

NO. 42134-8-II

IN THE COURT OF APPEALS OF THE STATE OF  
WASHINGTON, DIVISION II

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STATE OF WASHINGTON,

Respondent,

v.

CEDRIC JAMARKUS CARTER,

Appellant.

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BRIEF OF APPELLANT

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MICHELLE BACON ADAMS  
WSBA #25200  
Attorney for Appellant

Law Offices of MICHELLE ADAMS,  
PLLC  
904 Dwight Street  
Port Orchard, WA 98366  
(360) 876-5567

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APENDIX

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Findings of Fact and Conclusions of Law entered in this matter on March 14, 2011 ..... -A-

Addendum to Findings of Fact, Conclusions of Law, and Order Granting Department’s Limited Motion to Intervene and Authorizing Involuntary Treatment with Antipsychotic Medication entered in this matter March 21, 2011 ..... -B-

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**A. ASSIGNMENTS OF ERROR**

1. The trial counsel's failure to call an expert witness violated Mr. Carter's right to effective assistance of counsel under the Washington Constitution, Article I, Section 22 and the Sixth Amendment to the United States Constitution
2. Under Federal and Washington State law which provides for a constitutionally protected liberty interest in refusing involuntary medication, the trial court erred in granting the petition for involuntary medication of Mr. Carter when the court had no statutory authority to authorize involuntary medication.
3. The trial court erred in entering findings of fact and conclusions of law, and the supplemental order authorizing involuntary treatment with antipsychotic medication. The findings of fact at issue are: Nos. 2.7, 2.8, conclusions of law 3.1, 3.7. The supplemental order incorporates the finding of facts and conclusions of law.

**B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Whether counsel was ineffective for failing to make arrangements for an appropriate expert witness. (Assignment of Error No.1)
2. Whether the trial court erred in granting the State's petition to involuntarily medicate Mr. Carter when Mr. Carter had a constitutionally protected liberty interest to refuse involuntarily medication and the court had no statutory authority to authorize involuntary medication. (Assignment of Error No. 2)
3. Are the findings and conclusions entered by the trial court pursuant to its ruling of the motion to suppress supported by substantial evidence? (Assignment of Error No. 3)

### C. STATEMENT OF THE CASE

For the purposes of this appeal the hearing conducted on January 26, 2011 is referred to as 1RP in this brief, the hearing of February 11, 2011 is 2RP, the hearing of March 14, 2011 is 3 RP, and the hearing of April 18, 2011 is 4 RP.

Mr. Carter was found not guilty by reason of insanity on November 14, 2008. CP 23 Mr. Carter was committed to Western State Hospital under authority of RCW 10.77. Id. The Department of Social and Health Services intervened in this matter. CP 1 -4. The Department filed a Petition For Involuntary Treatment with Antipsychotic Medication on January 18, 2011. CP 5-10. Several hearings were conducted in this matter. On January 26, 2011 a continuance was granted to allow the defense to utilize an expert. 1RP 5 Judge Haberly was assigned to the case. 1 RP 6 The hearing was continued to February 11, 2011. 1 RP 8. On February 11, 2011 defesnse counsel requested a continuance. 2 RP 3 The request was granted and the hearing on the Petition was set for March 14, 2011. 2 RP 4.

On March 14, 2011 the parties appeared before Judge Haberly again to address the Petition. Defense counsel requested a continuance because the defense expert, Dr. Whitehill, was not available due to his mother's recent

death. 3 RP 2. Defense counsel requested a two to three week continuance. 3 RP 3 Mr. Michael argued against the requested continuance on behalf of the Department. 3 RP 3-5. The defense expert was necessary to address any viable treatment options for Mr. Carter. 3 RP 6. Defense counsel proposed, in the alternative to a continuance, that any order issued be temporary in nature. 3 RP 6 The request for a continuance was denied. 3 RP 7

The Court heard testimony from Dr. Harris, a psychiatrist employed at Western State Hospital. 3 RP 9-24 Dr. Harris was a member of the team providing psychiatric care to Mr. Carter. 3 RP 11. Mr. Carter's diagnosis at the time of the hearing was psychotic disorder not otherwise specified. Id. Dr. Harris described Mr. Carter's behavior on the psychiatric ward. 3 RP 12-13. The behaviors described by Dr. Harris included a suspected assault of another patient in early February, an assault on a staff member in late February, and yelling and jumping in March. 3 RP 13. The alleged assault against another patient involved Mr. Carter pushing the patient. 3 RP 21. The other patient did not need medical treatment. Id. The alleged assault on a staff member occurred when Mr. Carter lunged at a staff member Id. Dr. Harris did not know if Mr. Carter actually touched the staff member. Id. Dr. Harris recommended antipsychotic medication to treat Mr. Carter, on either a

voluntary or involuntary basis. 3 RP 14. Dr. Harris opined that Mr. Carter's behavior would improve if he continued a medication regimen. 3 RP 15. Dr. Harris believed that if Mr. Carter was medicated he could progress and would eventually be transferred back into the community. Id. Dr. Harris provided two reasons for involuntarily medicating Mr. Carter. 3 RP 19 The first reason was due to the potential for Mr. Carter to harm himself or others as a result of some of his behaviors. Id. The second reason was Mr. Carter's inability to function in a way that would allow him to reach his potential. Id. Dr. Harris believed Mr. Carter had the capacity to be a functioning member of society. 3 RP 19-20.

