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Court of Appeals
Division III
State of Washington
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No. 37140-9-III

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

STATE OF WASHINGTON,

Respondent,

v.

RYAN LEWIS FARR,

Appellant.

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

The Honorable Judge M. Scott Wolfram

APPELLANT'S REPLY BRIEF

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A. INTRODUCTION

Appellant Ryan Lewis Farr accepts this opportunity to reply to the State's brief. Mr. Farr requests the Court refer to his opening brief for issues not addressed in this reply.

B. COUNTERSTATEMENT OF THE CASE

Mr. Farr offers the following counterstatement of the case, in response to the State's statement of the case. *See* Respondent's Brief pgs. 1-6. The State asserts "Eastern State Hospital sends the trial court reports on the issues with providing treatment for Ryan Farr, the appellant. *The trial court's decision to issue the order for testing is based on these reports.*¹ *See* Respondent's Brief pg. 1 (emphasis added).

The State's assertion is only partially correct. In issuing its order to conduct drug testing of Mr. Farr, the trial court stated "I have had an opportunity to review the file, the Eastern State Hospital matters and everything that's in the file and it seems to me the drug testing is based on what has been happening at Eastern State Hospital and is proper and I will grant that request." (RP 8).

The trial court's order was issued on October 14, 2019. (CP 157-158; RP 6-11). At that time, the trial court file included progress reports for Mr. Farr from Eastern State Hospital, through May 1, 2019. (CP 178-253). Additional progress reports from Mr. Farr were filed in the trial court after the October 14, 2019 hearing date. (CP 254-272).

The trial court's decision to issue its order to conduct drug testing of Mr. Farr was only based upon what was in the court file on the October 14, 2019 hearing date. In its

¹ The State includes a footnote which states "RCW 10.77.140 requires an examination and report to the court at least every six months." *See* Respondent's Brief pg. 1, n.1.

statement of the case, the State outlines portions of progress reports filed after the October 14, 2019 hearing date. *See* Respondent’s Brief pgs. 4-6; *see also* CP 254-272. These reports were not considered by the trial court when it entered the order challenged here.

C. ARGUMENT IN REPLY

1. Whether the trial court erred in entering an order authorizing Eastern State Hospital to conduct drug testing of Mr. Farr, including urinalysis, nail sample testing, and hair sample testing.

The State claims “[t]he issue presented to the trial court was very narrow: Should Mr. Farr have to submit to drug testing to determine if he was obtaining and ingesting harmful substances while committed to Eastern State Hospital?” *See* Respondent’s Brief pg. 7. However, the issue presented to the trial court was not narrow. (CP 145-147; RP 6-11). The State filed a motion in the trial court requesting a court order for “*ongoing* drug screens via urinalysis, nail samples and hair samples.” (CP 145-147) (emphasis added). The order authorizes continuous drug testing of Mr. Farr for as long as he is committed to Eastern State Hospital. (CP 157-158). It contains no limitations on testing Mr. Farr; it does not require hospital personnel to have any level of suspicion before testing him. (CP 157-158). The order gives Eastern State Hospital unfettered discretion to drug test Mr. Farr. (CP 157-158). Defense counsel objected below to the entry of the order based upon a lack of statutory authority and hearsay grounds; the denial of Mr. Farr’s due process rights; and a violation of Mr. Farr’s rights under article 1, section 7 of the Washington State Constitution and the Fourth Amendment to the United States Constitution. (CP 152-153, RP 7-8). Mr. Farr asserts the issue before the trial court, and

now before this Court, is far from narrow. To the contrary, the issue has broad implications, which were raised in the trial court, and now here on appeal.

