



Man spends five years in jail awaiting trial as experts debate his mental health, competence

May 3, 2015

By [Ali Rockett](#)

alrockett@dailypress.com

It's been five and a half years since Justin Evans' arrest near his grandparent's York County home, caught with a gun and cocaine in his pocket.

He's had no trial. No conviction. No acquittal.

Just delay after delay between trips to hospitals and psychiatric facilities where psychologists and psychiatrists have never reached a consensus on whether he is mentally competent to stand trial. Some say he's sick. Some say he's a con man. All agree that he has serious problems, and that he presents a nearly unsolvable challenge for a justice system that struggles between criminal culpability and mental illness.

In 2002, Evans pleaded guilty in Hampton to robbery, serving seven years in prison. In a separate offense in Newport News, he was convicted on a drug possession charge. In and out of detention centers and mental health facilities since age 10, Evans, now 32, has been incarcerated for all but three months out of the last 13 years.

Medical records show that Evans has been diagnosed as bipolar, a disorder described by the National Institute of Mental Health as causing extreme mood swings, an inability to focus and irritability. He's also been diagnosed with borderline personality disorder, which includes impulsive and manipulative behaviors and problems regulating emotions. The institute says these disorders commonly occur alongside substance abuse and self-harming or suicidal behaviors.

There is no easy explanation for why Evans' prosecution has taken better part of a decade — longer than any other case in York-Poquoson Commonwealth's Attorney Ben Hahn's 30-year career.

Hahn, jail officials and some psychologists ordered by the court to assess his mental health blame Evans for the delay, saying he's faking a mental illness to stall sentencing. Evans believes his rights to a speedy trial and due process have been violated, and has asked that the case against him be dismissed.

"How are you going to have it both ways?" Evans said in a phone interview on Feb. 24. "If the first assertion is correct, that I'm faking it, then go ahead and bring me to trial already. If the second is true, and I am mentally ill, then let me get the treatment I need."

Cry for help

Evans' grandmother, Marianne Sherman, said a cry for help started it all.

It was Oct. 13, 2009. Sherman said she was worried that day that Evans would hurt himself and called the police, who were dispatched for a wellness check.

York-Poquoson Sheriff's officers found Evans walking along a neighborhood street near Sherman's home, according to department spokesman Lt. Dennis Ivey. In their notes from the incident, Ivey said, officers described Evans as suicidal but cooperative. When they searched him, according to court records, they found a .38-caliber Smith and Wesson revolver, eight bullets and 5.2 grams of cocaine.

He was charged with possession of a firearm by a felon, possession of a controlled substance with intent to sell or distribute, and possession of a controlled substance while also having a firearm. All three crimes carry heavy penalties: between five and 50 years imprisonment.

"It was a call for help five years ago," Sherman said. "This is a cry for help that really turned sour."

Since then, York-Poquoson Circuit Court records show, Evans' case has been continued more than 30 times. He's undergone eight psychological exams with varying results, and spent months isolated in an attempt to prevent him from harming himself.

According to records provided by Virginia Peninsula Regional Jail Superintendent John Kuplinski, in the four years between his arrest and December 2013, Evans had 57 trips to local hospitals after 42 incidents of self-mutilation and 31 incidents of him swallowing things that could hurt him, including tooth brushes, toothpaste tubes, combs, batteries, pencils and pens. The jail has incurred the cost of his medical bills — totaling \$450,000, Kuplinski said.

The jail has not dealt with another inmate like Evans, the superintendent said. Five months after his arrest, Evans had to be moved to a solitary cell where he was monitored 24/7 by jail staff. Aside from brief periods when Evans was reintroduced to the jail's general population, he's been kept separate in an effort to keep him from cutting himself or swallowing anything.

Most inmates committed to the jail leave within 48 hours, Kuplinski said. Those who have been convicted typically carry sentences of less than two years — above that, they are committed to the Department of Corrections, Kuplinski said.

"Most of the people who come here are in and out," he said.

Records show Evans been tased twice when he's been aggressive or threatening toward officers or other inmates. One incident in which he threw urine on an officer resulted in criminal charges filed in Williamsburg-James City County Court, where Evans was found not guilty. He is currently facing a charge for assaulting another officer.