Mr. Carter had expressed his reasons for refusing to take medications on the ward. 3 RP 16 Dr. Harris testified that the statements made by Mr. Carter on the subject included a belief medication was not necessary, he was through with medication, and the medication had the effect of slowing him down which Mr. Carter did not like. Id. Mr. Carter told a nurse at the hospital his family was not in favor of Mr. Carter taking medication and was encouraging him not to take medications. 3 RP 19. At the time of the hearing in March 2011 Mr. Carter was not consistently taking medication nor was he consistently attending group or individual treatment sessions. Dr. Harris

testified as to options available to the staff to deal with Mr. Carter. 3 Rp 17-18 The options included talking with him, isolating him, giving other medications, or restraining him. Id. A change to Mr. Carter's counseling or therapy sessions had not been explored as an alternative to involuntary medication. 3 RP 22. Dr. Harris could not recall a patient with psychotic disorders he did not recommend a medication. 3 RP 23.

After hearing Dr. Harris' testimony, Judge Haberly granted the Petition on a temporary basis. 3 RP 23 The Judge found Mr. Carter was suffering from a psychotic disorder, had recently threatened to cause serious harm to others and assaulted a peer and staff member at the Hospital. Id. Further the Judge found that Mr. Carter was a danger to himself and others and had been at a higher level of functioning in the past. The Judge also found that alternatives to treatment had been attempted without success. Id.

The temporary order expired sixty days after entry. A further hearing was held on April 18, 2011. Ultimately, the expert chosen by defense counsel did not feel qualified to render an opinion on whether forcible medication was appropriate in this case. 4 RP 3. The parties proceeded to present argument on whether a continuing order allowing involuntary medication was appropriate. 4 RP 3-14. The Court granted the petition for a six month

duration from March 14, 2011. 4 RP 16. The Court allowed Mr. Carter to have an expert appointed if he so chose if the Petition was renewed. Id. A timely notice of appeal was filed on June 27, 2011. (CP 35). This appeal follows.

#### **D. ARGUMENT**

1. **MR. CARTER'S RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WAS VIOLATED AND AS A RESULT OF TRIAL COUNSEL'S DEFICIENCIES MR. CARTER DID NOT RECEIVE A FAIR HEARING.**

Claims of ineffective assistance of counsel are reviewed de novo. *State v. White*, 80 Wn.App 406, 410, 907 P.2d 310 (1995) Assertions of ineffective assistance of counsel are determined with the application of a two part test. To establish a claim of ineffective assistance of counsel a defendant must prove counsel's deficient performance and resulting prejudice. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed2d 674 (1984); *In Re Personal Restraint of Rice*, 118 Wn.2d 876, 888, 828 P.2d 1086, *cert. denied*, 506 U.S. 958, 113 S.Ct. 421, 121 L.Ed.2d 344 (1992). To prove deficient performance, a defendant must prove the representation fell below an objective standard of reasonableness under professional norms and a reasonable possibility exists that but for counsel's error, the result would have been different. *State v. Rice*, 118 Wn.2d at 888-89. The Court starts with

the presumption counsel's representation was effective. *State v. Hendrickson*, 129 Wn.2d.61, 77, 917 P.2d 563 (1996).

In the case at hand Defense counsel initially sought appointment of an expert to review the medical reports and to provide an opinion as to whether involuntary medication was warranted. 1 RP 2-3. Trial counsel for Mr. Carter sought appointment of Dr. Whitehill as the expert for the defense. 1 RP 3. Trial counsel for Mr. Carter had worked with Dr. Whitehill previously. Id. At the next scheduled hearing on the petition, which occurred on February 11, 2011, the matter was continued to allow Dr. Whitehill to have sufficient time to write a report in the matter. 2 RP 3-4. The next hearing in this matter occurred on March 14, 2011. At that hearing trial counsel for Mr. Carter requested another continuance because Dr. Whitehill had not finished his report and was not available to testify at the hearing. 3 RP 2-3, 5. The request for a continuance was denied and the court proceeded to take testimony for a sixty day temporary order. 3 RP 7. The next hearing in the case was to determine whether a six month order would be entered occurred on April 18, 2011. At that hearing Dr. Whitehill ultimately decided he could not ethically take a position on whether medication was appropriate. 4 RP 3.

Trial counsel for Mr. Carter did not chose an appropriate expert to assist Mr. Carter in reviewing the medical reports generated by the treatment providers at Western State Hospital and/or to provide any opinion as to whether an order for involuntary medication was appropriate. As stated by trial counsel for Mr. Carter, Mr. Carter requested such an expert. 1 RP 3. An expert was necessary to present a defense to the petition. Trial counsel for Mr. Carter did not have the adequate medical background to fully attack the State's petition. The lack of a medical expert precluded Mr. Carter from presenting an adequate defense to the petition. The record indicates that trial counsel for Mr. Carter did not chose an appropriate expert. The expert chosen by trial counsel for Mr. Carter did not write a report or provide an opinion as to whether the requests made in the petition were appropriate. The decision to appoint an expert that ultimately was not qualified to provide an opinion in this matter fell below an objective standard or reasonableness under professional norms. The Court has previously found failing to present an expert is ineffective assistance of counsel. In the case of *In re Brett*, 142 Wn.2d 868, 16 P.3d 601 (2001) The Supreme Court held that defense counsel's failure to present an expert to investigate the defendant's physical and mental impairments and the failure to present expert testimony regarding

those impairments was ineffective assistance of counsel.

