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

In re the Detention of

M.S.

Appellant.

BRIEF OF RESPONDENT

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I. INTRODUCTION

M.S. is a 40-year-old man who is diagnosed with schizoaffective disorder. His ninth admission to Western State Hospital occurred after he was found incompetent to stand trial for Assault in the Third Degree. Doctors at Western State Hospital petitioned for M.S.'s further detention under the Involuntary Treatment Act on the grounds that, as a result of a mental disorder, he was (1) substantially likely to commit similar acts, and (2) gravely disabled.

Before M.S. was brought into the courtroom for his civil commitment hearing, the petitioners requested that he be partially restrained for the hearing. The trial court heard testimony from multiple witnesses and ruled restraints were necessary before bringing M.S. into the courtroom. Subsequently, M.S. was found to have committed acts constituting Assault in the Third Degree and that he presented a substantial likelihood of repeating similar acts due to a mental disorder. He was also found to be gravely disabled.

M.S. sought revision to the Pierce County Superior Court, which found that M.S. did not present a substantial likelihood of repeating similar acts but did find him gravely disabled. Consequently, M.S.'s argument regarding substantial likelihood are misplaced; that issue is not before this Court.

M.S. now appeals the order that committed him. M.S. argues that the trial court erred in ordering him to appear in restraints and that insufficient evidence supports the superior court's determination that he is gravely disabled. Substantial evidence supports the superior court's findings, and the findings support the legal conclusion that M.S. is gravely disabled as a result of his mental disorder. Therefore, the civil commitment order should be affirmed as revised by the superior court.

II. COUNTERSTATEMENT OF THE ISSUES

- A. The trial court held a pretrial hearing before M.S. was present in the courtroom. Evidence at the hearing established that M.S. presented a flight risk and safety concerns. Did the trial court properly order M.S. physically restrained during his commitment hearing?
- B. Does sufficient evidence support the superior court's conclusion that M.S. was gravely disabled as a result of a mental disorder?¹

III. COUNTERSTATEMENT OF THE CASE

M.S. was arrested for trespass at a CVS store. Clerk's Papers (CP) 4. During the arrest M.S. spat on one of the responding officers. *Id.* M.S. was subsequently charged with one count of Assault in the Third Degree. *Id.*

Western State Hospital petitioned the Pierce County Superior Court for an order allowing up to 180 days of involuntary treatment for M.S. on

¹ M.S. also assigns error and raises as an issue whether the trial court erred in committing M.S. on the basis of substantial risk of committing similar offenses. This is not an issue. The superior court already revised the trial court as to that finding and this decision is not being challenged by the State.

two bases. CP 1-11. First, the hospital alleged that M.S. had committed acts constituting the felony of Assault in the Third Degree and that he presented a substantial likelihood of repeating similar acts as a result of a mental disorder. CP 2. Second, the hospital alleged that M.S. was gravely disabled as the result of a mental disorder. *Id.* The petition was supported by the declaration of Dr. Mallory McBride, Ph.D., and Dr. Mary Cason, M.D. CP 4-11.

Prior to the hearing on the petition, the petitioners made a pre-trial motion to request M.S. remain in restraints. Verbatim Report of Proceedings (VRP I) 4:22-23, Nov. 12, 2019.² M.S. was not present in the courtroom. VRP I 4:20.

On the pre-trial motion regarding restraints, Stacy Brymer, RN, testified on behalf of the petitioners. VRP I 9:13. Nurse Brymer testified that M.S. was a flight risk and very hard to redirect. VRP I 10:14-15. She elaborated on her concern regarding M.S.'s flight risk, citing a previous medical appointment where he had darted for the door while in restraints. VRP I 10:14-24. She also testified that M.S. becomes hostile when discussing medications, and is angry at Dr. Cason. VRP I 11:4-11.

² VRP I includes the transcripts from two different hearings, the involuntary commitment hearing on November 12, 2019, and the involuntary medication hearing on November 22, 2019. M.S. is only appealing the order from the involuntary commitment hearing on November 12, 2019. CP 80.