Evans has been placed in restraints or a restraint chair for hours at a time. Kuplinski said restraints prevented Evans from reopening wounds and calmed him. A jail nurse ensures the bonds are not too tight, Kuplinski said.

In an October 2014 interview at the James City County Jail, Evans said his treatment in jail "hasn't been anything short of torture."

"When I've swallowed stuff and harmed myself, it has been — and I'm not trying to say it's right or that it's something I should have done — but it's always been in response to stressors in the jail. Like when I've been put in isolation. Sometimes it's been because of petty things that I couldn't handle. That's part of my mental illness — I don't handle stress well, I don't handle frustration well."

Kuplinski said he believes there has been a pattern to Evans' behavior as court dates near.

"He's made numerous statements over the years that he doesn't want to go to the Department of Corrections and he will kill himself if he does," Kuplinski said. "We've managed to keep him from fatally hurting himself in five years. This is a behavioral issue, not a mental health issue."

Time served

Assistant Commonwealth's Attorney Krystyn Reid was the lead prosecutor in the case until her boss, Ben Hahn, got involved in 2013.

"The prevailing opinion is that he is just malingering," Reid said.

A trial typically takes a few months, or 150 days after a preliminary hearing, she said. Evans' clock for a constitutionally guaranteed speedy trial started the day of the preliminary hearing, March 17, 2009, Reid said.

All but 85 days since then are chargeable to Evans, not the court or prosecution, Reid said.

The prosecution has only requested one of the 30-odd continuances in the case. Evans and his attorneys are responsible for the rest.

"He's competent," Reid said. "He's just not cooperative."

Evans was first represented by a court-appointed attorney Jason Atkins, of Gloucester, who asked to withdraw from the case in June 2013.

Atkins could not be reached for comment for this story, but he told the court that Evans wasn't cooperative and wished to represent himself.

For nearly a year, Evans did represent himself with Hampton attorney James Gochenour appointed by the court as standby counsel.

In 2014, the court told Gochenour to step in and represent Evans after his competency was again called into question.

In April, Gochenour asked to be removed from the case because his law partner joined the commonwealth's attorney's office, creating a conflict of interest. Evans is now awaiting the appointment of new lawyer.

Competent, or not

Evans' competency has been at issue from the start.

Minutes after arriving at Virginia Peninsula Regional Jail on the day of his arrest, Evans grabbed a pair of scissors and slashed his wrist — requiring more than 50 staples — and drank a bottle of window cleaner, according to medical and jail records.

Three months later, on Jan. 28, 2010, Dr. Kevin McWilliams, a court-appointed psychologist from Williamsburg Psychology Center, deemed Evans competent to stand trial while confirming that he "meets diagnostic criteria for bipolar disorder and borderline personality disorder."

A second evaluation, completed on Sept. 3, 2010, by Dr. Angela Torres at Central State Hospital, also found Evans competent to stand trial.

On May 31, 2011, a trial was set and a jury seated. But according to a court transcript, when Evans was asked to identify himself, he said his name was "one God, true God, holy God."

In December 2011, Sherman, Evans' grandmother, hired a clinical psychologist, with the permission of the court, to conduct another evaluation.

Dr. Suzanne Brassel found Evans competent to stand trial, but suggested that he was insane at the time of his offense due to an irresistible impulse. In her report, Brassel said Evans suffers from an impulse control disorder that may result from temporal lobe seizures. She recommended that he undergo a complete neurological assessment including an electroencephalogram (EEG) and magnetic resonance imaging (MRI), which Evans later refused.

"Certainly Mr. Evans is an intelligent individual. ... He no doubt knew at the time that he was doing something illegal," she wrote. "His emotions, however, not his intelligence, govern his behaviors, which I believe should be considered by the court when determining sentencing and/or guilt."

The prosecution disputed Brassel's findings, objecting that she was a clinical psychologist not a forensic one, and could not make an argument for an insanity defense. Reid, the assistant commonwealth's attorney, asked that McWilliams, the original evaluator, review the report and reassess Evans.