Mr. Carter requested the appointment of an expert to assist him in his defense. The expert chosen by trial counsel for Mr. Carter was not appropriate. It is impossible to determine whether the outcome of the hearing would have been different if an appropriate expert had been appointed. Certainly it is possible an expert would have an opinion that would have shown the drastic measures requested in the petition were not necessary. Additionally, the expert would have had information that would be otherwise unavailable to defense counsel. Without the information the expert could provide, defense counsel's investigation was inadequate. The Court should dismiss the petition.

2. THE TRIAL COURT DID NOT HAVE STATUTORY AUTHORITY TO GRANT THE STATE'S PETITION TO INVOLUNTARY MEDICATE MR. CARTER WHEN HE HAD A CONSTITUTIONALLY PROTECTED LIBERTY INTEREST TO REFUSE INVOLUNTARY MEDICATION.

An individual has a constitutionally protected liberty interest in avoiding unwanted administration of antipsychotic drugs. *Washington v. Harper*, 494 U.S. 210, 221-22, 110 S. Ct. 1028, 108 L.Ed. 198 (1990); *Sell v. United States*, 539 U.S. 166, 178, 123 S.Ct. 2174, 156 L.Ed. 2d 197 (2003); U.S. Const. amend. 14; Wash. Const. art. 1 section 3, 7. The

involuntarily administration of antipsychotic drugs interferes with a person's right to privacy and to produce ideas. *Riggins v. Nevada*, 504 U.S. 127, 134, 112 S.Ct. 810, 118 L.Ed.2d 479 (1992); *State v. Adams*, 77 Wn.App. 50, 56, 888 P.2d 1207, *review denied*, 126 Wn.2d 1016, 894 P.2d 565 (1995).

The applicable statute in this matter is RCW 10.77. The Findings of Fact and Conclusions of Law entered in this matter on March 14, 2011 specifically states that the authority to authorize involuntary administration of antipsychotic medication to Mr. Carter is found under RCW 10.77. (Conclusion of Law 3.7) (CP 27) This conclusion of law was incorporated by reference in the supplemental order entered in this matter on April 18, 2011. (CP 32)

The court must give effect to the plain meaning of the statutory language when interpreting a statute. *State v. Radan*, 98 Wn.App. 652, 657, 990 P.2d 962 (1999); *State v. Thompson*, 151 Wn.2d 793, 801, 92 P.3d 228 (2004). If a statute is unambiguous, a court may not engage on statutory construction. *State v. Bolar*, 129 Wn.2d 361, 366, 917 P.2d 125 (1996). A court should resist the temptation to rewrite an unambiguous statute to suit the court's ideas of what is good policy, and the principle that "drafting of a statute is a legislative, not judicial function" should be recognized. *State v.*

*Jackson*, 137 Wn.2d 712, 725, 976 P.2d 1229 (1999). The court's goal in statutory interpretation is to identify and give effect to the Legislature's intent. *State v. Spandel*, 107 Wn. App. 352, 358, 27 P.3d 613 (citing *State v. Bright*, 129 Wn.2d 257, 265, 916 P.2d 922 (1996)) *review denied*, 145 Wn.2d 1013 (2001). If the language of a statute is unambiguous, the language of the statute is not subject to judicial interpretation. *Id.* Language is considered to be unambiguous when it is not susceptible to two or more interpretations. *State v. Delgado*, 148 Wn.2d 723, 726-27, 63 P.3d 792 (2003). If the legislature omits language from a statute, either intentionally or inadvertently, the court should not read into the statute the language it believes was omitted. *State v. Moses*, 145 Wn.2d 370, 374, 37 P.2d 1216 (2002). Under the rule of lenity, any ambiguity in a statute is interpreted to favor the defendant. *State v. Spandel*, 107 Wn.App at 358. The meaning of a statute is a question of law to be reviewed de novo. *Dept. of Ecology v. Campbell & Gwinn, L.L.C.*, 126 Wn.2d 1, 9, 43 P.3d 4 (2002).

Mr. Carter was found not guilty by reason of insanity and ordered committed to a state mental health hospital for treatment pursuant to RCW 10.77 (CP 23). RCW 10.77.080 allows for "the defendant to move the court for a judgment of acquittal on the grounds of insanity: PROVIDED, that a

defendant so acquitted may not later contest the validity of his or her detention on the grounds that he or she did not commit the acts charged...” RCW 10.77.080. The plain language of the statute does not make any reference to RCW 71.05 (civil commitments) or authorize involuntary medication.

The criminally insane commitment statute, RCW 10.77.110 provides in pertinent part:

(1)...If it is found that such defendant (one acquitted by reason of insanity) is a substantial danger to other persons, or presents a substantial likelihood of committed criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, the court shall order his or her hospitalization, or any appropriate alternative treatment less restrictive than detention in a state mental hospital, pursuant to the terms of this chapter.

The plain language of this statute makes no reference to RCW 71.05 nor does the statute authorize involuntary medication.