Nurse Brymer was concerned for Dr. Cason's safety given that she would be testifying at the hearing and her close proximity to M.S. in the courtroom. VRP I 11:14-20.

Dr. Cason also testified on the pre-trial motion. VRP I 12:23. She testified that M.S. has a history while at Western State Hospital of being borderline assaultive when he was not pleased, specifically noting an incident at his last competency evaluation. VRP I 13:15-17. M.S. had grabbed the evaluator's wrist and blocked her from exiting the room, requiring other staff to take control of the situation. VRP I 13:17-20. She also testified that M.S. has a history of attempting to escape from Western State Hospital, including breaking a window and jumping out. VRP I 14:2-4. Following the testimony of the two witnesses, the petitioners requested one arm be free so M.S. could pass notes to his attorney. VRP I 17:12-20.

Before ruling, the Court also made a record of the layout of the courtroom, indicating that M.S. was the closest to the door and was in close proximity to the doctor. VRP I 16:11-25. The Court also noted that the chairs are not bolted to the floor and was aware of prior instances of assaults and instances where doctors were struck in the courtroom. VRP I 17:4-10.

The Court found that both witnesses seemed fearful and that Dr. Cason in particular had reason to be fearful. The Court also

acknowledged that this was not a jury trial and that he felt he could fairly decide the case. VRP I 18:15-23. Following this ruling, M.S. was brought into the courtroom in partial restraints. VRP I 19:7.

The first witness was Deputy Earl Seratt of the King County Sheriff's Office. VRP I 21:8-9. Deputy Seratt testified that he responded, in full uniform, to assist his partners with a subject causing a disturbance at a CVS Pharmacy. VRP I 22:8-9, 25:15-17. Deputy Seratt testified that M.S. was already detained when he arrived on scene. VRP I 23:6-7. M.S. had a very aggressive tone, was cursing, and started physically coming at Deputy Seratt when he interacted with M.S. VRP I 23:19-24. M.S. spat on Deputy Seratt, despite him standing a few feet away from M.S. VRP I 25:5-9. Deputy Seratt further testified he observed open sores that were oozing on M.S.'s body. VRP I 26:10-11. M.S. also appeared to be experiencing a mental health crisis and was muttering and saying incoherent statements and moving in a robotic fashion. VRP I 27:1-3, 23-24.

Dr. Cason testified next. She stated that M.S. suffers from schizoaffective disorder. VRP I 34:19-20. Dr. Cason explained that M.S. has symptoms of psychosis, including responding to internal stimuli. VRP I 34:24-35:4. M.S. also has co-existing mood disorder symptoms including ongoing hypomania, very unstable affect, disorganized speech and thought form, physical agitation and restlessness, and sometimes an

elevated expansive mood and grandiosity flare to his thinking. VRP I 35:4-16. Dr. Cason testified that Deputy Seratt's testimony of M.S.'s condition was consistent with her diagnosis of schizoaffective disorder. VRP I 36:1. She also testified that these symptoms are still intermittently present, particularly when limits are set on his behaviors or he receives answers to questions he does not like. VRP I 36:7-9.

Dr. Cason testified that M.S. has very poor judgment, adding that M.S. can be provocative at times, including one incident where M.S. made provocative racial statements that led to an incident where M.S. was assaulted. VRP I 36:12-22. M.S. does not have insight into the fact that he suffers from a mental disorder and has told Dr. Cason that he does not believe he has a mental disorder. VRP I 37:6-11. M.S. consistently refuses to take antipsychotic medication and was essentially unmedicated except on occasions when he took "as needed" medication. VRP I 37:20-38:7. The "as needed" medications are not antipsychotic medications and do not treat the underlying condition. VRP I 38:10-11. The "as needed" medication is used to momentarily calm M.S. VRP I 38:11-12. Dr. Cason testified that the prescribed antipsychotic medications are necessary for M.S.'s mental disorder to recover. VRP I 38: 22-24. Further, Dr. Cason testified that M.S. was currently on his ninth hospitalization at Western State Hospital since 2004. VRP I 39:2.