On March 2, 2012, McWilliams reversed his original report and found Evans incompetent.

"I believe that in examining this matter, now two years down the road from my initial assessment, it has become increasingly clear that Mr. Evans, for all practical purposes, is not competent to stand trial and likely cannot be rendered competent in the foreseeable future," his report reads. "The problem is not bipolar disorder, hallucinations/delusions (many, and likely all, of which he appears to feign), impulse control disorder, or any type of seizure, tumor endocrine disorder or brain damage but, instead the demonstrated severity of his borderline personality disorder."

"On a practical level, Mr. Evans, in my opinion, is strongly committed to thwarting a trial, and will not likely be thrown off that course," McWilliams wrote. "Toward that end, he will feign psychotic symptoms and choose to 'act' in a bizarre manner. Lacking that, or accompanying that, he will, in the courtroom and when with his attorney, grasp for any object that he could use to ingest or cut/puncture himself. He can do that suddenly, and without demonstrating initial cues of agitation. Should you handcuff him in place, he will bang his head and gash it open. Should you strap him down to immobilize head movements, he will be more than willing to bite off a portion of his tongue. In short, the level to which he is willing and able to frustrate a court appearance is extreme and persistent."

McWilliams said it would take years of "intensive psychotherapy" to address Evans' disorder and recommended that he be involuntarily committed to a psychiatric hospital if the charges are dropped.

Later that month, Evans was returned to Central State Hospital for an attempt at "restoration" to make him competent to stand trial.

On May 9, 2012, Evans was evaluated by Central State Hospital doctors Angela Torres and Robin Belcher-Timme, who found him competent.

"We believe, through repeated and extensive observation on an inpatient basis, that his behaviors are volitional and under his control," their report said. "Mr. Evans may not always possess the willingness to engage in the legal proceedings against him, but nevertheless clearly possesses the capacity to do so."

But in July 2012, McWilliams sent a letter to Judge William Shaw reiterating his belief that Evans was unresponsible.

McWilliams said in the letter that after showing some signs of improvement, Evans was told by hospital staff that he could still be found competent so he punched a wall fracturing his hand. The injury required surgery and pins were placed into his hand. Evans removed the pins and swallowed them, McWilliams told the judge.

Last year, another test was completed by doctors at the [University of Virginia](#), who found Evans incompetent. The Daily Press was not able to review this report. The others were provided by Evans through his grandmother.

In light of the U.Va. report, Evans was sent back to Central State Hospital in November to be restored. And there he remains.

Motion to dismiss

On Feb. 2, 2015, from the hospital, Evans filed a motion to dismiss the charges against him.

He cites state statute 19.2-169.3, which says: "Charges against an unconditionally incompetent defendant shall be dismissed on the date upon which his sentence would have expired had he been convicted and received the maximum sentence for the crime charged, or on the date five years from the date of his arrest for such charges, whichever is sooner."

In the motion, Evans argues that since no restoration or treatment has affected his competency, the charges should be dropped.

"Immediately," Evans ends the motion.

In an interview in October, Ben Hahn, who is now leading the prosecution against Evans, said the statute doesn't apply in this case.

"That's the fail-safe," Hahn said. "The pressure relief valve built into the system. Not to be used to avoid the consequences of other criminal conduct."

Hahn said that while all defendants are entitled to a speedy trial, the state can't rush, especially when competency is an issue, potentially encroaching on their right to a fair trial.

"We are bending over backward to give him every due process he deserves," Hahn said. "Then he's using it as a sword against us saying we are not giving him a speedy trial."

Fredric Lederer, chancellor professor of law at the College of William and Mary's Law School, said mental health issues complicate criminal proceedings, and that presumably that is why Evans' trial, or lack thereof, has taken so long.

"This is not the perfect-storm case, but it's close," Lederer said.

Hahn filed a motion on March 31, following yet another competency evaluation, asking to go to trial, and soon.

Donna Moore, director of psychology at Central State Hospital, found Evan competent to stand trial. She said once it was explained to Evans that the statute he cited to dismiss his charges could see him hospitalized indefinitely without resolution, "he appeared to want to cooperate with the process."

