

69139-2

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NO. 69139-2-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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IN RE DETENTION OF K.I.,

STATE OF WASHINGTON

Respondent,

v.

K.I.,

Appellant.

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APPEAL FROM THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON FOR KING COUNTY

THE HONORABLE JULIE SPECTOR, JUDGE

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**BRIEF OF RESPONDENT**

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DANIEL T. SATTERBERG  
King County Prosecuting Attorney

REBECCA VASQUEZ  
Deputy Prosecuting Attorney  
Attorneys for Respondent  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000

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A. ISSUES PRESENTED

1. The Respondent is not arguing this case is moot.
2. The delay before K.I.'s referral to the DMHP does not warrant dismissal/
3. The evidence established probable cause for a 14-day commitment.
4. The commitment order should be upheld.

B. STATEMENT OF THE CASE

The appellant K.I. appeals from the denial of her motion to dismiss the 14-day involuntary commitment petition and the court's subsequent order entered July 2, 2012, granting the petition and committing her involuntarily. CP 23-25, 30-36.

The petition for initial detention was filed on June 28, 2012, following K.I.'s visit to the Harborview Psychiatric Emergency Services Unit (PES) on June 27. CP 1. A subsequent petition for 14-day involuntary treatment was filed by Harborview on June 29, 2012. CP 11. The petition alleged that K.I. presented as a likelihood of serious harm to herself and a likelihood of serious harm to others. CP 11. K.I. moved to dismiss the 14 day petition on the grounds that the State violated the "six-hour rule" of RCW 71.05.050. CP 15-22.

Records provided by K.I.'s counsel indicated that K.I. arrived at the Harborview Emergency Department on June 27<sup>th</sup> at 5:58 PM and was transferred to the PES at 6:15 PM. CP 15. The records reflect that K.I. was referred to the DMHP at 9:40 PM on June 27, 2012 and was taken into custody at 3:30 AM on June 28<sup>th</sup>, 2012. CP 15. After K.I. was brought to the PES, the records reflect that staff was exploring the "safest, lest-restrictive alternative," gathering more information about the patient, increasing the hospital database, explaining the evaluation process to the patient, and obtaining labs to make sure that there were no medical issues. RP 8. Staff treated K.I. with Tylenol for soreness. RP 8-9. There was a conflict in the records as to whether drug testing of the patient was completed by 6:25 PM or by 7:40 PM. RP 9-10. K.I. reportedly never asked or demanded to leave. RP 8.

The court denied the motion to dismiss the 14 day petition. RP 11-13. The court found that it was unreasonable to conclude that the six hours set out in the statute were triggered by K.I. "hitting the doors" of the ER. RP 11. The court noted that hospitals have a duty to review the "systems" that are presented to them. RP 11. The court found that the six-hour rule was not triggered until 9:40

PM. RP 12. The court concluded that the delay was “not ideal” but that the court did not view it “as an undue delay in the major trauma center in a five state area in the northwest that would trigger the six hour rule.” RP 13.

Dr. Jessica Yeatermeyer testified that K.I. reported she was suicidal, but did not have a specific plan. RP 17. She further testified that K.I. was unable to answer further questions because she was saying nonsensical phrases and responding to internal stimuli. RP 17. She noted the Respondent was making strange movements and shaking like she was having a seizure. RP 17-18. She described how after her interview, she saw the patient frequently knock on the door of the office, and that she was “very kind of aggressive” and would get in the face of staff. RP 18. She observed nurses back away when K.I. was acting in an aggressive manner, and she was escorted back to her room. RP 19. After she was escorted back to her room, the door was locked for her safety. RP 20.

Dr. Yeatermeyer testified that K.I. was suicidal and unable to do what is called “contracting for safety,” meaning that she was unable to answer questions regarding what she was going to do to

keep herself safe. RP 21. Dr. Yeatermeyer noted that after she was locked in seclusion, she began beating on the windows in an almost rhythmic fashion, and was therefore out into restraints to protect herself. RP 21.

Dr. Brent O'Neal testified that K.I. presented a likelihood of physical harm to herself as a result of a mental disorder and that K.I. presented a substantial risk of physical harm to others as a result of a mental disorder. RP 25-26. He testified that since she had been at Harborview, she had demonstrated paranoid thinking and volatile behavior to the point she had required physical restraint in locked seclusion. RP 26. He described a chart note in which she refused to step out of an office doorway, became resistant and combatant when staff attempted to assist her to her room, and was placed in seclusion for the safety of others. RP 27. He described a chart note from June 28<sup>th</sup>, 2012 in which K.I. was noted to be yelling, threatening to staff, spitting on staff, and pounding on doors, and required a show of force to be given I.M. Ativan. RP 28.