Dr. Cason stated that M.S.'s mental disorder interferes with his ability to provide for his basic health and safety needs. VRP I 40:3-14. Dr. Cason acknowledged that M.S. does fine with his activities of daily living in the structured environment of the hospital, but she had concerns about his ability to engage in these activities in a less structured setting. VRP I 39:11-22. Dr. Cason cited two instances where M.S. did not cooperate with dental care that he had requested, and that it was her professional opinion that it would be hard for him to adequately meet his needs in the unmedicated and untreated state that he was currently in. VRP I 40:3-8. It was Dr. Cason's professional opinion that, given M.S.'s provocative behaviors, it would be difficult for him to meet his basic safety needs if he was discharged. VRP I 40:11-14.

Dr. Cason testified that M.S. presents a substantial likelihood of repeating acts similar to the behavior Deputy Seratt testified to. VRP I 40:22. She stated it was extremely likely given his response when limits have to be set around his behavior. VRP I 40:22-23. Further, it was very likely it would recur if M.S. was released in his unmedicated and untreated state. VRP I 40:24-41:2.

Finally, Dr. Cason testified that, in her professional opinion, M.S. is not ready for a less restrictive alternative to an inpatient setting and that he currently needs to remain within the highly structured environment of

Western State Hospital. VRP I 41:3-11. Furthermore, it was her opinion that M.S. would have to show a remission of symptoms in order to be ready for a less restrictive alternative, and needed further treatment in the inpatient setting of Western State Hospital. VRP I 41:5-15.

M.S. testified that it was his desire to be released from Western State Hospital. VRP I 50:16-17. He testified that he had several housing options available upon discharge, including his mother's condo, his sister's apartment, hotels in Seattle, and his grandparent's cabin. VRP I 50:21-51:2. He indicated he could stay with relatives on a trial basis. VRP I 51:2-3. M.S. also testified he had financial resources, including SSI and SNAP benefits, and savings. VRP I 51:7-13. M.S. testified that, despite not currently receiving those benefits, he would be able to reinstate them upon release. VRP I 50:16-25.

M.S. did acknowledge that he had a mild version of a mental illness, but it was something he could deal with day to day. VRP I 55:5-7. M.S. also testified that he was refusing antipsychotic medication and would seek to get other regimens in place—including antibiotics, Ambien, and citalopram—before seeking anti-psychotic medications. VRP I 55:16-19. He testified that his medicine was in his bag when he was arrested. VRP I 55:19-20. He also testified that he had been previously committed to Fairfax, a facility in Juanita. VRP I 56:2.

In the court's Findings, Conclusions, and Order Committing Respondent for Involuntary Treatment, the commissioner made a finding that M.S. was determined to be incompetent and felony charges were dismissed. CP 17. The court found that M.S. committed one count of Assault in the Third Degree and that he presents a substantial likelihood of repeating similar acts as a result of a mental disorder. *Id.* The court also found that, as a result of a mental disorder, M.S. is in danger of serious physical harm resulting from the failure to provide for his essential needs of health or safety. CP 18. Additionally, the court found that M.S., as a result of a mental disorder, manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his actions, and is not receiving such care as is essential for health and safety. *Id.* The commissioner ordered up to 180 days of involuntary treatment at Western State Hospital. CP 19.

M.S. sought revision of the court commissioner's order before the Pierce County Superior Court on a number of issues, including the findings and conclusions of law regarding grave disability, and the Conclusion of Law under Detention Criteria of a substantial likelihood of repeating similar acts to the charged behavior. CP 26-27. Superior Court Judge James Orlando denied the motion to revise as to the finding of grave disability, and granted the motion as to the finding of substantial likelihood

of committing similar acts. Verbatim Report of Proceedings (VRP II) 8:9-9:7, Dec. 6, 2019. In his oral ruling, Judge Orlando found by clear, cogent, and convincing evidence that M.S. lacked the ability to meet his essential health and safety needs and that M.S. was gravely disabled. VRP II 8:9-12. In particular, Judge Orlando cited to M.S.'s nine hospitalizations at Western State Hospital, that he has not done well for the last several years, that he remains somewhat difficult to manage, his lack of medication compliance, and that there is no indication that he would be able to meet his activities of daily living if he were released in the community. VRP II 8:9-18. Judge Orlando did find that an assault occurred when M.S. spat on Deputy Seratt while he was being restrained, but there was no indication that he engaged in similar type behaviors while on the ward. VRP II 8:24-9:4. He found that the M.S. has been in confrontation with peers and others, but that the behavior goes to the underlying diagnoses that he suffers from, and was not sufficient evidence that M.S. presents a substantial likelihood of committing similar acts. VRP II 9:4-7.

