

Editor

My recent article on the legal and personal background to the landmark case of *Jackson v. Indiana*<sup>1</sup> prompted my colleagues in Indianapolis to tell me that Mr. Jackson had encounters with the criminal justice system after 1972. My article was in part based on Mr. Jackson's state hospital records, which I was given access to by Mr. Jackson's sister, who is his health care representative, and on interviews with his sister. His sister reported that her brother had not been in trouble following his release from the state hospital. In response to my colleagues' comments, I requested a search of the public records of the Marion County court system, which revealed that the date of birth listed in the state hospital records differed from the date of birth used by the Marion County court system. Mr. Jackson's identity was confirmed based on details contained within the case chronologies. Mr. Jackson was arrested four times in Marion County after 1972. Although the case files had been purged because each case was eventually dismissed (Linda Broadus, court reporter, Marion Superior Court, personal communication, February 28, 2011), the case chronologies, which are public records, were available for review, and the details within the chronologies led to a more complete understanding of Mr. Jackson's history after his release from Central State Hospital in 1972.

Mr. Jackson was arrested in February 1993, more than 20 years after his release from the state hospital, on a charge of misdemeanor battery. According to the case chronology,<sup>2</sup> in October 1993, the court heard testimony from two psychiatrists, Drs. Schuster and Masbaum, both of whom felt that the defendant was competent to stand trial, as well as from defense witnesses, regarding Mr. Jackson's ability to communicate. One week later, the judge examined the defendant himself and, based on this experience and the prior hearing, concluded that Mr. Jackson was not competent to stand trial. However, the judge also believed that, while Indiana statute did not apply to Mr. Jackson's specific situation, "the Constitution does and it would be unconstitutional to commit the defendant to DMH [Department of Mental Health]."<sup>2</sup> The defense motion to dismiss the charges was granted.

Mr. Jackson was again arrested for misdemeanor battery in March 1994. According to the case chronology,<sup>3</sup> in May 1994 the court appointed Dr. Deaton to evaluate the defendant, with the assistance of two interpreters for the deaf. Although Dr. Deaton felt Mr. Jackson had never been and would never be competent to stand trial (Rodney Deaton, MD, JD, personal communication, April 7, 2011), in September 1994 the court committed him to a state hospital for restoration to competence. The state hospital returned Mr. Jackson to court as competent to stand trial in April 1995. Dr. Deaton again opined that Mr. Jackson would never be competent to stand trial (Rodney Deaton, MD, JD, personal communication, April 7, 2011) and in December 1995, the court concluded that "due to Mr. Jackson's limited linguistic ability, he is unable to assist in his defense of these proceedings. Defendant does not suffer from a psychiatric disorder, therefore confinement to a psychiatric institution is not appropriate."<sup>3</sup> The state eventually moved to dismiss the charges against Mr. Jackson in June 1997, and the court granted the motion.

Mr. Jackson was arrested in October 1996 on misdemeanor charges of battery and invasion of privacy; the latter is the Indiana charge for violation of a protective order. No competence evaluation was requested. The court granted the state's petition to dismiss the charges in October 1998.<sup>4</sup>

Mr. Jackson was most recently arrested in April 2004 on felony charges of pointing a firearm and criminal recklessness and a misdemeanor charge of carrying a handgun without a license. The case chronology noted that the "initial hearing could not be conducted due to defendant being deaf and illiterate" and a deaf interpreter was ordered "for purposes of determining defendant's ability to comprehend and assist partially due to his hearing disability and inability to communicate by sign language or written means."<sup>5</sup> No formal competence evaluation was requested. Two weeks later, the defendant was discharged by the court and his property was returned, though the handgun was "ordered disposed of per law."<sup>5</sup>

After his historic victory in court in 1972, Mr. Jackson was able to achieve dismissal of charges after a finding of incompetence to stand trial without any commitment to a state hospital for attempted restoration, which is very rare in Indiana. In one other case the charges were dismissed after commitment for restoration when the court agreed Mr. Jackson would never be compe-

tent. In 2008, the Indiana Supreme Court held that a judge could dismiss the charges against incompetent defendants who had been in the state hospital for restoration for longer than the maximum sentence of the underlying charge.<sup>6</sup> However, as one of Mr. Jackson's judges noted,<sup>2</sup> Indiana statute does not address the issue of permanent incompetence. The Indiana Supreme Court very recently issued an opinion that requires a defendant be found incompetent by the court and be committed for restoration before a finding of permanent incompetence can be made<sup>7</sup> (*Alva Curtis v. State*, available at <http://www.in.gov/judiciary/opinions/pdf/06141101shd.pdf>), in contrast to the outcome of at least one of Mr. Jackson's arrests. It therefore appears that a legislative solution will be needed to resolve Indiana's difficulties with permanently incompetent defendants.

References

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6. *State v. Davis*, 898 N.E.2d 281 (Ind. 2008)
7. *Alva Curtis v. State*. Available at: <https://mycourts.in.gov/arguments/default.aspx?view=detail&id=1130>. Accessed May 2, 2011

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