

FILED  
Court of Appeals  
Division II  
State of Washington  
5/15/2020 4:42 PM

No. 54144-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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IN RE THE DETENTION OF:

J.M., Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR PIERCE COUNTY

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BRIEF OF APPELLANT

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## A. INTRODUCTION

J.M. was arrested for shoplifting from Fred Meyers. After being told of his *Miranda* rights, J.M. made several sets of inculpatory statements to police admitting to the shoplifting as well as his intent to resell the items in order to obtain a gun to shoot someone. One of J.M.'s statements was videotaped by a detective.

J.M. was charged with theft and felony harassment. The charges were dismissed after J.M. was found incompetent and not restorable. The State then petitioned to civilly commit J.M. for 180 days of involuntary treatment on the basis he was gravely disabled and had committed acts constituting felonies.

The court admitted J.M.'s videotaped interview as evidence over defense objections that J.M. was not competent to waive his *Miranda* rights. The court also permitted a witness to testify about threatening Facebook messages she received from J.M., although the State did not offer the messages themselves as evidence, in violation of the best evidence rule. The court ultimately ordered J.M. committed, relying almost entirely on "check-the-box" findings.

This Court must reverse with instructions to vacate the order of commitment because these proceedings violated J.M.'s statutory and constitutional rights.

B. ASSIGNMENTS OF ERROR

1. The admission of J.M.'s videotaped statement to police violated his statutory right to remain silent. RCW 71.05.360(8)(d).

2. The admission of J.M.'s statements to the arresting officer as well as the videotaped statements violated his right to due process of law. U.S. Const. amend. V, XIV; Const. art. I, § 3.

3. The admission of testimony in violation of the best evidence rule violated J.M.'s right to proceedings that comported with the rules of evidence. RCW 71.05.360(8)(c).

4. The court failed to make sufficiently specific written findings to permit meaningful review, in violation of court rules and precedent.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Individuals facing involuntary treatment have the statutory right to remain silent. In the criminal context, the right to remain silent requires a defendant to voluntarily, knowingly, and intelligently waive their *Miranda* rights before any statements the defendant made during a custodial interrogation can be used against them at trial. The statutory right to remain silent in the involuntary treatment context must bestow the same rights as in the criminal context in order to accomplish the intended effect of the statutory grant. Here, the court permitted J.M.'s videotaped interview with law enforcement to be admitted despite evidence J.M. was

not competent to waive his *Miranda* rights. Did the court err in admitting the videotaped interview when the State did not prove J.M. voluntarily, knowingly, and intelligently waived his *Miranda* rights?

2. Civil commitment is a significant deprivation of liberty that requires due process protections. In determining the proper scope of due process protections, courts apply a balancing test that considers the private interest, the risk of an erroneous deprivation of that interest through existing procedures, and the governmental interest. Here, the court admitted J.M.'s statements to police despite the fact the State did not prove J.M. voluntarily, knowingly, and intelligently waived his *Miranda* rights. Applying the balancing test, J.M.'s private interest in avoiding a deprivation of liberty, coupled with the serious risk of an erroneous deprivation through the use of coerced confessions, significantly outweighs the government's interest. Did the admission of J.M.'s statements to law enforcement violate his right to due process of law?

3. Involuntary treatment proceedings must comport with the rules of evidence. Under the best evidence rule, the original writing is required to prove the content of a writing. Here, the State offered a witness's testimony describing threatening messages she received from J.M. on Facebook, but did not offer the messages themselves as evidence. Did the

admission of this testimony violate J.M.'s right to proceedings that comported with the rules of evidence?

4. Courts are required to enter written findings of fact in mental health proceedings tried before the bench. These findings must be sufficiently specific to permit meaningful review. "Check-the-box" factual findings are insufficient. Here, the court's written order committing J.M. to 180 days of involuntary treatment relied almost entirely on "check-the-box" findings, with a few, sparse handwritten notes regarding J.M.'s mental health symptoms. Were these findings of fact inadequate to permit meaningful review as well as to support the court's legal conclusions that J.M. was gravely disabled and had committed acts constituting felonies?

