACITY OR INSIGHT STANDARD OF §64-7-36(H) (3) IS CONSTITUTIONALLY DEFICIENT BECAUSE IT ALLOWS TOO MUCH DISCRETION IN THE FACTFINDER.

Appellant contends that the lack of capacity or insight basis for commitment is unconstitutional because it grants too much discretion in determining

the individuals to whom it applies. He concedes that it does not, on its face, violate the traditional rationale of the Vagueness Doctrine. Boutilier v. Immigration and Naturalization Service, 387 U.S. 118 (1967). It is unconstitutional because it allows too much discretion with the factfinder.

In Papachristou v. City of Jacksonville, 405 U.S. 156 (1972), the Supreme Court unanimously invalidated a vagrancy ordinance partly because the absence of objective standards invited the possibility of "arbitrary and discriminatory enforcement." The court reasoned that the indefinite terms could be used to require individuals "to comport themselves according to the life style deemed appropriate by the Jacksonville police and the courts." 405 U.S. at 170.

The commitment standard in question here is subject to exactly the same abuses and,

for that reason, should be declared invalid. See In re Sealy, 218 So.2d 765 (Fla. Dist. Ct. App. 1969), where the Florida Appellate Court reversed an involuntary commitment of a young man where the only evidence of his mental illness was a life style which made him a "typical Hippie." 218 So.2d at 768.

### POINT III

THE DECISION OF THE DISTRICT COURT SHOULD BE REVERSED BECAUSE IT WAS NOT SHOWN THAT APPELLANT MET THE STATUTORY GROUNDS FOR COMMITMENT AT THE TIME OF THE HEARING.

The Appellant testified that he was willing to continue with medication and treatment under the supervision of his physician (Tr. 19-20). The evidence supporting Appellant's alleged lack of insight consisted of the possibility that, at some time in the future, he might refuse to follow through with treatment or consider the possibility of taking LSD if that drug became legalized.

Section 64-7-36(H) is written in the

present tense and should be limited to an inquiry into the proposed patient's mental health at the time of the hearing. Any doubt should be resolved in favor of the individual's right to freedom. In re Pickles Petition, supra.

Since Appellant's alleged lack of insight is based upon some contingency which may or may not occur in the future, the Order of the Court was improper and should be reversed.

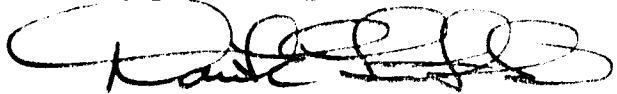
#### CONCLUSION

The hearing held in the District Court in the instant matter, having failed to comply with due process of law because it utilized an improper standard of proof, the "lack of insight or capacity" test for commitment allowing too much discretion with the factfinder, and the facts in the record not clearly showing that the Appellant met the standards for involuntary hospitalization at the time of the hearing, this Court should reverse the judgment of

the District Court. As Mr. Justice Brandeis  
stated in Olmstead v. United States, 227 U.S.  
438 (1928):

Experience should teach us to be  
most on our guard to protect liberty  
where the Government's purposes are  
beneficent." 227 U.S. at 479.  
(Dissenting opinion).

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "David E. Littlefield", written in a cursive style.

DAVID E. LITTLEFIELD  
Attorney for Appellant