State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: July 2, 2026 CR-25-1138

In the Matter of EL SHAMAR B.

COLUMBIA COUNTY DISTRICT ATTORNEY,
Appellant;

MEMORANDUM AND ORDER

EL SHAMAR B.,
Respondent.

Calendar Date: May 12, 2026

Before: Garry, P.J., Pritzker, Reynolds Fitzgerald, Powers and Corcoran, JJ.

Christopher Liberati-Conant, District Attorney, Hudson, for appellant.

Shane A. Zoni, Public Defender, Hudson (*Bryan Bergeron* of counsel), for respondent.

Powers, J.

Appeal from an order of the County Court of Columbia County (Michael Howard, J.), entered April 17, 2025, which, in a proceeding pursuant to CPL 330.20, among other things, found that respondent is mentally ill but does not have a dangerous mental disorder.

Respondent was charged by indictment with robbery in the first and third degrees and burglary in the second degree following an alleged unlawful entry into a dwelling and the forcible removal of property therefrom. In satisfaction of that indictment, respondent pleaded not responsible by reason of mental disease or defect to one count of

robbery in the third degree (*see* CPL 220.15). County Court then ordered that defendant be temporarily confined in a secure facility until psychiatric examinations by two separate qualified psychiatric examiners could be conducted (*see* CPL 330.20 [2]). After such examinations, an initial hearing was held to determine respondent's mental status and the appropriate level of confinement that he required (*see* CPL 330.20 [2], [6]). The psychiatric examiners, who both concluded that respondent had a dangerous mental disorder, testified at the hearing and the reports each drafted were admitted into evidence. The court, nevertheless, determined that respondent had a mental illness – which respondent had conceded during the hearing – but not a dangerous mental disorder (*see* CPL 330.20 [6], [7]). As a result, the court committed respondent to the custody of the Commissioner of Mental Health in accordance with Mental Hygiene Law article 9 (*see* CPL 330.20 [7]). Petitioner appeals.[1]

As a point of reference, "CPL 330.20 requires County Court to conduct an initial hearing within 10 days after receipt of psychiatric examination reports for the purpose of assigning an insanity acquittee to one of three 'tracks' based upon his or her present mental condition" (*Matter of Matheson KK.*, 161 AD3d 1260, 1261 [3d Dept 2018], *lv dismissed* 32 NY3d 945 [2018]; *see* CPL 330.20 [6]). Individuals classified under track one are found "to suffer from a dangerous mental disorder," track two are found to be "mentally ill, but not dangerous" and those classified as track three "are neither dangerous nor mentally ill" (*Matter of Allen B. v Sproat*, 23 NY3d 364, 368 [2014]; *see* CPL 330.20 [1] [c], [d]; [7]). Relevantly, " '[d]angerous mental disorder' " is defined to mean an individual who "currently suffers from a 'mental illness' as that term is defined in [Mental Hygiene Law § 1.03 (20)], and . . . that[,] because of such condition[,] he [or she] currently constitutes a physical danger to [themselves] or others" (CPL 330.20 [1] [c]). "Track status designation, unique to insanity acquittees, is vitally important in determining the level of judicial and prosecutorial involvement in future decisions about an acquittee's confinement, transfer and release," and, germane here, "[t]rack one status is significantly more restrictive than track two status" (*Matter of Brian HH.*, 39 AD3d 1007, 1009 [3d Dept 2007] [internal quotation marks, emphasis and citations omitted]).

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[1] Appeals in this context are limited to those by permission (*see* CPL 330.20 [21] [a] [iii]). Thus, although not raised by the parties, we treat petitioner's notice of appeal as an application for permission to appeal and grant same (*see Matter of Richard W.*, 250 AD2d 695, 695 [2d Dept 1998], *lv denied* 92 NY2d 806 [1998]; *see also Matter of John P. [New York State Off. of Mental Health]*, 208 AD3d 1018, 1018 [4th Dept 2022]; *see generally* CPLR 5701 [c]; *Matter of Hogencamp v Matthew KK.*, 243 AD3d 984, 985 [3d Dept 2025]).

Following respondent's plea, petitioner was required to prove by a preponderance of the evidence that respondent suffers from a dangerous mental disorder to support his confinement in a secure facility under track one (*see Matter of Eric U.*, 40 AD3d 1148, 1150 [3d Dept 2007], *lv denied* 9 NY3d 809 [2007]; *see also Matter of Norman D.*, 3 NY3d 150, 154-155 [2004]). Respondent concedes that he suffers from a "mental illness" as defined in Mental Hygiene Law § 1.03 (20); as such, the only determination left to make is whether, "because of such condition[,] he currently constitutes a physical danger to himself or others" (CPL 330.20 [1] [c] [ii]; *see Matter of James Q.*, 192 AD3d 1370, 1371 [3d Dept 2021]). "This determination must be based on more than expert speculation about dangerousness, and may be shown by presenting proof of a history of prior relapses into violent behavior, substance abuse or dangerous activities upon release or termination of psychiatric treatment, or upon evidence establishing that continued medication is necessary to control the respondent's violent tendencies and that he or she is likely not to comply with prescribed medication because of a prior history of such noncompliance or because of threats of future noncompliance" (*Matter of Amir F.*, 94 AD3d 1209, 1210 [3d Dept 2012] [internal quotation marks, brackets and citations omitted]; *accord Matter of James Q.*, 192 AD3d at 1371-1372).