#### D. STATEMENT OF THE CASE

##### **1. J.M. is arrested for shoplifting and makes inculpatory statements to law enforcement after receiving *Miranda* warnings.**

J.M. was stopped by an asset protection manager at a Fred Meyers after the manager allegedly observed J.M. shoplifting Seahawks apparel. RP 30–31. According to the manager, J.M. admitted to stealing the items and said he was planning to pawn them. RP 33. J.M. also allegedly admitted he planned to pawn the items so he could buy a gun to kill his ex-girlfriend's boyfriend. RP 39.

Police were called to the scene. RP 25. According to the responding officer, J.M. reiterated the same plan to pawn the stolen merchandise to buy a gun to kill someone after being read his *Miranda* rights. RP 26. J.M. was then brought to the police precinct, read his *Miranda* rights again by a detective, and made similar statements in a videotaped interview. RP 58–59. During the video, J.M. admitted to stealing the Seahawks merchandise, talked extensively about his mental health history, including prior hospitalizations, and described his struggles with self-harming behavior and alcohol. RP 70–77.

In investigating J.M.'s statements regarding an ex-girlfriend, law enforcement learned J.M. believed he was in a relationship with a 16-year-old girl who was a friend of his sibling. CP 52. However, the girl informed police she did not know J.M. and had never dated him. CP 52. J.M. had reportedly sent the girl multiple messages on social media and had shown up at her high school, which resulted in him being reported for trespassing. CP 52.

J.M. was charged with theft with intent to resell as well as harassment – threats to kill. CP 17. However, he was found incompetent to stand trial and was also found unrestorable after a period of treatment.

CP 16. Accordingly, the charges against him were dismissed without prejudice. CP 17.

**2. The court finds that J.M. is gravely disabled and committed acts constituting felonies and orders 180 days of involuntary treatment.**

The State petitioned to have J.M. committed for 180 days of involuntary treatment. CP 42–56 (second amended petition). The State alleged that J.M. was gravely disabled and also that he had committed acts constituting felonies, and that, due to his mental disorder, he also presented a substantial likelihood of repeating similar acts. CP 43; *see also* RCW 71.05.280(3) (permitting commitment because the person has committed acts constituting felonies but has been found incompetent to stand trial), (4) (permitting commitment because a person is gravely disabled).

At the hearing on the petition, the State presented multiple witnesses, including several law enforcement officers, Fred Meyers employees, and a Western State Hospital physician. The State also presented the testimony of a friend of the girl J.M. believed was his girlfriend. RP 23–89.

In its case-in-chief, the State offered as evidence the videotaped interview that was recorded when J.M. was in police custody. RP 63. The

defense made repeated objections to the admission of this video, arguing that J.M. was not competent to waive his Fifth Amendment rights. RP 20–21, 60, 63. The court ultimately permitted the State to play portions of the video and admitted the video into evidence. RP 65.

The friend of the girl J.M. believed was his girlfriend testified J.M. had sent her Facebook messages. RP 51. According to the friend, J.M. told her that “if anyone stood in his way between him and [the girl J.M. believed was his girlfriend] that they will be fatally shot or dreadfully murdered and so, I took that as a threat because I was kind of standing in the way of them.” RP 53. The defense made a best evidence objection, because the State did not introduce the Facebook messages themselves. RP 51–53. The court permitted the testimony to proceed. RP 53.

The trial court ultimately found that J.M. was gravely disabled and also that J.M. had committed acts that constituted felony theft with intent to resell and harassment and that, as a result of his mental disorder, J.M. presented a substantial likelihood of repeating similar acts. CP 58–59. Based on these findings, the court ordered J.M. committed for 180 days of involuntary treatment. CP 60.