The State also claims “[e]very six months a new report is provided to the trial court, and this enables the trial court to continue, modify, or terminate the requirement for drug testing.” *See* Respondent’s Brief pg. 14. However, the issuance of a six-month progress report does not grant the trial court authority to take these actions. *See* RCW 10.77.140. This statute provides:

Each person committed to a hospital or other facility or conditionally released pursuant to this chapter shall have a current examination of his or her mental condition made by one or more experts or professional persons at least once every six months. The person may retain, or if the person is indigent and so requests, the court may appoint a qualified expert or professional person to examine him or her, and such expert or professional person shall have access to all hospital records concerning the person. In the case of a committed or conditionally released person who is developmentally disabled, the expert shall be a developmental disabilities professional. *The secretary, upon receipt of the periodic report, shall provide written notice to the court of commitment of compliance with the requirements of this section.*

RCW 10.77.140 (emphasis added).

There is not necessarily any judicial review following the submission of a progress report to the trial court:

Insanity acquittees receive automatic review of their mental condition every six months. Wash.Rev.Code § 10.77.140. This review is conducted in the hospital by health service professionals. Judicial review is discretionary, unless the hospital recommends release.

Hickey v. Morris, 722 F.2d 543, 545 (9th Cir. 1983).

The issuance of a six-month progress report pursuant to RCW 10.77.140 does not provide a procedural mechanism for the trial court to continue, modify, or terminate the requirement for drug testing. It does not provide for automatic review of the trial court’s

order authorizing drug testing of Mr. Farr. Importantly, RCW 10.77.140 did not authorize the trial court to issue the order authorizing Eastern State Hospital to conduct drug testing of Mr. Farr in the first instance; the State filed a separate motion requesting the order. (CP 145-147).

The trial court's order authorizes continuous drug testing of Mr. Farr for as long as he is committed to Eastern State Hospital. (CP 157-158). The order contains no provisions for modifying or terminating this authorization. (CP 157-158).

The State argues "[t]he procedural safeguards in place under chapter 10.77 RCW providing continued reports and the ability to petition the court are sufficient to satisfy due process." *See* Respondent's Brief pg. 14. Mr. Farr disagrees with this assertion; as argued above, progress reports do not automatically provide for judicial review of the trial court's order granting continuous drug testing of Mr. Farr. *See* RCW 10.77.140; *see also Hickey*, 722 F.2d at 545. Due process was not satisfied here, where Mr. Farr did not receive a meaningful hearing, with the right to present evidence, cross-examine witnesses, and have the rules of evidence enforced. (RP 6-11).

D. CONCLUSION

The trial court's order authorizing Eastern State Hospital to conduct drug testing of Mr. Farr, including urinalysis, nail sample testing, and hair sample testing, should be reversed. There was no statutory authority for the order and the order was based on inadmissible hearsay; and it violated Mr. Farr's rights to procedural due process, and his rights under article 1, section 7 of the Washington State Constitution, and the Fourth Amendment to the United States Constitution.

Respectfully submitted this 23rd day of June, 2020.



Jill S. Reuter, WSBA #38374

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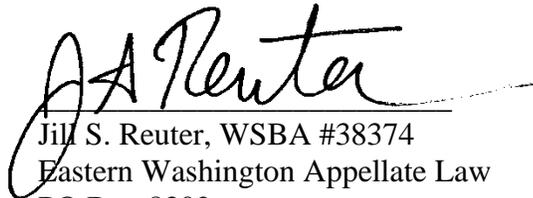
STATE OF WASHINGTON) COA No. 37140-9-III
Plaintiff/Respondent)
vs.) Walla Walla Co. No. 12-1-00328-6
)
RYAN LEWIS FARR) PROOF OF SERVICE
)
Defendant/Appellant)
_____)

I, Jill S. Reuter, assigned counsel for the Appellant herein, do hereby certify under penalty of perjury that on June 23, 2020, I deposited for mailing by U.S. Postal Service first class mail, postage prepaid, a true and correct copy of the Appellant's reply brief to:

Ryan Lewis Farr
Eastern State Hospital
PO Box 800
Medical Lake WA 99022

Having obtained prior permission, I also served a copy on the Respondent at jnagle@co.walla-walla.wa.us using the Washington State Appellate Courts' Portal.

Dated this 23rd day of June, 2020.


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