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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE DETENTION OF

H.N.,

ANSWER TO PETITION FOR REVIEW

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ORIGINAL

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A. IDENTITY OF RESPONDENT

Respondent, the State of Washington, asks this Court to deny the petition for review.

B. COURT OF APPEALS OPINION

The Court of Appeals decision at issue is In re: H.N., No. 72003-1-I, filed on July 6, 2015 (published).

C. INTRODUCTION

H.N. has filed a petition for review of the Court of Appeals decision cited above, which affirmed the trial court on all three grounds raised in her appeal. This case is governed by RCW 71.05, the Involuntary Treatment Act ("ITA") statute. H.N. was committed for up to 14 days of inpatient treatment following a hearing on whether she, as a result of a mental disorder, constituted a likelihood of serious harm to herself, based upon a recent suicide attempt via overdose.

The three issues raised on appeal were (1) whether the trial court erred in substantively admitting screenshots of text messages sent by H.N. to "A"[1] the night of her overdose; (2) whether the prosecutor's closing argument was improper; and (3) whether there was sufficient evidence for the trial court to find, by a

[1] Respondent will adopt the naming convention of initials consistent with how the Court of Appeals identified certain individuals in its published opinion.

preponderance of evidence, that H.N. suffered from a mental disorder and presented a substantial risk of physical harm to herself. Both the trial court and the Court of Appeals ruled in favor of the State on each of these issues.

H.N. filed a motion for reconsideration on the text message issue, which was denied by the Court of Appeals. The Court denied that motion on August 18, 2015 and this Petition follows.

H.N. argues that each of the three issues identified above is a matter of substantial public interest such that this Court should accept review. However, none of the issues meet the required criteria. For the reasons set forth below, Respondent requests that H.N.'s petition be denied on all grounds.

D. STANDARD FOR ACCEPTANCE OF REVIEW

A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b).

E. STATEMENT OF THE CASE

H.N. was committed to up to 14 days of inpatient treatment under the ITA statute following a hearing before Judge Andrus on May 7, 2014.

The State presented four witnesses at the hearing. The first two witnesses, C.W. and D.B., were roommates, co-workers, and friends of H.N. Both witnesses described how H.N. was normally a happy, intelligent, and social young woman, but that for the few months leading up to her suicide attempt, she had become sad, withdrawn, had been skipping classes, and was a much different person than the one they were used to. RP 4-7, 28-30. One of the witnesses, C.W., noted that H.N. admitted to her that she had been cutting herself after being confronted with bloody items found in the bathroom trashcan. RP 8. C.W. also noted that H.N. had been dealing with the anniversary of H.N,'s ex-boyfriend having committed suicide himself and that H.N. was having difficulty with her current boyfriend, "A," as well. RP 9, 17.

Both roommates testified as to how they came home from work late one evening to discover H.N. passed out and surrounded by an empty bottle of Nyquil, an empty bottle of wine, and an almost empty bottle of vodka. RP 10, 30-32. Each of these bottles

had been almost full earlier that day. Id. H.N. was lying in her own red colored vomit, and the roommates were afraid she was dead. Id. After only being able to briefly rouse H.N. before she passed out again, they quickly called 911 for help. Id. C.W. was particularly concerned given that H.N. was currently on anti-depressants and had previously admitted to a prior overdose on Vicodin. RP 11.

S.T., who was H.N.'s best friend of four years, also testified. She also noticed H.N.'s recent deviation from her normal behavior, which particularly concerned S.T. given her knowledge of H.N.'s prior overdose attempt on Oxycodone and Vicodin two years prior, which ended up with her being committed to a psychiatric ward. RP 38. S.T. provided additional details of H.N.'s internal struggle over H.N.'s ex-boyfriend's suicide and H.N.'s lasting guilt over the situation. RP 42.

The State's final witness, Dr. Cynthia Mason, provided her expert opinion that H.N. was suffering from a Mood Disorder NOS ("not otherwise specified") and that as a result, she presented a substantial risk of harm to herself. RP 46-47. Dr. Mason based this opinion on H.N.'s medical chart, involuntary commitment detention paperwork, the testimony of the other witnesses, her personal interactions with H.N., copies of screenshots of text

messages, as well as a flyer that she received and were placed in H.N.'s medical chart. RP 46.

Notably, both Dr. Mason and H.N.'s father confronted her with the printed version of the screenshots of the text messages from her phone prior to the hearing. After reviewing this information, H.N. did not deny sending them. She indicated "she didn't recall who she'd actually sent the text to or what was contained in the text." RP 49. The Court of Appeals' decision indicates this record was sufficient to constitute an admission by H.N. that she had sent the text messages in question.