E. ARGUMENT

**1. The admission of J.M.’s statements to police violated his statutory right to remain silent as well as his right to due process of law.**

Involuntary commitment is a significant deprivation of liberty that requires due process protections. *Addington v. Texas*, 441 U.S. 418, 425, 99 S. Ct. 1804, 1809, 60 L. Ed. 2d 323 (1979). Accordingly, the legislature has seen fit to provide due process protections by statute for individuals facing commitment for involuntary treatment. *See* RCW 71.05.360(8). These protections include the right to remain silent. RCW 71.05.360(8)(d).

In the criminal context, the right to remain silent under the Fifth Amendment extends to custodial interrogations. *Miranda v. Arizona*, 384 U.S. 436, 444–45, 86 S. Ct. 1602 (1966). Prior to any questioning, a person “must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has the right to a presence of an attorney, either retained or appointed.” *Id.* at 444. An individual may only waive their *Miranda* rights “voluntarily, knowingly, and intelligently.” *Id.*

Here, the defense argued that J.M.’s videotaped confession while in police custody after his arrest should be excluded because of J.M.’s “inability to fully understand his Fifth Amendment right,” *i.e.*, because he

could not voluntarily, knowingly, and intelligently waive his *Miranda* rights. RP 20. The defense noted J.M.'s forensic evaluation in the related criminal proceedings indicated J.M. "did not have an understanding of his Fifth Amendment privilege and that it did not appear to improve with education." RP 21; *see also* RP 60 (renewing the objection).

The State countered that the the Fifth Amendment did not apply because J.M. was "not a criminal defendant," and that, although he had a statutory right to remain silent, "the statute is silent as to the Fifth Amendment privilege against self-incrimination." RP 21–22, 60–61. The State relied on two sexually violent predator civil commitment cases, *Allen v. Illinois*, 478 U.S. 364, 371–72, 106 S. Ct. 2988, 92 L. Ed. 296 (1986) and *In re the Detention of Robinson*, 2014 WL 7172289 at \*4, 185 Wn. App. 1002 (Dec. 16, 2014) (unpublished) to argue that there was no Fifth Amendment right in the civil commitment context. RP 21–22, 60–61.

The court ultimately admitted the videotaped interview into evidence. RP 65. The arresting law enforcement officer also testified regarding J.M.'s initial inculpatory statements, which were not videotaped. RP 26.

The admission of these statements violated J.M.’s statutory right to remain silent as well as his right to due process, requiring reversal and vacation of the order of commitment.

- a. The statutory right to remain silent affords the same protections as the Fifth Amendment right to remain silent in the criminal context.

Whether the statutory right to remain silent under RCW 71.05.360(8)(d) includes the exclusion of any evidence obtained without a valid *Miranda* waiver appears to be a question of first impression for this Court. However, our Supreme Court’s opinion in *Dunner v. McLaughlin* is instructive. *See McLaughlin*, 100 Wn.2d 832, 676 P.2d 444 (1984). There, the Supreme Court concluded that the statutory right to remain silent in the involuntary treatment context required a “no-inference” jury instruction—an instruction that the jury must not make any adverse inferences from an individual’s failure to testify—just as it would in a criminal trial. *See id.* at 847. The Court held that otherwise “[t]he intended effect of [the] statutory grant cannot be accomplished.” *Id.* *McLaughlin* thus implies that, although the right to remain silent in involuntary commitment proceedings “is one of statutory creation,” this statutory grant bestows the same rights as in the criminal context. *See id.*

The “intended effect” of the statutory right to remain silent is particularly salient where, as here, the State has petitioned for civil

commitment on the basis that the individual has committed acts constituting felonies. *See* CP 58–59. In this situation, a civil commitment hearing for involuntary treatment becomes the mirror-image of a criminal trial, with a significantly lower standard of proof. *See* RCW 71.05.310 (State must prove an individual committed acts constituting felonies by “clear, cogent, and convincing evidence.”); *accord In re LaBelle*, 107 Wn.2d 196, 209, 728 P.2d 128 (1986). Further, due process protections in the involuntary treatment context are even more pertinent where, as here, the State dismisses the criminal charges without prejudice and may re-file them at any time. CP 16–17.