RCW 10.77.120 governs the care and treatment of a person committed as criminally insane and provides in pertinent part:

(1) The secretary shall provide adequate care and individualized treatment to persons found criminally insane at one or several of the state institutions or facilities under the direction and control of the secretary...Any person so committed shall not be released from the control of the secretary except by order of a court of competent jurisdiction made after a hearing and judgement of release.

This statute made no reference to RCW 71.05 nor does the statute authorize involuntary medication.

RCW 10.77 does authorize involuntary medication in two limited circumstances. RCW 10.77.092 does authorize involuntary medication solely for the purpose of restoration of competence pending trial prior to judgment. RCW 10.77.092 does not include any language making its provision for involuntary medication applicable to a person found to be criminally insane or committed subject to a not guilty by reason of insanity order. RCW 10.77.093 authorizes involuntary medication for those civilly committed or subject to civil commitment proceedings. RCW 10.77.093 does not contain any language extending its provisions for involuntary medication applicable to a person found to be criminally insane or committed subject to a not guilty by reason of insanity order.

The plain language of RCW 10.77 set forth the Legislatures' limitations on the administration of involuntary medications. The plain language of the statutes, especially RCW 10.77.092 and 10.77.093 indicate that the a court has no authority to order involuntary medication for those committed as criminally insane under a not guilty by reason of insanity order. The legislature has omitted this class of individuals from such treatment. The

admission was either intentionally or inadvertently.

The plain language of the statute seems to unambiguously indicate the legislative intent, which this appellate court must give effect. Of note is the amendment of RCW 10.77.092 and RCW 10.77.093 in 2004 which was in response to federal cases involving involuntary medications. See RCW 10.77.010 Findings - Intent -2004 c. 157. The Legislature did not enact a similar statutory provision pertaining to criminal insane persons committed pursuant to a not guilty by reason of insanity order. This indicates that legislative intent is to exclude this group of persons from involuntary medication.

Given the statutory scheme described above and the legislative intent behind RCW 10.77 as well as the unambiguous language, Mr. Carter should not have been subject to an order for involuntary medication as no statutory authority for the court to enter such an order exists. This court should reverse the trial court's order and preclude the State from filing any further petitions for involuntary medication of Mr. Carter unless and until the Legislature enacts a change to the statutory scheme of RCW 10.77.

This is an issue of constitutional magnitude which may be considered for the first time on appeal. Although trial counsel did not argue the issue of

the trial court's authority to enter an order allowing Mr. Carter to be involuntarily medicated, this court should review the issue as the issue is of constitutional magnitude. As argued above, an individual has a constitutionally protected liberty interest in avoiding unwanted administration of antipsychotic drugs. *Washington v. Harper*, 494 U.S. 210, 221-22, 110 S. Ct. 1028, 108 L.Ed. 178 (1990); *Sell v. United States*, 539 U.S. 166, 178, 123 S.Ct. 2174, 156 L.Ed. 2d 197 (2003). The involuntary administration of antipsychotic drugs interferes with a person's right to privacy and to produce ideas. *Riggins v. Nevada*, 504 U.S. 127, 134, 112 S.Ct. 810, 118 L.Ed.2d 479 (1992); *State v. Adams*, 77 Wn.App. 50, 56, 888 P.2d 1207, review denied, 126 Wn.2d 1016, 894 P.2d 565 (1995). Therefore, the issue of whether the trial court had the authority to enter an order allowing Mr. Carter to be involuntarily medicated is a constitutional issue. Constitutional issues may be argued for the first time on appeal. RAP 2.5(a)(3).

3. THE TRIAL COURT ERRED IN ENTERING FINDINGS OF FACT 2.7, 2.8, 2.9, 2.10, 2.11 AND CONCLUSIONS OF LAW 3.1, AND 3.7

The State must prove by clear, cogent, and convincing evidence that involuntary medication will significantly further its interests and is necessary to further those interests. *Sell v. United States*, 539 U.S. at 180-83. The trial

court must weigh the evidence and determine if the required elements are proven by clear, cogent, and convincing evidence. *Endicott v. Saul*, 142Wn.App.889, 910 176 P.3d 560 (2008). The findings of fact and conclusions of law entered on March 14, 2011 were incorporated by reference into the subsequent supplemental order authorizing involuntary treatment entered on April 18, 2001.

Findings of Facts set forth in provision 2.7 of the document entered on March 14, 2011 state that Mr. Carter had recently threatened, attempted, or caused serious harm to himself and/or others and treatment with antipsychotic medication would reduce the likelihood he would do so. (CP 24). Mr. Carter contests this finding of fact. At the hearing of March 14, 2011 Dr. Harris testified as to Mr. Carter's behavior at the hospital. 3 RP 11-24. Dr. Harris testified that Mr. Carter assaulted another patient in the restroom the month prior, and had previously made threats to fight that patient at an unspecified time. 3 RP 13. Dr. Harris also testified that Mr. Carter was involved in an assault on a staff member in later February. *Id.* The year of the event was not specified although Dr. Harris did refer to the presentation made by counsel for the State, Mr. Michael. *Id.* Mr. Michael indicated that Mr. Carter has assaulted a patient and staff member over the past few weeks. 3

RP 4.