The contents of the text messages are significant because, in totality, they rebut any assertion that H.N. accidentally drank too much and passed out. The contents show that H.N. was deliberately taking a combination of medication and alcohol to kill herself. The text messages, between H.N. and "A," show H.N. upset and "about to do something really stupid" with the alcohol and medications in her possession. RP 53. The text messages discuss particulars about H.N.'s life including naming, "A" (the name of H.N.'s boyfriend), "B" (H.N.'s deceased ex-boyfriend), and "S" (presumed to be S.T., her best friend). Id. The messages then give a play-by-play of H.N. consuming the alcohol, beginning to feel

dizzy, and confessing that "I'm not killing myself [for someone who isn't worth it]. I'm killing myself because I'm tired." RP 53-55. The text messages then stop and then resume the next morning with "I think I'm in the hospital now." RP 55.

Following the State's examination of Dr. Mason's knowledge of the screenshots of the text messages, the trial court substantively admitted them as evidence over defense objection.

H.N. also testified and admitted to many of the facts, including that she had been thinking about "B" given that it was close to the anniversary of his death, and that she had been drinking alone and drank too much the night in question and passed out. RP 77-78. However, she denied this was a suicide attempt or that anything had been bothering her. RP 92. She denied any difference in her recent behaviors or any relationship difficulties. RP 92,99. While she testified she did not remember texting that evening, she acknowledged the phone number the text messages came from was hers. RP 91. She denied any feelings or desires to hurt herself and, while acknowledging she had not been seeing her therapist in over a year, requested that she be released to go see him rather than remain in the hospital. RP 96-97.

H.N. presented no other witnesses on her behalf. She explained she had not contacted either of her outpatient doctors and had specifically advised a friend and her boyfriend ("A") both to go to class and not come to court. RP 100.

The parties then provided closing argument and no objection was made to the contents of the prosecutor's argument at any point. The trial court, based upon the evidence presented, found that the State had proven by a preponderance of evidence that H.N. suffered from a mental disorder and that she presented a substantial risk of harm to herself. This appeal followed, where the trial court was affirmed on all issues by published decision on July 6, 2015. H.N.'s motion for reconsideration was denied on August 18, 2015. This petition follows.

F. THE COURT SHOULD DENY THE PETITION FOR REVIEW

1. THE PETITION DOES NOT MEET THE CRITERIA FOR REVIEW UNDER RAP 13.4.

The only basis for review asserted in H.N.'s petition is that each of the three issues raised is a matter of substantial public interest. RAP 13.4(d)(4). She makes no contention that any of the other RAP 13.4(d) criteria apply and thus they will not be addressed

here. For the reasons stated below, none of the three issues raised is a matter of substantial public interest.

a. There Is No Ambiguity In The Court's Ruling On The Screenshots Of The Text Messages That Would Make It A Matter Of Substantial Public Interest.

The Court of Appeals went through great lengths in its decision to explain the broad variety of ways that evidence can be authenticated and admitted. It agreed with the trial court that the low threshold had been met with regard to the text message screenshots in this case and that the trial court had not abused its discretion in admitting the text message screenshots as substantive evidence.

The issue was again raised in H.N.'s motion for reconsideration and again, following briefing on the issue, the Court of Appeals found that the text message screenshots were properly admitted.

Despite these rulings, H.N. continues to insist that the text message screenshots were improperly admitted, despite the lack of authority to support this argument. Because the text messages were properly admitted consistent with the existing case law and statutory authority, review of this issue is not of substantial public interest such that the Supreme Court would be able to provide any

additional clarity on this matter beyond what the Court of Appeals has already provided.

As the record indicates, the trial court and Court of Appeals both found more than ample evidence under ER 901(b)(10) to find that the State had properly authenticated the screenshots of the text messages such that they were admissible.

It is well settled that a trial court's decision on the authenticity of the evidence is reviewed for an abuse of discretion. State v. Payne, 117 Wn. App. 99, 110 (Div. 2, 2003). Thus, the decision must be manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons. Id. This discretion extends to the sufficient of identification. State v. Tatum, 58 Wn.2d 73, 75 (1961).

ER 901(b) is clear that there is no specific test to any one piece of evidence and that the subsections provided in the rule are meant only by way of illustration. There is a wide variety of ways that a piece of evidence can be properly authenticated. In this case, ER 901(b)(10) appeared to be the most analogous to the situation present in this case.[2]

[2] ER 901(b)(4) was also identified in the party's briefing. Those two subsections state:

As explained in Payne, ER 901 simply requires that the proponent make a prima facie showing of authenticity and ER 901 is met if the proponent shows enough proof for a reasonable fact-finder to find in favor of authenticity. Payne, 117 Wn. App. at 108. ER 901 does not limit the type of evidence allowed to authenticate a document and merely requires some evidence which is sufficient to support a finding that the evidence in question is what the proponent claims it to be. Id. at 106. In doing so, the trial court is not restricted by the Rules of Evidence; rather ER 104(a) permits the trial court to consider even inadmissible evidence, so long as it is reliable. City of Bellevue v. Mociulski, 51 Wn. App. 855, 860 (Div. 1, 1988). See also: State v. Danielson, 37 Wn. App. 469, 471-472 (Div. 1, 1972) (discussing how direct or circumstantial evidence may provide distinctive characteristics sufficient to provide authentication).