Additionally, this Court has implied that a “voluntariness inquiry” applies whenever a confession is obtained during a custodial interrogation with the intent to use the confession in a criminal prosecution. *See In re Detention of Law*, 146 Wn. App. 28, 44, 204 P.3d 230 (2008). In *Law*, a sexually violent predator civil commitment case, the appellant argued that the polygraph results obtained to monitor his community placement conditions were involuntary confessions in violation of his right to due process. *Id.* at 42–44. This Court rejected this argument, noting that “the voluntariness inquiry required by due process . . . appears to relate only to confessions of criminal suspects obtained by custodial interrogation *for use in criminal prosecutions.*” *Id.* (emphasis added). This Court noted

that the polygraph results were not obtained for this purpose, and that the appellant was only entitled to “limited constitutional protections” as a result. *Id.* *Law’s* analysis suggests that full constitutional protections adhere whenever a confession is obtained for the express purpose of a criminal prosecution, regardless of whether the confession is later utilized in a civil commitment proceeding. *See id.*

The State’s reliance on sexually violent predator cases below was misplaced. *See* RP 21–22, 60–61 (citing *Allen*, 478 U.S. at 371–72 and *Robinson*, 2014 WL 7172289). As this Court has recognized, there is no statutory provision providing a right to remain silent in the sexually violent predator context as there is in the involuntary treatment context. *See Law*, 146 Wn. App. at 50. Accordingly, this Court has rejected the argument that *McLaughlin’s* reasoning applies to sexually violent predator commitment hearings, concluding that “[t]he civil commitment and sexual predator statutes are not identical in purpose or function.” *Id.*

*McLaughlin’s* implicit holding is that the statutory right to remain silent in the civil commitment context must include the attendant rights provided in the criminal context. 100 Wn.2d at 847. This interpretation is necessary to accomplish “[t]he intended effect of [the] statutory grant.” *Id.* *Law* further suggests that constitutional protections apply whenever a confession is obtained for criminal prosecution purposes, regardless of

whether it is later used in a civil commitment hearing. *Law*, 146 Wn. App. at 44. In light of the holdings of *McLaughlin* and *Law*, this Court should hold that confessions obtained during a custodial interrogation without a valid *Miranda* waiver are inadmissible in civil commitment proceedings.

- b. The State did not meet its burden to prove that J.M. voluntarily, knowingly, and intelligently waived his *Miranda* rights, and his videotaped statement should be excluded as a result.

“Under *Miranda* and its progeny, the State bears the burden of demonstrating that a suspect knowingly and intelligently waived his *Miranda* rights before it may introduce incriminating statements made during the court of custodial interrogation.” *State v. Mayer*, 184 Wn.2d 548, 556, 362 P.3d 745 (2015). “Only if the totality of the circumstances surrounding the interrogation reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived.” *Id.* (internal quotation marks omitted) (quoting *Moran v. Burbine*, 475 U.S. 412, 421, 106 S. Ct. 1135, 89 L. Ed. 2d 410 (1986)). Whether the State has met its burden to show that an individual properly waived their *Miranda* rights is a matter of law this Court reviews *de novo*. *Id.* at 555.

Here, the State did not meet its burden to show that J.M. “voluntarily, knowingly, and intelligently” waived his *Miranda* rights

prior to making a videotaped statement. *Miranda*, 384 U.S. at 444. The only evidence proffered by the State was that the detective conducting the videotaped interview read J.M. his *Miranda* rights from a form and that J.M. agreed to be interviewed. RP 59. Conversely, the defense argued that J.M.'s forensic evaluation demonstrated J.M. did not have an understanding of his Fifth Amendment rights and that his understanding did not improve with education. RP 21, 60. Further, J.M. was ultimately found incompetent to stand trial on the basis that he was unable to understand the nature of the proceedings against him and was unable to assist in his own defense. CP 16. This should have created a strong presumption that J.M. was not able to voluntarily, knowingly, and intelligently waive his *Miranda* rights.