M.S. timely appealed the Order on Motion to Revise. CP 80.

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IV. ARGUMENT

A. Standard of Review

1. Whether M.S. was denied the right to a fair proceeding is a Constitutional question and is reviewed de novo

Constitutional questions are questions of law and reviewed de novo.

In re Detention of Morgan, 180 Wn.2d 312, 319, 330 P.3d 774 (2014).

2. Challenges to findings of fact are reviewed for sufficiency of the evidence

This case was subject to revision below. Therefore on appeal the Court reviews the superior court's decision, not the court commissioner's decision. *State v. Ramer*, 151 Wn.2d 106, 113, 86 P.3d 132 (2004); RCW 2.24.050. The record is reviewed for evidence sufficient to support the superior court's findings. *Ramer*, 151 Wn.2d at 113.

A trial court's finding of grave disability will generally not be overturned at the appellate level if it is supported by substantial evidence that the trial court could have reasonably found to be clear, cogent, and convincing – i.e., that the issue in question was shown to be “highly probable.” *In re the Det. of LaBelle*, 107 Wn.2d 196, 209, 728 P.2d 138 (1986). Put another way, a sufficiency of the evidence challenge to a finding of grave disability will not prevail if the finding is supported by substantial evidence “in light of the ‘highly probable’ test.” *Id.*

Substantial evidence is “evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise.” *Matter of Det. of A.S.*, 91 Wn. App. 146, 162, 955 P.2d 836 (1998). Additionally, when sufficiency of the evidence is challenged, the appellate court must ask whether there was any “evidence or reasonable inferences therefrom to sustain the verdict when the evidence is considered in the light most favorable to the prevailing party.” *Goodman v. Boeing Co.*, 75 Wn. App. 60, 82, 877 P.2d 703 (1994). The appellate court must defer to the trier of fact on the persuasiveness of the evidence, witness credibility, and conflicting testimony. *In re Knight*, 178 Wn. App. 929, 937, 317 P.3d 1068 (2014).

If this Court finds the substantial evidence standard has been met, “a reviewing court will not substitute its judgment for that of the trial court even though it might have resolved a factual dispute differently.” *Sunnyside Valley Irr. Dist. v. Dickie*, 149 Wn.2d 873, 879-80, 73 P.3d 369 (2003). This is particularly important where the trial court has heard conflicting testimony, evaluated the persuasiveness of the evidence, and assessed witness credibility. *See In re G.W.-F.*, 170 Wn. App. 631, 637, 285 P.3d 208 (2012). The reviewing court then evaluates the trial court’s conclusions of law de novo, determining whether they are supported by the findings of fact. *Id.*

B. Compelling Circumstances Justified the Court’s Order to Keep M.S. in Restraints and did not Deny Him a Fair Trial

The petitioners presented sufficient evidence to show that compelling circumstances justified the use of restraints during the commitment hearing. No Washington court has addressed whether the right to be free from restraints applies in the civil commitment context, however, Washington courts have “long recognized that a prisoner is entitled to be brought into the presence of the court free from restraints.” *State v. Damon*, 144 Wn.2d 686, 690, 25 P.3d 418 (2001) (citing *State v. Williams*, 18 Wash. 47, 50, 50 P. 580 (1897)). The United States Supreme Court has held in the criminal context that “courts cannot routinely place defendants in shackles or other physical restraints visible to the jury” *Deck v. Missouri*, 544 U.S. 622, 633, 125 S. Ct. 2007, 161 L. Ed. 2d 953 (2005). Further, the United States Supreme Court has extended the liberty from bodily restraints under the Due Process Clause to patients involuntarily committed. *Youngberg v. Romero*, 457 U.S. 307, 316, 102 S. Ct. 2452, 73 L. Ed. 2d 28 (1982).