The event described as an assault on another patient was a push that did not cause any significant injury. 3 RP 20-21. Dr. Harris was not aware of any injury to the patient, however Dr. Harris stated that a minor injury may have occurred but he was not certain. 3 RP 21. The other event, an assault against a staff member, was described to have occurred when Mr. Carter beat his fist on a window, started to incite other patients and lunged at a staff member. Id. Dr. Harris did not know if Mr. Carter actually physically contacted the staff member. Id Dr. Harris also described incidents of Mr. Carter attempting to drink foul water, hitting his head and kicking a concrete wall with his fist. 3 RP 12-13. These events as described by Dr. Harris do not support a finding that Mr. Carter must be involuntarily medicated in order to prevent serious harm to himself or others. The events described above do not indicate that Mr. Carter is engaging in dangerous behavior. None of the events rose to the level of serious bodily injury. The Court erred in finding this fact.

Findings of Fact set forth in provision 2.7 also states in summary that Mr. Carter has suffered or will suffer a severe deterioration in his functioning that will endanger his health or safety if he does not receive involuntary

medication. (CP 24 ) Mr. Carter takes issue with this finding as well. Dr. Harris did testify that Mr. Carter had been functioning at a better level in the past and had been in the community program. 3 RP 14-15. Mr. Carter was taken off the program when he absconded. 3 RP 23 It was not clear if Mr. Carter was taking his medications at the time he absconded. Id. When Dr. Harris was asked for his prognosis if Mr. Carter was not given medication, Dr. Harris testified that Mr. Carter's behaviors described would continue. 3 RP 15. Dr. Harris did not indicate that Mr. Carter's condition would worsen if medications were not administered. Given that Mr. Carter was not successful on the community program, and Mr. Carter's compliance with medication regimen was not clear at the time he absconded, the evidence does not indicate that Mr. Carter suffered a sever deterioration in his functioning if not involuntarily medicated or that his health would decrease. The court erred in finding as such.

Findings of Fact set forth in provision 2.7 also states in summary that Mr. Carter will likely be detained for a substantially longer period if involuntary medication is not given. (CP 24). Mr. Carter takes issue with this finding as well.

Findings of Fact set forth in provision 2.7 also states in summary that

involuntary medication is necessary because no other effective less intrusive courses of treatment exist. (CP 24). The lack of other methods of treatment available is also set forth in Finding of Fact 2.8. Finding of Fact 2. 8 states in summary that any alternatives are less effective than involuntary medication because the treatment would be longer than involuntary medication. The evidence presented as to the treatment options addresses both finding of fact 2.7 and 2.8. Dr. Harris testified that alternatives to medication attempted included secluding Mr. Carter and restraining him. No other alternative therapy or counseling had been explored. Dr. Harris did testify that an mood stabilizer could be an effective treatment. 3 RP 15. Since no alternative treatment has been explored, it is not possible to determine if Mr. Carter would remain detained for a longer period of time if he went unmedicated. The Court erred in entering Findings of Fact 2.7 and 2.8.

Mr. Carter also challenges finding of facts 2.7, 2.8, 2.9, 2.10, 2.11 (CP 24-26) on the basis the findings relate to requirements necessary for involuntary medication of person who are civilly committed (see RCW 10.77.093) and for the involuntary mediation to restore the competency of person pending trial (see RCW 10.77.092) as set forth in *Sell v. United States*, supra. These findings are not relevant in this case as no statutory authority to

order the involuntary medication of a criminally insane person committed pursuant to a not guilty by reason of insanity order exists as previously argued.

Mr. Carter challenges Conclusion of Law 3.1 and 3.7. As previously argued, RCW 10.77 does not provide statutory authority for a trial court to order involuntary medication of a criminally insane person committed pursuant to a not guilty by reason of insanity order nor does it allow for the application of RCW 71.05.217 to this case. The Court had no statutory authority to enter an involuntary medication order against Mr. Carter as stated in Conclusion of Law No. 3.7. Additionally, the trial court's order granting the petition allowing involuntary administration of medication which are set forth in both the order of March 14, 2011 and the order of April 18, 2011 have no legal basis and should be reversed. Mr. Carter should not have been subject to an order for involuntary medication as no statute authority exists allowing the court to enter such an order. This court should reverse the trial court's order and preclude the State from filing any further petitions for involuntary medication of Mr. Carter in the future. Although the order of April 18, 2011 has expired, this issue is not moot as the State will likely file additional petitions to involuntarily medicate Mr. Carter in the future.

**E. CONCLUSION**

Based on the arguments above, Mr. Carter respectfully requests this court to reverse and dismiss the order requiring him to be involuntarily medicated.

DATED this 22 day of September, 2011.

  
MICHELLE BACON ADAMS  
Attorney for Appellant  
WSBA # 25200

# APPENDIX

## A

RECEIVED AND FILED  
IN OPEN COURT  
MAR 14 2011  
DAVID W. PETERSON  
KITSAP COUNTY CLERK

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STATE OF WASHINGTON  
KITSAP COUNTY SUPERIOR COURT

State of Washington,  
  
Plaintiff,  
  
v.  
  
Cedric Carter,  
  
Defendant.