In sum, the State did not meet its burden that J.M. properly waived his *Miranda* rights, and the admission of J.M.'s videotaped statements violated his statutory right to remain silent.

- c. Due process requires involuntary confessions be excluded in civil commitment hearings, and thus the admission of J.M.'s statements to police violated his constitutional rights.

In addition to violating J.M.'s statutory right to remain silent, the admission of the videotaped statements violated J.M.'s constitutional right to due process of law. *See Addington*, 441 U.S. at 425 (civil commitment is a deprivation of liberty requiring due process protections). Further,

although the defense only challenged the admissibility of J.M.'s videotaped statements, the admission of the *Mirandized* statements J.M. made to the initial arresting officer also violated J.M.'s due process rights. RP 26. This Court may consider the erroneous admission of the statements to the arresting officer as a manifest error effecting a constitutional right. *See* RAP 2.5(a).

*Law* holds that the *Mathews v. Eldridge* balancing test is appropriate to determine to the proper scope of due process protections in civil commitment hearings. *Law*, 146 Wn. App. at 43 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)). Under the *Mathews* test, courts balance (1) the private interest affected; (2) the risk of erroneous deprivation of that interest through existing procedures and the probable value, if any, of additional procedural safeguards; and (3) the governmental interest, including the costs and administrative burdens of additional procedures. *Mathews*, 424 U.S. at 335; *see also Post v. City of Tacoma*, 167 Wn.2d 300, 313, 217 P.3d 1179 (2009). It is “important to focus on the nature of the interest at stake in the sense that the more important the interest, the more process is required.” *Nguyen v. Dep’t of Health Med. Quality Assurance Comm’n*, 144 Wn.2d 516, 525–26, 29 P.3d 689 (2001). In balancing the factors, “[t]he interest of the individual is the primary concern.” *Id.* at 526.

Here, the private interest at stake is J.M.’s loss of liberty for involuntary treatment for 180 days, the maximum period of time permitted under the Involuntary Treatment Act. *See* RCW 71.05.320(8). Involuntary treatment often includes behavior modification and the possibility of forced medication, massive intrusions into one’s bodily autonomy. *See Vitek v. Jones*, 445 U.S. 480, 492, 100 S. Ct. 1254, 63 L. Ed. 2d 552 (1980). Further, the attendant collateral consequences of civil commitment, including the associated societal stigma, must be considered. *See Addington*, 441 U.S. at 425–26. Accordingly, it is well-established that civil commitment for involuntary treatment involves “a massive curtailment of liberty.” *Humphrey v. Cady*, 405 U.S. 504, 509, 91 S. Ct. 1048, 31 L. Ed. 394 (1972); *see also LaBelle*, 107 Wn.2d at 201.

Turning to the second factor, it is fundamental that involuntary confessions cannot be used to convict a defendant in a criminal case. *See Jackson v. Denno*, 378 U.S. 368, 385–86, 84 S. Ct. 1774, 12 L. Ed. 2d 908 (1964); *see also* CrR 3.5 (establishing procedures for considering the admissibility of a defendant’s statements). This is because of the “probable unreliability of confessions that are obtained in a manner deemed coercive, but also because of the ‘strongly felt attitude of our society that important human values are sacrificed where an agency of the government, in the course of securing a conviction, wrings a confession

out of an accused against his will.”” *Id.* (quoting *Blackburn v. Alabama*, 361 U.S. 199, 206–207, 80 S. Ct. 274, 4 L. Ed. 2d 242 (1960)).