The United States Supreme Court acknowledged that this right is not absolute and the trial court judge is permitted “to take account of special circumstances, including security concerns, that may call for shackling.” *Deck*, 544 U.S. at 633. In making such determination, the analysis “must be

case specific; that is to say, it should reflect particular concerns, say, special security needs or escape risks, related to the defendant on trial.” *Id.*

Even in the criminal context, where more specific constitutional protections apply, the “defendant’s right to be in court free from restraints is not limitless.” *State v. Lundstrom*, 6 Wn. App. 2d 388, 394, 429 P.3d 1116 (2018) (citing *State v. Walker*, 185 Wn. App. 790, 800, 344 P.3d 227 (2015)). “The right may yield to courtroom safety, security, and decorum. A defendant may be restrained if necessary to prevent injury, disorderly conduct, or escape.” *Lundstrom*, 6 Wn. App. 2d at 394 (internal citations omitted). “The trial court must exercise discretion in determining the extent to which courtroom security measures are necessary and its decision must be founded upon a factual basis set forth in the record.” *Id.* (citing *State v. Finch*, 137 Wn. 2d 792, 846, 975 P.2d 967 (1999)). Prior to allowing restraints, the trial court must first conduct a hearing and enter a finding “on the record sufficient to justify their use on a particular defendant.” *Lundstrom*, 6 Wn. App. 2d at 394.

Prior to M.S.’s civil commitment hearing, the trial court was presented with sufficient evidence to support the decision to partially restrain him. Contrary to M.S.’s argument that he appeared in court in two-point shackles before a judicial determination was made on the issue of restraints, the record clearly shows that M.S. was not present in

the courtroom until after the court made such determination. Br. of Appellant at 1, 14; VRP I 19:7. Both the petitioners and M.S., through his attorney, presented the factors from *Finch* and *Lundstrom* and agreed that, although both are criminal cases, it was in the interest of fairness to apply the same standards in the context of civil commitment. VRP I 8:6-25.

Two witnesses testified as to both safety concerns and M.S.'s flight risk if he were to appear in court without restraints. Nurse Brymer testified that M.S. was a flight risk and cited an escape attempt during his last medical appointment. VRP I 10:14-20. She also testified that she was concerned for Dr. Cason's safety given her close proximity to M.S. in the courtroom. VRP I 11:14-17. Nurse Brymer cited M.S.'s history of becoming hostile when discussing medication as cause for her concern. VRP I 11:4-5. During civil commitment hearings, the petitioners testify as to both the patient's prescribed medications and the patient's compliance with taking those medications. VRP I 37:12-38:24. Dr. Cason also testified that she was concerned about taking M.S. out of restraints for the civil commitment hearing. VRP I 13:13. She noted that he has a history during his time at the hospital of being borderline assaultive, and cited an incident during his last competency evaluation where he grabbed the evaluator's wrist and prevented her from leaving the room. VRP I 13:15-22. Dr. Cason

also testified as to her concerns of M.S. being a flight risk. She cited a previous escape attempt where M.S. broke a window and jumped out. VRP I 14:2-4. She also testified that M.S. made an escape attempt during his dental appointment that was a week prior to the civil commitment hearing. VRP I 15:14-18.

The commissioner made a record of safety concerns regarding the layout of the courtroom, specifically noting that M.S. would be seated closest to the door and that the chairs were not secured to the floor. VRP I 16:11-17:4. Further, the commissioner was aware of previous incidents of assault in the courtroom and that doctors had been struck before. VRP I 17:6-10.

The evidence presented by both the witnesses and the record made by the court is consistent with the requirements set forth in *Lundstrom*. Here the evidence showed that M.S. presented both a safety concern and a flight risk. The commissioner heard this evidence before M.S. was brought into the courtroom and the record clearly established the specific concerns about M.S. appearing without restraints. Therefore, this Court should find that M.S. received a fair trial and sufficient evidence supported the trial court's order to partially restrain M.S.