The evidence at the hearing – after which County Court determined that respondent did not suffer from a dangerous mental disorder – was limited to the testimony and written reports of two qualified psychiatric evaluators, both of whom concluded that respondent did suffer from a dangerous mental disorder. The first examiner, Gary Ciuffetelli, described that he relied upon his observations of respondent, as well as police reports, medical records and several examination reports from local physicians and psychologists in formulating his diagnosis of schizophrenia. Ciuffetelli was able to discern that respondent was lying regarding his use of ecstasy on the date of the underlying crime, which Ciuffetelli found to be the most relevant fact in determining respondent suffered from a dangerous mental disorder. Ciuffetelli also considered, among other things, respondent's substance abuse history; poor insight as to his own sobriety, mental illness and the harm that resulted from his past crimes; respondent's history of noncompliance with antipsychotic medication outside of an institutional setting; as well as his violent criminal history, antisocial behavior and his schizophrenia diagnosis. Based upon these considerations, Ciuffetelli opined that respondent's treatment would be unsuccessful if he were allowed to be treated outside of a secure facility.

The second examiner, Gwendolyn Cody, similarly concluded that respondent had a dangerous mental disorder based upon her examination and review of various medical records, police reports and prior forensic evaluations. Although Cody did not believe

respondent fit the criteria for a schizophrenia diagnosis, she acknowledged that he experienced psychotic symptoms, including auditory hallucinations, and diagnosed him with "Unspecified Schizophrenia Psychotic Disorder." Cody considered numerous factors in reaching this conclusion, including respondent's history of substance abuse, mental health symptoms, violations of court orders and parole conditions, as well as his demonstrated impaired ability to reason and plan, history of violent and dangerous behavior and associated criminal history, which has resulted from such dangerous behaviors. Cody also observed certain inconsistencies in what respondent was reporting to her and the information found in his records. Like Ciuffetelli, Cody observed that respondent had been compliant with his antipsychotic medications while in confinement and, as a result, had not experienced any psychotic symptoms during that time. However, she was doubtful that respondent would be compliant if he were to return to the community under an order of condition.

In setting aside the opinions of these examiners, County Court seemed to believe that they had placed too much weight on respondent's substance abuse history because, according to the court, he had demonstrated an ability to cease his drug use. Yet, the court did not address the fact that respondent's history of drug abuse went well beyond the crack cocaine and heroin that he claimed to no longer use. Indeed, reports indicate that, from the age of 14, respondent abused heroin, crystal meth, cocaine, alcohol, cannabis, prescription opioids and ecstasy. The court credited respondent's self-interested and inconsistent reporting over the analysis of multiple qualified professionals who had the opportunity to meet with him and form opinions based upon these meetings as well as his records, which documented events that directly contradicted respondent's own account. Similarly, to explain away his positive drug screen on the night of the underlying offense, respondent claimed he had been unknowingly dosed. The court credited this account without support or explanation – beyond stating that respondent tested positive for amphetamines but "did not test positive for THC, crack cocaine, heroin, or crystal meth" – despite both examiners disbelieving the claim.

Further, and again in direct contradiction to the examiners' conclusions, County Court found that respondent was likely to be compliant with prescribed antipsychotic medications. However, during his evaluations, respondent refused to acknowledge that he had a mental illness, something that both experts documented and highlighted as a serious factor suggestive of his future dangerousness. If respondent disbelieves that he has a mental illness, he is unlikely to voluntarily and independently take medications to control that mental illness outside of a controlled setting. The court similarly discounted that respondent would likely be noncompliant with any applicable court order by justifying

his violation of an order of protection, noting that respondent was 17 years old at the time of his violation, the protected party was his infant son and the child's mother had agreed to the visit. However, in so concluding, the court seemingly ignored the proof abundant in the record that respondent is likely to flout court direction. Namely, respondent had been released to parole supervision just two days before he committed the instant offense; he was arrested for bail jumping and driving without a license two years prior to the instant offense; four years prior to that, he was arrested for resisting arrest, driving without a license and unauthorized use of a motor vehicle; and the year prior to that, he was arrested for attempted escape – acts which are all indicative of a likelihood of noncompliance. The court also suggested that respondent's violent tendencies were well behind him, an assertion which is also contradicted by the documented evidence inasmuch as he was arrested for criminal obstruction of breathing or blood circulation in 2019 and, during his hospitalization on the night of the instant offense, he required four-point restraints because respondent was believed to pose a danger to those around him.

For these reasons, the record does not support County Court's determination that respondent is not "a physical danger to himself or others" (CPL 330.20 [1] [c] [ii]; *see Matter of Lamont D.*, 9 AD3d 630, 631 [3d Dept 2004], *lv denied* 3 NY3d 609 [2004]). As "[t]his Court's authority in reviewing a commitment determination pursuant to CPL 330.20 is as broad as that of the trier of fact, and we may render the determination warranted by the record" (*Matter of Amir F.*, 94 AD3d at 1212; *see Matter of Stephen W.*, 90 AD3d 1166, 1170 [3d Dept 2011]), we find that petitioner demonstrated by a preponderance of the evidence that respondent suffers from a dangerous mental disorder (*see Matter of John P. [New York State Off. of Mental Health]*, 208 AD3d 1018, 1019 [4th Dept 2022]; *Matter of James Q.*, 192 AD3d at 1374-1375; *Matter of Amir F.*, 94 AD3d at 1212; *Matter of Eric U.*, 40 AD3d at 1150; *see also People v Wachtel*, 188 AD3d 580, 581-582 [1st Dept 2020], *lv denied* 36 NY3d 909 [2021]). Based upon the foregoing, respondent meets the criteria for retention in a secure facility (*see generally* CPL 330.20 [1] [b]).

Garry, P.J., Pritzker, Reynolds Fitzgerald and Corcoran, JJ., concur.

ORDERED that the order is reversed, on the facts, without costs, and matter remitted to the County Court of Columbia County for further proceedings not inconsistent with this Court's decision.

ENTER:

Robert D. Mayberger
Clerk of the Court