The exact same reasoning holds true for civil commitments. If a court is permitted to consider a confession without any procedural safeguards as to its voluntariness, there is a serious risk of an erroneous deprivation of liberty. *See State v. Myers*, 86 Wn.2d 419, 425, 545 P.3d 538 (1976) (noting the “due process problems” that arise when the trier of fact considers an involuntary confession). Requiring the State to prove that an individual voluntarily, knowingly, and intelligently waived their *Miranda* rights in an involuntary treatment hearing serves to protect against this erroneous deprivation.

With regards to the third *Mathews* factor, the State undoubtedly has an interest in committing individuals it deems to be a safety risk to themselves or others. *See LaBelle*, 107 Wn.2d at 201. However, this interest is outweighed by the force of the individual’s private interest as well as the risk of an erroneous deprivation of liberty through the use of coerced confessions. *See Humphrey*, 405 U.S. at 509; *Jackson*, 378 U.S. at 385–86. In light of the significant individual interest and the serious risks of an erroneous deprivation of that interest if the court considers an involuntary confession, the *Mathews* balancing test tips in favor of requiring strong procedural safeguards against the admission of an

involuntary confession. *See Mathews*, 424 U.S. at 335. Thus an involuntary treatment court should determine whether an individual was competent to waive their *Miranda* rights prior to admitting the individual's statements to police.

Again, the State did not prove that J.M. voluntarily, knowingly, and intelligently waived his *Miranda* rights. Further, the court did not even consider the voluntariness of the initial statements to police nor the videotaped confession. The absence of these procedural safeguards denied J.M. his right to due process.

A constitutional error can only be harmless "if the untainted evidence is so overwhelming that it necessarily leads to the same outcome." *Mayer*, 184 Wn.2d at 566. Here, the court noted that J.M. had confessed, including "trying to get some money to get this gun," in concluding that J.M. had committed acts constituting felonies. RP 110. The videotaped statements also included lengthy admissions from J.M. regarding his mental health and history of self-harming behaviors, facts the court ostensibly relied on in finding J.M. gravely disabled. RP 73–77; CP 59. Accordingly, the admission of J.M.'s statements cannot be held harmless.

Because the State did not meet its burden to prove that J.M. made a valid waiver of his *Miranda* rights prior to making inculpatory statements,

the admission of these statements violated J.M.'s statutory right to remain silent as well as his right to due process. Reversal and vacation of the order of commitment is required.

**2. The trial court erred in overruling the objection under the best evidence rule.**

A person facing involuntary treatment has the right to a proceeding that comports with the rules of evidence. RCW 71.05.360(8)(c). Under ER 1002, to prove the content of a writing, the original writing is required. *See also State v. Fricks*, 91 Wn.2d 391, 397, 588 P.2d 1328 (1979) (when a party seeks to prove the terms of a piece of writing, “the original writing [must] be produced unless it can be shown to be unavailable for some reason other than the serious fault of the proponent.”) (internal quotation marks and citations omitted). “[T]he wisdom of the best evidence rule rests on the fact that a document is a more reliable, complete, and accurate source of information as to its contents and meaning than anyone’s description.” *State v. Modesky*, 15 Wn. App. 198, 201, 547 P.2d 1236 (1976).

Here, the State offered testimony from a person who was a friend of the girl J.M. thought was his girlfriend. RP 50–51. The friend testified that J.M. sent her messages via Facebook that she found threatening. RP 51–54. Specifically, she testified that J.M. wrote her a message stating

“that if anyone stood in his way between him and [the girl J.M. believed to be his girlfriend] that they will be fatally shot or dreadfully murdered.”

RP 53. The defense objected on the basis that the Facebook messages themselves had not been admitted into evidence and thus the friend’s testimony violated the best evidence rule. RP 51–53. The court permitted the witness to testify regarding the threats she read on Facebook. RP 53.

The witness’s testimony as to the contents of the Facebook messages violated the best evidence rule as the messages themselves were not offered or admitted at the hearing. No explanation was offered for the State’s failure to produce the messages. *See Fricks*, 91 Wn.2d at 397.