NO. 08-1-00985-6  
  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
ORDER GRANTING  
DEPARTMENT'S LIMITED  
MOTION TO INTERVENE AND  
AUTHORIZING INVOLUNTARY  
TREATMENT WITH  
ANTIPSYCHOTIC MEDICATION

HEARING

1.1. Date – March 14, 2011

1.2. Appearances

- Justin Zaug, Deputy Prosecuting Attorney
- Scott E. Michael, Katy Hatfield, Assistant Attorneys General
- Jacob P. Murphy, Counsel for Defendant

1.3. Presence of Defendant

- The Defendant was present
- The Defendant waived his/her presence

FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND ORDER GRANTING  
DEPARTMENT'S LIMITED MOTION TO  
INTERVENE AND AUTHORIZING  
INVOLUNTARY TREATMENT WITH  
ANTIPSYCHOTIC MEDICATION

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1 1.4. Purpose – To consider the Department’s motion to intervene and a  
2 petition for involuntary treatment with antipsychotic medication.

3 1.5. Evidence – The court considered the briefs and oral argument of  
4 counsel, and the testimony of:

5  Charles Harris, M.D., Petitioner.

6  Cedric Carter, Defendant

7  \_\_\_\_\_

8 1.6. Procedures – The Court afforded Defendant all the procedural rights  
9 contained in RCW 71.05.217(7)(c).

10 **FINDINGS OF FACT**

11 The Court finds the following facts by clear, cogent and convincing evidence:

12 2.1. The Defendant was found not guilty by reason of insanity (NGRI) on  
13 November 14, 2008 and was committed to Western State Hospital under the authority  
14 granted under RCW Chapter 10.77, where the Defendant remains today.

15 2.2. When criminal defendants found NGRI are committed to Western State  
16 Hospital, the Department is legally responsible for providing care and treatment to  
17 those defendants.

18 2.3. Dr. Harris, M.D., is an employee of Western State Hospital and has filed  
19 a petition seeking a court order authorizing involuntary treatment with antipsychotic  
20 medication to the Defendant.

1           2.4. The Defendant and the Defendant's guardian, should one exist, was  
2 provided all notices and statements relative to the Petition and the Petition was filed in  
3 a timely manner.

4           2.5. The Defendant has refused to consent to treatment with antipsychotic  
5 medication for the following reasons: he believes he does not need antipsychotic  
6 medications.

7           2.6. The Defendant was advised of the right to refuse medication 24 hours  
8 prior to the hearing of this Petition and those rights were respected.

9           2.7. The Department has a compelling interest in involuntarily administering  
10 antipsychotic medication to the Defendant for the following reasons :

11            Defendant has recently threatened, attempted, or caused serious harm to  
12 self or others and treatment with antipsychotic medication will reduce the likelihood  
13 that Defendant will commit serious harm to self or others.

14            Defendant has suffered or will suffer a severe deterioration in routine  
15 functioning that endangers Defendant's health or safety if he/she does not receive  
16 such treatment, as evidenced by Defendant's past behavior and mental condition  
17 while receiving such treatment.

18            Defendant will likely be detained for a substantially longer period of  
19 time, at increased public expense, without such treatment.

20            Maintenance of the ethical integrity of the medical profession requires  
21 that Defendant receive treatment with antipsychotic medication as evidenced by the  
22 lack of effective, less intrusive courses of treatment.

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Other: \_\_\_\_\_

2.8. Antipsychotic medication is a necessary and effective course of treatment for the Defendant, as evidenced by Defendant's prognosis with and without this treatment and the lack of effective alternative courses of treatment. The alternatives are less effective than medication for the following reasons:

They are more likely to prolong the length of commitment for involuntary treatment.

They are more intrusive to Defendant's liberty and/or privacy interests.

Other: \_\_\_\_\_

2.9. The Defendant would consent to being treated with antipsychotic medication if the Defendant were capable of making a rational decision concerning treatment and this Court is hereby substituting its judgment for that of the Defendant.

2.10. The Defendant  has /  has not expressed any religious or moral objections to the use of antipsychotic medications. The Defendant's stated objections, if applicable, are as follows: \_\_\_\_\_

2.11. The Defendant's guardian, should one exist, or family members or other influential individuals in the Defendant's life  have /  have not expressed any

1 objection to the use of antipsychotic medication. Stated opinions, if applicable, are as  
2 follows: Aunt is in favor of medications, other unspecified  
3 family encourages Mr. Carter not to take medications  
4

#### 5 CONCLUSIONS OF LAW

6 On the basis of the foregoing Findings of Fact and the record herein, the Court  
7 makes the following Conclusions of Law by clear, cogent and convincing evidence:

8 3.1. Under RCW Chapter 10.77, this Court retains personal jurisdiction over  
9 the Defendant. The Court also has personal jurisdiction over the other parties.

10 3.2. Venue is proper in Kitsap County.

11 3.3. When the Criminal Rules of Procedure are silent, a court may look to  
12 the Civil Rules of Procedure for guidance. There is no Criminal Rule of Procedure  
13 governing intervention in a criminal case by a third party. This Court turned to Civil  
14 Rule of Procedure 24 for guidance.

15 3.4. Because the Department is responsible for providing care and treatment  
16 to the Defendant, it has an interest in this case. This interest will be impaired or  
17 impeded unless the Department is permitted to intervene in order to bring the petition  
18 for involuntary treatment with antipsychotic medication. The Department's interests  
19 are not adequately represented by existing parties.