Dr. O'Neal also testified that K.I. told him she came to Harborview because she was going to commit suicide. RP 28. Dr. O'Neal testified that the patient continued to be impulsive and

volatile, erratic in her behavior and thinking. RP 29. He testified that based on her recent statements, her psychiatric decompensation, and her potential prior history of self-harm, she continued to present a risk to hurt herself in some way. RP 29.

Dr. O'Neal also testified, as part of the basis of his opinion that K.I. presented a likelihood of serious harm to others, that he had reviewed a police report from a June 24<sup>th</sup> incident in which K.I. had committed an unprovoked assault in which she kicked the victim in the stomach and was seen staring up at the sky chanting, RP 30-31. He testified that while at Harborview, there were multiples times that she exhibited posturing and behavior that made other professionals concerned to the point she has been in locked seclusion and required physical restraint. RP 31.

The court found that there was insufficient evidence that K.I. presented a likelihood of serious harm to self. RP 40. However, the court found that K.I. presented a likelihood of serious harm to others based on her mental disorder. RP 40-42.

### C. ARGUMENT

1. THE RESPONDENT IS NOT ARGUING THIS CASE IS MOOT.

Appellant anticipated that the Respondent here will argue that this appeal is moot, and cites to the recent Division 2 analysis of that issue. See In re the Detention of M.K., 168 Wn. App 621, 728 P. 2d 828 (1983). However, Respondent is not arguing that this appeal is moot, and respectfully requests that the court instead decide this case on the merits, as outlined below.

2. THE DELAY BEFORE K.I.'S REFERRAL TO THE DMHP DOES NOT WARRANT DISMISSAL

RCW 71.05.050 requires several events to occur before the hospital staff may refer a person to the CDMHP. First, a person must be brought to the hospital or agency for "observation or treatment." Second, the person must refuse voluntary admission. Third, the professional staff must "regard" the person as "presenting as a result of a mental disorder an imminent likelihood of serious harm, or as presenting an imminent danger because of grave disability." RCW 71.05.050. Under the plain language of the statute, once these conditions are met, the professional staff "may

detain such person for sufficient time to notify the [CDMHP] of such person's condition to enable the [CDMHP] to authorize such person being further held in custody ... but which time shall be no more than six hours *from the time the professional staff determine that an evaluation by the [CDMHP] is necessary.*" In re the Detention of C.W., 147 Wn.2d 259, 272, 53 P.3d 979 (2002), citing RCW 71.05.050 (emphasis added).

The Supreme Court found that to hold that DMHP referral must occur the moment a patient arrives in an emergency department "ignores the realities of EDs, which often require prioritizing patients so that those with life threatening conditions will be treated first." In re the Detention of C.W., 147 Wn.2d 259, 274. The Supreme Court further found that the interpretation of RCW 71.05.050 as requiring several events to occur before referral to the CDMHP fulfills the legislative purpose of the statute, noting it helps to prevent "inappropriate, indefinite commitment" by providing professional staff with adequate time to evaluate persons brought to hospitals to ensure that lesser restrictive forms of treatment are not appropriate. It also ensures "prompt evaluation and timely and appropriate treatment." Our interpretation "encourage[s] the full use

of all existing agencies [and] professional personnel.” In modern medical practice, this necessarily includes hospital staff who must triage persons brought into EDs. Id. at 274.

Dismissal is not generally the appropriate remedy for violations of RCW 71.05.050. Id. at 282. However, dismissal may be appropriate in the few cases where hospital staff or the CDMHP “totally disregarded the requirements of the statute.” Id. at 283.

In this case, K.I. was in the emergency room for 3 hours and 42 minutes before emergency room staff made a referral to the DMHP. K.I. was detained 5 hours and 50 minutes later. Overall, K.I. was in the emergency room for less than 10 hours. While there is not a lot of detail in the record regarding her evaluation and treatment before the DMHP referral was made, the Supreme court has previously recognized the reasons why a DMHP referral both cannot and should not occur before a patient goes through triage and preliminary evaluation. The trial court also recognized those reasons. There is no evidence that either hospital staff or the DMHP totally disregarded the requirements of the statute, particularly since the statute does not actually provide a time limit for the referral to the DMHP.