Further, this witness’s testimony was the *only* evidence presented during the hearing that J.M. had committed acts that constituted felony harassment. Accordingly, this violation of the best evidence rule was highly prejudicial. *See id.* at 398.

### **3. The court failed to make sufficiently specific findings.**

Courts are required to enter written findings of fact and conclusions of law in mental health proceedings tried before a bench. *LaBelle*, 107 Wn.2d at 218; MPR 3.4(b). “[W]here findings are required, they must be sufficient specific to permit meaningful review.” *Labelle*, 107 Wn.2d at 218. Accordingly, these findings must, at a minimum, indicate the factual bases for the ultimate legal conclusions. *Id.*

“[C]onclusory and general findings” that consist of “preprinted standardized form[s] reciting generally the statutory grounds for involuntary commitment” are inadequate. *Id.*

This Court recently held that “check-the-box findings” used in a commitment order where the fact-finding court checks boxes on a boilerplate form, are insufficient to permit meaningful review pursuant to *LaBelle. In re Det. of G.D.*, 11 Wn. App. 2d 67, 70–71, 450 P.3d 668 (2019). This Court further held that when a trial court relies on “check-the-box” findings to support involuntary commitment, reversal is required. *See id.* at 72–73.

Here, the trial court order imposed 180 days of involuntary treatment relying almost entirely on “check-the-box findings.” *See* CP 57–60. The court checked boxes indicating it was finding J.M. was “gravely disabled” as a matter of law as well as that J.M. had committed acts constituting felonies and had a substantial likelihood of repeating similar acts. CP 58–59; *see also* RCW 71.05.280(3), (4) (permitting involuntary treatment on these grounds). However, the court did not provide sufficient findings to support either legal conclusion.

In finding an individual to be “gravely disabled,” a court must conclude that, as a result of a mental disorder or use of alcohol or other psychoactive chemicals, the individual either (1) is in “danger of serious

physical harm resulting from a failure to provide for his or her essential human needs of health or safety;” or (2) “manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.” RCW 71.05.020(22).

Here, the court concluded that J.M. was “gravely disabled” on the basis that he was in danger of serious physical harm. CP 59. The court’s only factual findings in support of this conclusion were its handwritten note that J.M.’s current mental health status revealed “[d]elusional thoughts disorganization mood lability, self harm, limited insight, currently needs the supervised setting of the hospital, poor insight.” CP 59. These are “conclusory and general findings” that are insufficient to permit meaningful review as required by *Labelle*, 107 Wn.2d at 218.

In finding J.M. committed felonies and presented a “substantial likelihood” of repeat offenses, the court checked the appropriate box and then handwrote that J.M. “did commit thefts with intent to sell, as well as harassment threats to kill.” CP 59; *see also* CP 58. However, this is entirely a legal conclusion, bereft of any factual support. Pursuant to *G.D.*, these insufficient findings warrant reversal. *See G.D.*, 11 Wn. App. 2d at 70–71; *see also LaBelle*, 107 Wn.2d at 218.

In sum, the court's factual findings were insufficient. The court relied almost entirely on checkboxes, with a few brief handwritten notes. The court's findings do not permit meaningful review. *See LaBelle*, 107 Wn.2d at 218. Reversal of the order is required. *See G.D.*, 11 Wn. App. 2d at 71.

F. CONCLUSION

For the reasons stated above, this Court should reverse with instructions to vacate the order of commitment on the basis that the Court erred in admitting J.M.'s statements to police in violation of his statutory right to remain silent and his right to due process. In the alternative, this Court should reverse because the best evidence rule was violated and the court's findings were insufficient to support the order of commitment.

DATED this 15th day of May, 2020.

Respectfully submitted,

/s Jessica Wolfe

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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO**

IN RE THE DETENTION OF )

J.M., )

APPELLANT. )

NO. 54144-1-II

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