C. Sufficient Evidence Supports the Superior Court's Determination That M.S. Is Gravely Disabled

The petitioners presented sufficient evidence to justify the superior court's finding that M.S. is gravely disabled. "Gravely disabled" is defined as:

[A] condition in which a person, as a result of a mental disorder, or as a result of the use of alcohol or other psychoactive chemicals: (a) 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 (b) 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(21).

Either definition of grave disability provides a basis for involuntary commitment. *LaBelle*, 107 Wn.2d at 202. The petitioners bear the burden of proof by clear, cogent, and convincing evidence. RCW 71.05.310.

Additionally, RCW 71.05.245 provides that:

(1) In making a determination of whether a person is gravely disabled . . . the court must consider the symptoms and behavior of the respondent in light of all available evidence concerning the respondent's historical behavior.

(2) Symptoms or behavior which standing alone would not justify civil commitment may support a finding of grave disability . . . when . . . [s]uch symptoms or behavior are closely associated with symptoms or behavior which preceded and led to a past incident of involuntary hospitalization, severe deterioration, or one or more violent acts.

RCW 71.05.245(1)-(2).

Further, under RCW 71.05.285, evidence of a prior history or pattern of decompensation and discontinuation of treatment resulting in: (1) repeated hospitalizations, or (2) repeated peace officer interventions resulting in criminal charges, may be used to provide a factual basis for concluding that the individual would not receive, if released, such care as is essential for his or her health or safety.

1. M.S. is gravely disabled under the prong (a) definition of gravely disabled

In this case, the evidence and the superior court's findings support the conclusion that M.S. meets the first definition of grave disability by being in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety.

The first definition of grave disability does not require that the danger of serious harm be "imminent." *In re the Det. of LaBelle*, 107 Wn.2d at 203. But the State "must present recent, tangible evidence of failure or inability to provide for such essential human needs as food, clothing, shelter, and medical treatment which presents a high probability of serious physical harm within the near future unless adequate treatment is afforded." *Id.* at 204–05. The *LaBelle* court recognized that a requirement of imminence might mandate the "premature release of mentally ill patients who are still unable to provide for their essential health and safety needs

outside the confines of a hospital setting but who, because of their treatment there, are no longer in ‘imminent’ danger of serious physical harm.”
Id. at 203.

There was substantial evidence for the trial court to find that M.S. would be at risk of serious physical harm if released immediately. First, Deputy Seratt testified that at the time of M.S.’s arrest, he was extremely dirty and had oozing open sores throughout his body. VRP I 26:7-11. Dr. Cason testified to ongoing symptoms of schizoaffective disorder, including responding to internal stimuli, hypomania, pressured and rapid speech, and physical agitation and restlessness. VRP I 34:24-35:16. Dr. Cason further testified that M.S. would have difficulty in meeting his basic safety needs if he was discharged in his current unmedicated and untreated state. VRP I 40:11-14. Specifically, she cited his inability to cooperate with medical appointments while at Western State Hospital, and M.S.’s provocative behaviors exhibited while at the hospital. VRP I 40:3-14. Dr. Cason acknowledged M.S.’s current ability to attend to his activities of daily living in the structured environment of the hospital, but had concerns about his ability to do so in the community. VRP I 39:17-22. Dr. Cason was specifically concerned about M.S.’s ability to find food and housing when it is not provided for him, and how

unpredictable stimulus in public can destabilize people if they are not already stabilized with medications. VRP I 39:19-24.