Appellant further argues that the court took judicial notice of facts without meeting the requirements of the evidence rules. The Respondent submits that in fact, the court was simply demonstrating an understanding of modern-day emergency rooms consistent with the language in C.W. However, even if the court excludes those “judicially noticed” facts from consideration, the trial court here still reached an appropriate result. A DMHP referral was made less than 4 hours after K.I. arrived at Harborview. Records provided to the court by counsel for K.I. establish that labs were drawn and a psychiatric assessment was conducted. A four hour delay in providing triage and assessment before making a DMHP referral is not unreasonable.

The Supreme Court in C.W. recognized that dismissal is an extreme remedy, and prevents the trial court from carrying out the overall legislative purpose of RCW 71.05. It is not the appropriate remedy here.

3. THE EVIDENCE ESTABLISHED PROBABLE CAUSE FOR COMMITMENT; THE COMMITMENT ORDER SHOULD BE UPHELD

In reviewing an involuntary commitment order, the Court considers whether substantial evidence supports the findings and, if

so, whether the findings in turn support the trial court's conclusions of law and judgment." In re the Detention of LaBelle, 107 Wn.2d 196, 209, 728 P. 2d 138 (1986). In the hearing over 14-day involuntary commitment of a respondent, also called a probable cause hearing, the court determines whether it has been established by a preponderance of the evidence that the respondent, as the result of mental disorder, presents a likelihood of serious harm. RCW 71.05.240(3). "Likelihood of serious harm" has multiple alternative definitions, including the definition of: (a) A substantial risk that: (i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm." RCW 71.05.020 (25).

A "recent overt act" is required to justify commitment under this definition. In re Detention of Harris, 98 Wn. 2d 276, 287, 654 P.2d 109 (1982). This act may be one which has caused harm or

creates a reasonable apprehension of dangerousness. Harris, 98 Wn. 2d 276, 284-285.

At issue in this case, therefore, is whether there was evidence of a recent overt act that created a reasonable apprehension of dangerousness. Appellant argues that there was not, and that the only possible evidence of a recent overt act was the purported history of assault based on the police reports. RO 29-30. Respondent respectfully disagrees with this characterization. Dr. O'Neal testified that while K.I. was at Harborview, there were multiples times that she exhibited posturing and behavior that made other professionals concerned to the point she has been in locked seclusion and required physical restraint. RP 31. Dr. O'Neal read from multiple specific examples in the chart. RP 26-31. In addition, Dr. Yeatermeyer testified to having witnessed nurses back away when K.I. was acting in an aggressive manner. RP 19.

The law requires a recent overt act that creates a reasonable apprehension of dangerousness, but it does not require that the court hear testimony from the staff observing the overt act to make such a finding. The burden at a probable cause hearing is

preponderance of the evidence. RCW 71.05.240(3). The question, therefore, is whether the petitioner established by a preponderance of evidence that there was a recent overt act that created a reasonable apprehension of dangerousness. Multiple examples were provided from the chart and relied on by Dr. O'Neal in forming his expert opinion. The court therefore did not err by finding, by a preponderance of the evidence, that K.I. posed a likelihood of serious harm to others as a result of her mental disorder.

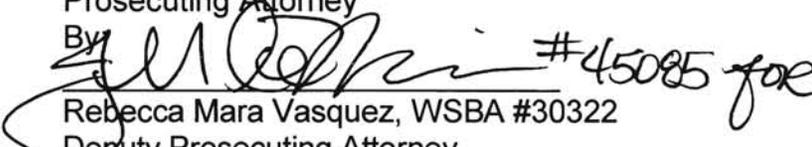
#### D. CONCLUSION

For the foregoing reasons, the State respectfully asks this court to affirm the trial court's 14 day commitment order.

Dated this 31<sup>st</sup> day of December, 2012.

DANIEL T. SATTERBERG  
Prosecuting Attorney

By

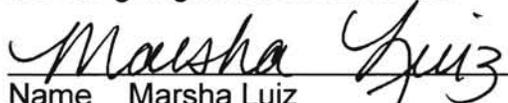
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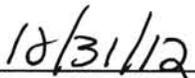
Deputy Prosecuting Attorney  
Attorney for Respondent

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Dana M. Nelson, the attorney for the Appellant, at Nielsen, Broman & Koch, PLLC, 1908 – E. Madison St, Seattle, WA 98122, containing a copy of the Brief of Respondent, in In Re the Detention of K.I., Cause No. 69139-I, in the Court of Appeals, Division I, for the State of Washington.

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

  
Name Marsha Luiz  
Done in Seattle, Washington

  
Date 12/31/12