20 3.5. The Department may intervene as of right pursuant to CR 24(a)(2).

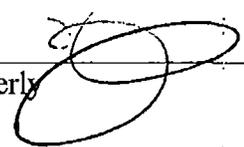
21 3.6. In the alternative, the Department may participate on a limited basis  
22 pursuant to the rule announced in *State v. Mendez*, 157 Wn. App. 565, 238 P.3d 517  
23 (2010).



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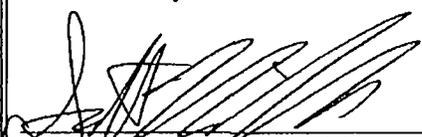
4.5. Other: date set for April 18, 2011  
for the court's decision on continuing involuntary  
medication order

DONE IN COURT this 14 day of March, 2011.

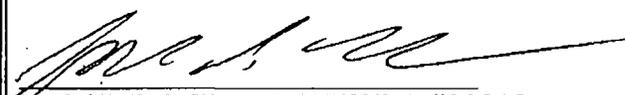
  
\_\_\_\_\_  
Judge Haberly

Presented by:

M. KARLYNN HABERLY

  
\_\_\_\_\_  
SCOTT E. MICHAEL, WSBA #39383  
KATY HATFIELD, WSBA #39906  
Assistant Attorney General

Agreed as to form by:

  
\_\_\_\_\_  
JACOB P. MURPHY, WSBA #29818  
Attorney for Defendant

\_\_\_\_\_  
JUSTING ZAUG, WSBA #26236  
Deputy Prosecuting Attorney

FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND ORDER GRANTING  
DEPARTMENT'S LIMITED MOTION TO  
INTERVENE AND AUTHORIZING  
INVOLUNTARY TREATMENT WITH  
ANTIPSYCHOTIC MEDICATION

# APPENDIX

## B

FILED  
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2011 MAR 21 PM 3:10  
DAVID W. PETERSON

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STATE OF WASHINGTON  
KITSAP COUNTY SUPERIOR COURT

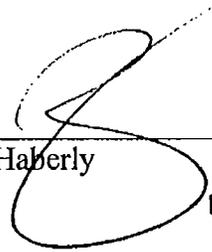
State of Washington,  
  
Plaintiff,  
  
v.  
  
Cedric Carter,  
  
Defendant

NO. 08-1-00985-6  
  
ADDENDUM TO FINDINGS OF  
FACT, CONCLUSIONS OF LAW,  
AND ORDER GRANTING  
DEPARTMENT'S LIMITED  
MOTION TO INTERVENE AND  
AUTHORIZING INVOLUNTARY  
TREATMENT WITH  
ANTIPSYCHOTIC MEDICATION

ORDER

Based on the previously filed Findings of Fact and Conclusions of Law, IT IS  
ALSO ORDERED:  
  
Petitioner and the Department are also authorized to administer Abilify IM if  
oral medication is refused.

3/21/11

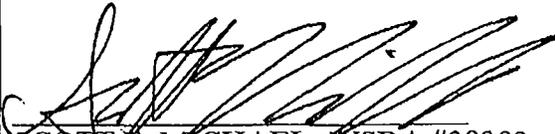
  
\_\_\_\_\_  
Judge Haberly  
M. KARLYNN HABERLY

ADDENDUM TO FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND ORDER  
GRANTING DEPARTMENT'S LIMITED  
MOTION TO INTERVENE AND  
AUTHORIZING INVOLUNTARY  
TREATMENT WITH ANTIPSYCHOTIC  
MEDICATION

1 Presented by:

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SCOTT E. MICHAEL, WSBA #39383  
KATY HATFIELD, WSBA #39906  
Assistant Attorney General

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6 Agreed as to form by:

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JACOB P. MURPHY, WSBA #29818  
Attorney for Defendant

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JUSTING ZAUG, WSBA #25236  
Deputy Prosecuting Attorney

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ADDENDUM TO FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
GRANTING DEPARTMENT'S LIMITED  
MOTION TO INTERVENE AND  
AUTHORIZING INVOLUNTARY  
TREATMENT WITH ANTIPSYCHOTIC  
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RECEIVED AND FILED  
IN OPEN COURT  
APR 18 2011  
DAVID W. PETERSON  
KITSAP COUNTY CLERK

STATE OF WASHINGTON  
KITSAP COUNTY SUPERIOR COURT

State of Washington,  
  
Plaintiff,  
  
v.  
  
Cedric Carter,  
  
Defendant.

NO. 08-1-00985-6  
  
SUPPLEMENTAL ORDER  
AUTHORIZING INVOLUNTARY  
TREATMENT WITH  
ANTIPSYCHOTIC MEDICATION

HEARING

1.1. Date - April 18, 2011

1.2. Appearances

Justin Zaug, Deputy Prosecuting Attorney

Scott E. Michael, Assistant Attorney General

Jacob P. Murphy, Counsel for Defendant

1.3. Presence of Defendant

The Defendant was present

The Defendant waived his/her presence

1.4. Purpose - To consider extending the authority of the Department to involuntarily treat the Defendant with antipsychotic medication.

1 1.5. Evidence – The court considered the briefs and oral argument of  
2 counsel, and the testimony of:

3  \_\_\_\_\_

4 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

5 2.1. This Court incorporates by reference all of the Findings of Fact and  
6 Conclusions of Law entered by this Court on March 14, 2011.