M.S. testified as to his desire to be released from Western State Hospital and his plan if he were discharged immediately. He testified to a number of housing options, including that his mother would let him stay at a condo in Kirkland, his sister has an apartment in Rose Hill, he had enough money for a hotel, and potentially his grandparent's cabin. VRP I 50:21-51:5. No relatives testified to corroborate these living arrangements, and M.S. acknowledged that these housing arrangements were on a trial basis. VRP I 41:2-3. He also testified as to his SSI and SNAP benefits and how those benefits would have to be turned back on upon release from the hospital. VRP I 51:7-25. Finally, he testified as to his plan to continue mental health treatment, citing a number of case managers he had worked with previously. VRP I 52:5-18. On cross examination, however, M.S. acknowledged only that he had a mild mental illness and it was something he could manage. VRP I 55:5-7. He also stated that he refuses antipsychotic medications and plans to address his mental illness with other regimens such as antibiotics, Ambien, and citalopram before going on antipsychotic medication. VRP I 55:16-18.

M.S. now argues only that the "record lacks any evidence M.S. is at risk of serious physical harm resulting from a failure to provide for his

essential human needs.” Br. of Appellant at 20. M.S. relies on his testimony that he has resources for shelter, clothing, healthcare, and financial assistance. *Id.* This argument ignores the testimony of both Deputy Seratt and Dr. Cason that showed “recent tangible evidence of failure or inability to provide for such essential human needs as food, clothing, shelter, and medical treatment which presents a high probability of serious physical harm within the near future unless adequate treatment is afforded.” *In re the Det. of LaBelle*, 107 Wn.2d at 204–05.

Despite M.S.’s plan for discharge, this Court should not ignore the evidence of M.S.’s dangerousness to himself. The testimony of Deputy Seratt showed a recent inability to provide for his basic needs with open sores on his body. And Dr. Cason’s testimony showed a recent inability to meet his medical needs even in the highly structured environment of Western State Hospital. The State met its burden under prong (a) by clear, cogent, and convincing evidence. This Court should affirm the finding that M.S. was gravely disabled under prong (a).

2. M.S. is gravely disabled under the prong (b) definition of gravely disabled.

In this case, the evidence and the superior court’s finding support the conclusion that M.S. meets the second definition of grave disability by manifesting severe deterioration in his routine functioning, evidenced by

repeated and escalating loss of cognitive or volitional control over his actions, and is not receiving such care as is essential for health and safety.

The Washington Supreme Court in *LaBelle* rejected a strict, literal reading of “repeated and escalating loss of cognitive or volitional control,” finding that requiring the release of a person whose condition had stabilized or improved minimally, but who would decompensate in the community and be rehospitalized, would lead to “absurd and potentially harmful consequences.” 107 Wn.2d at 207. Instead, the key question for the trial court is whether the person is showing severe deterioration of routine functioning, evidenced by recent proof of loss of cognitive or volitional control, and whether they would receive the care they need to maintain their health and safety if released. *Id.* at 208. Under the standard articulated in *LaBelle*, the evidence must show that the person is unable to make a rational choice about his or her need for treatment, creating a “causal nexus” between the person’s severe deterioration in routine functioning and evidence that they would not receive essential care if they were released. *Id.*

Committing mentally ill persons under this definition of grave disability allows the State to intervene “before a mentally ill person’s condition reaches crisis proportions” and to “provide the kind of continuous care and treatment that could break the cycle and restore the individual to satisfactory functioning.” *Id.* at 206. As the *LaBelle* court noted, the express

intent of the statute is to “provide continuity of care for persons with serious mental disorders.” *Id.* at 207 (quoting RCW 71.05.010[(1)(e)]).

Here, the evidence at trial supports a civil commitment under prong (b) because M.S. has a history of repeated and escalating loss of cognitive and volitional control over his actions. This includes the testimony that this was currently M.S.’s ninth admission to Western State Hospital. VRP I 39:2. Additionally, M.S. acknowledged admission to Fairfax for treatment. VRP I 56:2. Therefore, M.S. has a history of repeated hospitalizations.

Moreover, the record demonstrates “recent proof of significant loss of cognitive or volitional control.” First, M.S. had stated to Dr. Cason that he was at the CVS that led to the index offense because it had to do with his grandfather having the same initials as CVS. VRP I 49:16-18. This is reflective of a mental illness and it is a referential idea that shows M.S. places special meaning on random connections. VRP I 49:23-50:1. Dr. Cason also testified that the disorganization of speech and thinking that was present at the time of the index offense was still present periodically, specifically when limits are placed on M.S. VRP I 36:1-9. M.S. also exhibits poor judgment and no insight into the fact he suffers from a mental illness. VRP I 36:12-27:6.