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(4) Distinctive Characteristics and the Like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.
(10) Electronic Mail (E-mail). Testimony by a person with knowledge that (i) the e-mail purports to be authored or created by the particular sender or the sender's agent; (ii) the e-mail purports to be sent from an e-mail address associated with the particular sender or the sender's agent; and (iii) the appearance, contents, substance, internal patterns, or other distinctive characteristics of the e-mail, taken in conjunction with the circumstances, are sufficient to support a finding that the e-mail in question is what the proponent claims.

Once the prima facie showing is made, the evidence is admissible. Rice v. Offshores Systems, Inc., 167 Wn. App. 77, 86 (Div. 1, 2012). The opponent is free to object based on any other evidence rules that may bar the evidence or introduce contradictory evidence challenging authenticity. Id. Here, H.N. did not do either of these things. Her sole argument is that the initial prima facie case was insufficient; an argument rejected by both the trial court and the Court of Appeals.

The Court of Appeals, in its opinion, delineated five reasons why the State had properly met the requisite minimal threshold, which included (1) H.N.'s own admission to sending the text messages upon being confronted with the screenshots prior to the hearing; (2) H.N.'s name and phone number shown in the screenshots matching her known true name and phone number; (3) the contents of the text messages referencing names of people in H.N.'s life; (4) the contents of the text messages being consistent with the events in H.N.'s life; and (5) the timing of the text messages being consistent with the timing of H.N.'s hospitalization on the night of the incident. In re: H.N., 355 P.3d 294, 301-302 (Div. 1, 2015).

The Court further acknowledged H.N.'s comparison of this case to another recent text message case, State v. Bradford, 175 Wn. App. 912 (Div. 1, 2013) and rejected each and every one of H.N.'s arguments. It reached similar conclusions with H.N.'s arguments arising from State v. Danielson, 37 Wn. App. 469 (Div. 1, 1972).

The text message screenshots were properly admitted consistent with the existing case law. Review of this issue by the Supreme Court would provide no further clarity to this issue and would not affect the substantial public interest.

i. The Court of Appeals acknowledged the evidence as screenshots and still found they were properly admitted.

In an argument raised for the first time in her motion for reconsideration, H.N. attempted to muddy the issue by arguing that because the evidence was a "screenshot" of the text message rather than the "text message" itself, the prima facie case as established above somehow did not apply or suffice.

First, this does not change the nature of the evidentiary test required. As already addressed above, the authenticity test is broad, reviewed for an abuse of discretion, and all that is required is a minimal prima facie case that was met here.

Second, H.N. overly complicates the issue by trying to splice the difference between "text message" and "screenshot of text message." The record is clear that the only evidence present in this case were the screenshots. These were the documents produced and authenticated at trial and the same ones submitted and reviewed by the Court of Appeals. These are the same documents that were shown to H.N. by Dr. Mason and H.N.'s father, that H.N. acknowledged sending. Whatever H.N., on appeal wants to call "it," whether it be "screenshots" or "text messages," it is the same evidence discussed by the trial court, the Court of Appeals, and the parties. "It" was properly authenticated and admitted as evidence.

Beyond that, even under the test advanced by H.N., under State v. Tatum, 58 Wn.2d 73 (1961), which is merely one possible route to authenticity, the requirements are met. The State had "some witness" (Dr. Mason) who was able to give "some indication" of "when, where, and under what circumstances" the screenshots of the text messages were taken and that they "accurately portray the subject illustrated." Using H.N.'s own admission, S.T.'s knowledge given to Dr. Mason, or both, even this standard can be met by Dr. Mason.

ii. H.N. admitted to sending the text messages.

H.N.'s argument on this issue stretches the record in an untenable way. The record shows that prior to the hearing, Dr. Mason confronted H.N. with the screenshots of the text messages and that H.N. "said she didn't recall who she'd actually sent the text to or what was contained in the text." RP 48. H.N.'s father also attempted to speak with H.N. shortly afterward about those same text messages and H.N. dismissed him. RP 49.

Then, when testifying at the hearing, H.N. said she did not remember texting that night. RP 90. She did not deny that she sent the text messages.

Based upon this record, the Court of Appeals correctly concluded that this constituted an admission by H.N. that she had sent the text messages at issue. This exact issue was challenged by H.N. in her motion for reconsideration, which was briefed by both parties and denied by the Court of Appeals.