7 2.2. Additional Findings of Fact: \_\_\_\_\_  
8 \_\_\_\_\_  
9 \_\_\_\_\_  
10 \_\_\_\_\_

11 2.3. Additional Conclusions of Law: \_\_\_\_\_  
12 \_\_\_\_\_  
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15 **ORDER**

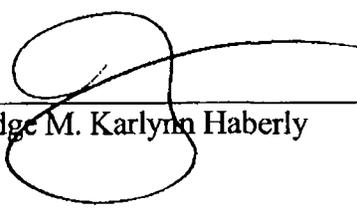
16 Based on the previously filed Findings of Fact and Conclusions of Law, IT IS  
17 ALSO ORDERED:

18 4.1. Petitioner and the Department are authorized to administer Abilify PO,  
19 Risperdal PO, Risperdal Consta IM, Haldol PO, Zyprexa PO, Geodon PO, or  
20 Seroquel PO and if refused Haldol IM, Zyprexa IM, Prolixin IM, Abilify IM, or  
21 Geodon IM and side effect medications at clinically appropriate levels to the  
22 Defendant over his lack of consent or against his refusal as requested in the Petition  
23 filed herein.  
24

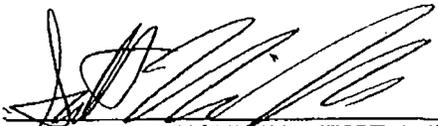
1 4.2. Petitioner and the Department are authorized to involuntarily administer  
2 antipsychotic medications to the Defendant for up to 180 days from the date of the  
3 original order (March 14, 2011). This authorization shall expire on September 10,  
4 2011, unless a new petition for involuntary treatment with antipsychotic medication is  
5 filed with this Court prior to that day. If a new petition is filed with this Court, this  
6 Order shall remain in effect until the hearing on the new petition.

7 4.3. If, prior to September 10, 2011, the Defendant wishes to present new  
8 expert evidence in opposition to the continuing authority of the Petitioner and the  
9 Department to involuntarily treat the Defendant with antipsychotic medication, the  
10 Defendant shall note a hearing before this Court. At this hearing, the Department  
11 shall bear the burden of proof by clear, cogent and convincing evidence that it should  
12 be permitted to continue to involuntarily treat the Defendant with antipsychotic  
13 medication.

14 4.5. Other: \_\_\_\_\_  
15 \_\_\_\_\_  
16 \_\_\_\_\_

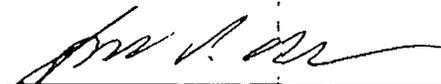
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20 Judge M. Karlynn Haberly

21 Presented by:

22   
23 \_\_\_\_\_  
24 SCOTT E. MICHAEL, WSBA #39383  
Assistant Attorney General

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Agreed as to form by:

  
\_\_\_\_\_  
JACOB P. MURPHY, WSBA #29818  
Attorney for Defendant

\_\_\_\_\_  
JUSTIN B. ZAUG, WSBA #26236  
Deputy Prosecuting Attorney

# PORT ORCHARD ASSIGNED COUNSEL

September 22, 2011 - 5:28 PM

## Transmittal Letter

Document Uploaded: 421348-Appellant's Brief.pdf

Case Name: State v. Cedric J. Carter

Court of Appeals Case Number: 42134-8

Designation of Clerk's Papers                      Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_

Answer/Reply to Motion: \_\_\_\_

■ Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Other: \_\_\_\_\_

Sender Name: Pamela Sykes Knoll - Email: [diane@hemstreetlawoffice.com](mailto:diane@hemstreetlawoffice.com)

COURT OF APPEALS  
DIVISION II

NO. 42134-8-II

11 SEP 26 AM 10:04

IN THE COURT OF APPEALS OF THE STATE OF  
WASHINGTON, DIVISION II

STATE OF WASHINGTON  
BY Tracy Kirby  
DEPUTY

STATE OF WASHINGTON,

Respondent,

v.

CEDRIC J. CARTER

Appellant.

CERTIFICATE OF MAILING

I, Tracy Kirby, declare under penalty of perjury under the laws of the State of Washington that the following statements are true and based on my personal knowledge, and that I am competent to testify to the same.

That on this day I had the Brief of the Appellant in the above-captioned case hand-delivered or mailed as follows:

Copy of Brief of the Appellant Mailed To:

Scott Eric Michael  
Washington Attorney General's Office  
7141 Cleanwater Dr. SW  
P.O.Box 40124  
Olympia, WA 98504-0124

Katy Anne Hatfield  
Washington Attorney General's Office  
7141 Cleanwater Dr. SW  
P.O.Box 40124  
Olympia, WA 98504-0124

Copy of Brief of the Appellant Mailed To:

Cedric Carter  
Western State Hospital

9601 Steilacoom Blvd SW  
Tacoma, WA 98498-4798

Brief of appellant was sent electronically to the Court of Appeals on  
September 22, 2011.

DATED this 22 day of September, 2011, at Port Orchard,  
Washington.

A handwritten signature in cursive script that reads "Tracy Kirby". The signature is written in black ink and is positioned above a horizontal line.

TRACY KIRBY  
Legal Assistant