On cross examination, M.S. acknowledged that he had a mild version of mental illness but stated he was capable of dealing with it day to day. VRP I 55:5-7. He also testified that he refused garden variety antipsychotic medications, and his desire was to pursue other regimens before seeking medications. VRP I 55:16-18. However, Dr. Cason testified that antipsychotic medication is necessary for M.S. to recover from his mental disorder. These cognitive limitations supported Dr. Cason's opinion that M.S. needed further treatment in an inpatient setting in order to be ready to discharge into the community. VRP I 41:5-11.

M.S. argues that he cannot be found gravely disabled under prong (b) because "Dr. Cason's conclusory opinion M.S. might have difficulty meeting basic needs is . . . insufficient to show he was not receiving such care as is essential for his health and safety under RCW 71.05.020(22)(b)." Br. of Appellant at 21-22. Further, he argues that there was no evidence that his plan upon release would be negatively impacted by his mental illness symptoms. *Id.* at 21. Just because a patient articulates a plan upon discharge, it does not mean he or she evades the scope of the prong (b) grave disability definition. Both M.S.'s history of repeated hospitalization and his lack of insight into his mental disorder show the "revolving door" scenario that is specifically addressed in *LaBelle*. The court appropriately gave M.S.'s plan upon discharge little weight.

M.S.'s argument that he is able to meet his activities of daily living while in Western State Hospital and that he has a plan upon release is also contrary to the reasoning of the *LaBelle* decision. The *LaBelle* court addressed the "revolving door" syndrome where patients who have stabilized in a hospital are discharged to other housing, only to begin the hospitalization cycle over again. *In re the Det. of LaBelle*, 107 Wn.2d at 206. The *LaBelle* court specifically recognized that:

RCW 71.05.020(1)(b) enables the State to provide the kind of continuous care and treatment that could break the cycle and restore the individual to satisfactory functioning. Such intervention is consonant with one of the express legislative purposes of the involuntary treatment act, which is to "to provide continuity of care for persons with serious mental disorders."

In re the Det. of LaBelle, 107 Wn.2d at 206-07 (citing RCW 71.05.101(4)).

The petitioners presented sufficient evidence that M.S. has a history of repeated hospitalizations and that in his current unmedicated and untreated state, the highly structured environment of Western State Hospital was in his best interests.

Because the record contains substantial evidence to support the conclusion that M.S. is gravely disabled under RCW 71.05.020(21)(b), the trial court's conclusion that M.S. is gravely disabled as a result of a mental disorder should be affirmed.

V. CONCLUSION

The trial court properly held a pre-trial hearing before M.S. was present in the courtroom and evidence established that M.S. presented both a flight risk and safety concerns. M.S. received a fair trial and his constitutional rights were protected. This Court should affirm the superior court's order because the evidence and facts are sufficient to support the conclusion that M.S. is gravely disabled as a result of his mental disorder.

RESPECTFULLY SUBMITTED this 29th day of June, 2020.

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PROOF OF SERVICE

I, *Christine Townsend*, state and declare as follows:

I am a citizen of the United States of America and over the age of 18 years and I am competent to testify to the matters set forth herein. On June 29, 2020, I served a true and correct copy of this **RESPONDENT’S BRIEF** and this **CERTIFICATE OF SERVICE** on the following parties to this action, as indicated below:

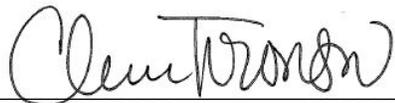
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- By United States Mail**
- By E-Mail PDF via COA Portal: tiffinie@washapp.org**

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

DATED this 29th day of June, 2020, at McCleary, Washington.



CHRISTINE TOWNSEND
Legal Assistant

SOCIAL AND HEALTH SERVICES DIVISION, ATTORNEY GENERALS OFFICE

June 29, 2020 - 2:29 PM

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