Now, H.N. makes the novel argument for the first time that her statements meant that she had sent "some" text messages the night of the incident, but that she was not referring to the ones that Dr. Mason had shown her. Instead, defense counsel speculates that H.N.'s response must have been referring to some other

unknown text messages, based upon a research article about how often teenage girls text generally on average. There is no support or basis for this argument. All evidence in the record corroborates H.N.'s admission. Appellant's attempts to twist the record to imply otherwise are improper and do not transform this issue from a straightforward one into a complex one that would affect the substantial public interest.

b. There Is No Substantial Public Interest In H.N.'s Accusations Of Improper Argument.

Examining what was actually said during closing argument demonstrates the lack of support for this issue. Despite H.N.'s accusations of improper comments and burden shifting, the actual argument merely focused on the evidence produced and ultimately the trial court did not find H.N.'s testimony credible.

Even presuming that there was any indicia of improper argument specifically related to the facts of this case, such would not have any effect on the substantial public interest such that it would meet the criteria under RAP 13.4(d)(4) and merit Supreme Court review. Significant case law on what constitutes improper argument already exists in abundance. There is nothing factually

significant about the argument in this case that would not already fit within the framework of the existing case law.

Beyond that, it is notable that there was no objection made to either the prosecutor's cross examination of H.N. or any of the contents of the prosecutor's closing argument. As acknowledged by the Court of Appeals, this "strongly suggests that the remarks did not appear critically prejudicial in the trial's context." In re: H.N., 355 P.3d 294, 305 (Div. 1, 2015). H.N. cannot fail to object at trial and then afterward claim that the argument was so prejudicial it should warrant reversal.

Adding further support against review is that this was a bench trial. Again, as acknowledged by the Court of Appeals, "in the absence of evidence to the contrary, we presume the judge in a bench trial does not consider improper matters or inadmissible evidence in rendering a verdict." Id.

Looking at the actual substance of the prosecutor's argument, the lack of any objection by H.N.'s counsel, and the fact that it was a bench trial, the Court of Appeals did not find any of H.N.'s arguments to this issue to be persuasive. Ultimately, the trial court simply did not find H.N. credible, which is not an issue reviewed by the Court of Appeals. State v. Camarillo, 115 Wn.26

60. 71 (1990) ("Credibility determinations are for the trier of fact and cannot be reviewed on appeal"). This Court does not advance the substantial public interest in any way by rehashing review of an argument that was already found under existing case law not to be improper.

c. A Review Of The Sufficiency Of The Evidence Of This Case Is Not Of Substantial Public Interest.

There is no substantial public interest to the Supreme Court reviewing whether this case was factually sufficient by a preponderance of the evidence. Both the trial court as well as the Court of Appeals set forth detailed reasons as to why the evidence sufficed and the testimony of the State's witnesses was credible. These facts were applied to the existing, well settled case law.

There was no unique issue that arose that would make this particular case significant such that its outcome would have any effect on the public interest. Respondent will not repeat the facts again here as they are amply discussed in the Court of Appeal's published opinion along with the reasons why such facts satisfy the appellate standard of "substantial evidence." In re: H.N., 355 P.3d 294, 303-305 (Div. 1, 2015).

H.N. provides no real reason why this issue should be reviewed by the Supreme Court, beyond that she disagrees with

the two prior court's outcomes. She states no reason why this is a matter of substantial public interest.

G. CONCLUSION

For the foregoing reasons, the petition for review should be denied.

DATED this 16 day of October, 2015.

Respectfully submitted,

DANIEL T. SATTERBERG
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CERTIFICATE OF FILING AND SERVICE

On October 16, 2015, I e-filed the foregoing document with the Supreme Court of the State of Washington at supreme@courts.wa.gov, and caused a copy of the same to be served via email to kate@washapp.org.

On October 16, 2015 I also caused a copy of the same foregoing document to be served via ABC Legal Messenger to be delivered on October 16, 2015 no later than 4:00pm to the following:

Kathleen Shea
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 16th day of October, 2015.

Karen L. Richardson
KAREN RICHARDSON
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OFFICE RECEPTIONIST, CLERK

To: Richardson, Karen
Cc: Kate@washapp.org; Wong, Christopher; Mizuta, Anne; Pizelo, Samuel
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Cc: Kate@washapp.org; Wong, Christopher <Christopher.Wong@kingcounty.gov>; Mizuta, Anne <Anne.Mizuta@kingcounty.gov>; Pizelo, Samuel <Samuel.Pizelo@kingcounty.gov>
Subject: In Re the Detention of H.N./92301-9

Dear Supreme Court Clerk,

Attached for filing is Respondent's Answer to Petition for Review regarding the above referenced case.

Please let me know if you have problems opening the attachment.

Thank you,

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