"This was evidently motivationally driven," Hahn's motion said from a summary of Moore's report. "Mr. Evans believed that he could remain incompetent to stand trial for a period of five years and his charges would then be dismissed. When educated about this misperception, he appeared to want to have his charges resolved appropriately. Should he set his mind to resolving his legal circumstances, he will comport himself appropriately in the courtroom setting."

In a hearing April 21, Evans went ahead with his motion to dismiss, which Judge Shaw denied since Central State had most recently found him competent.

'They say it is bizarre'

Exactly five years after his arrest, Evans sat in a small cell at Virginia Peninsula Regional Jail across from a reporter. He was calm and respectful, and spoke eloquently about his circumstances, weighing his words carefully.

He stretched his 6-foot-2-inch wingspan touching both sides of the cell to illustrate the tight confines he's been living in most of his time in jail. His tall, bulky frame is imposing, but his quiet voice showed restraint. Tattoos scrolled across his neck and covered his arm, though not hiding the scars on his wrist from years of self harm.

On his left arm are the lyrics to a DMX song: "Either let me fly, Or give me death, Let my soul rest, Or take my breath, If I don't fly, I'm going to die anyway, I'm gonna live on, But I'll be gone any day."

Marianne Sherman is exasperated. She's sought help from legal experts, mental health providers, advocacy groups and politicians, but has come up empty.

"They say it is bizarre," she said. "They say that it is mishandled. But they don't do a damn thing to stop it."

"

Also in Evans' court file is a letter written by one of the people Evans robbed in 2001. David Kapacki said Evans and his accomplice had three handguns pointed at him and his pregnant fiancee.

"I cannot explain to you how those actions have affected our minds and how we will now always have fear of public places," he wrote. "There is no doubt in my mind that Justin is sorry for his crimes, however due to the fact that he has committed those same crimes to other people and also pointed a gun at an unborn child whether mine or someone else's, I do not believe that anyone would feel that anything less than a jail or prison term would be appropriate. This man is a threat to society."

Evans said he's changed.

"For me it's either ... this is like the major turning point and crossroads of my life. Either I'm going to be able to turn this thing around, come home, get my life together, live life. Or I just won't make it. I can't live institutionalized no more. I just can't do it. All I want is to be able to get some help, get cleared by some doctors and get back out and live life."

No man's land

The resolution of this case might not be as easy as convict or treat, according to officials at the Hampton-Newport News Community Services Board, who say Evans is an extreme case but exemplary of a system that isn't equipped to deal with mental illness.

Cases like Evans', usually involving nonviolent charges, can easily drag out for years, said Derek Curran, emergency services director for the board.

"A lot of people get clogged in the system longer than they should," Curran said.

It's not uncommon for a mentally ill defendant facing a 30-day sentence to serve two or three years instead when competency comes into question, Curran said. In March alone, 31 people from nine community services boards from Essex County south to the North Carolina border were awaiting admission into Central and Eastern state hospitals for restoration, he said.

If this case had been in Newport News or Hampton, the board would have intervened when Evans was arrested, said Dean Barker, forensic services manager at CSB. It's called jail diversion: CSB tries to get mentally ill offenders placed in treatment to stabilize them, rather than sent to jail where they further devolve and competency becomes an issue.

In the end, if competency questions linger, Barker said, the court is left with one of three options based on state statute 19.2-169.3 — the same law that Evans cites in his motion to dismiss. They are: release the defendant, commit him or her to a hospital for treatment, or if there is an intellectual disability, send the defendant to a training center.

The latter is not an issue in Evans' case.

Institutionalization is an option, but not necessary, Curran said — bipolar disorder can be treated with medication and doesn't require in-patient treatment. But there is no treatment for borderline personality disorder, Curran said, so if Evans was committed, a state hospital would most likely release him once he stabilized.

Chuck Hall, executive director of the Newport News-Hampton CSB, believes Central State is using "malingering" to describe Evans' case, not because he's faking it, but because they cannot treat him.

"It's a no man's land," Hall said. "Nobody wants to be the one to let him go."

Rockett can be reached by phone at 757-247-4942.

Copyright © 2015, [Daily Press](#)