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NO. 37140-9—III

**COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III**

STATE OF WASHINGTON, Respondent,

v.

RYAN LEWIS FARR, Appellant.

BRIEF OF RESPONDENT

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A. COUNTER STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. The trial court did not commit error or abuse its discretion by relying on the written reports of psychiatrists or psychologists at Eastern State Hospital in determining whether drug testing was medically and psychiatrically necessary for the treatment of the appellant.
2. Persons committed as criminally insane have a reduced expectation of privacy because they ordered to confinement and random urinalysis is necessary to manage their health and safety.

B. STATEMENT OF CASE

Appellant's statement of the facts is sufficient for argument of this appeal, except for the following facts that need to be emphasized.

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 those reports.¹

A report dated November 20, 2018 discussed the treatment up to that point (CP239-245), and described an issue Mr. Farr was having with consumption of methamphetamine.

Random urinalysis testing occurs on the ward to manage the health and safety of patients. On 10/25/18, Mr. Farr submitted what appeared to be an altered urinalysis sample; when inspected within the specimen's container, it was light in color and cold to the touch through

¹ RCW 10.77.140 requires an examination and report to the court at least every six months.

the container. He provided an additional sample that appeared more consistent with urine specimens typically collected from individuals, a balanced color and warm temperature. Both sample were tested internally at ESH, one specimen indicated a preliminary "positive" for amphetamine, that sample was sent for confirmation by an independent lab. The result of the confirmation aligned with preliminary findings by our lab at ESH. The independent confirmation indicated *a presence of methamphetamine as opposed to the preliminary amphetamine* result. This confirmed positive urinalysis for methamphetamine points to a relapse by Mr. Farr and significant increase in overall risk. When confronted with this use Mr. Farr became angry, distraught and tearful, this culminated in a pattern of self-injurious behavior not seen from Mr. Farr in over a year; he proceeded to bang his head against the treatment room wall several times resulting in a need to be contained.

CP 240.

The report dated May 1, 2019 continued to describe the issue Eastern State Hospital was having with Mr. Farr's illicit drug usage and its impact on his health. CP 246-253. The report referred again to the positive urinalysis test for methamphetamine in October of 2018:

On October 25th 2018, Mr. Farr had a positive urinalysis for methamphetamine. In mid-December 2018, Administration and the treatment team participated in a meeting to establish and approve an addendum to his treatment plan, providing Mr. Farr with a clear path toward elevated recovery level and ultimately less risk. An integral piece of his treatment plan was to comply with drug screens on a regular basis or when requested. The drug screens were initiated based on several factors. Due to the fragility of his cirrhotic liver, ingestion of alcohol based products and/or illicit substances could have grave consequences for Mr. Farr. The urinalyses were a means to monitor and deter such outcomes. In addition, his recent possession and use of methamphetamine as well as contraband possessed by a close peer of Mr. Farr place him at increased risk of subsequent usage. Previous to his relapse in October, Mr. Farr had shown consistent abstinence and decent progress in regards to his recovery from substance abuse. This could, in part be attributed to increased accountability over the past year when regular scheduled drug screens

have been adhered to, Mr. Farr admitted: *"I do better when I am being watched, it is easier to do the right thing."* Mr. Farr was adamant about not complying with requested drug screens (*"it is my right to refuse the UA's, I am taking a stand"*).

CP 248. The report documents continued difficulty with his treatment:

Mr. Farr's noncompliance continued through the month of November 2018 and into December 2018. Mr. Farr submitted one urine specimen prior to an administrative meeting regarding Mr. Farr in December 2018. After which he continued to refuse multiple (twice weekly) requests to obtain urine samples for the first two and a half months of 2019 with one exception, on 2/21/19. On 2/26/2019, Mr. Farr was observed displaying suspicious behavior in the patient dining room. While on a one to one, he was observed suddenly concealing an item (wrapped in folded white paper) within his undergarments and when confronted by staff he rushed to the men's restroom (while a peer blocked staff's entry) and was observed splashing copious amounts of water and liquid soap on and around his mouth and face. When processing this event with the "treatment team, Mr. Farr denied anything out of the ordinary had occurred, yet was unwilling to comply with requested urinalysis.

CP 248.

On March 1, 2019, a urine sample showed the presence of alcohol. This was of concern to Eastern State Hospital given Mr. Farr's history of consuming alcohol-based hand sanitizer. He had, however, been willing to monitor and regulate the use of hygiene products containing denatured alcohol. He was compliant with room searches and urinalysis up to May 1, 2019. CP 249.

In the report, drug screens were recommended to continue to be used as a tool to assist in maintaining Mr. Farr's accountability and his overall health and safety. CP 250. The report states in the "Conclusions

and Recommendations” section: “ Mr. Farr remains in need of continued risk mitigation and management given the fragility of his mental illness combined with his polysubstance abuse dependence disorder.” CP 253.

The trial court based the October 14, 2019 decision to grant the motion for drug testing based on the reports from Eastern State Hospital:

THE COURT: I have had an opportunity to review the file, the Eastern State 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 and is proper and I will grant that request.

RP 8, lines 14-18. The trial court entered its written findings and order authorizing drug testing that day. CP 63-64.

Eastern State Hospital submitted an unsigned 30 day progress report dated November 19, 2019. CP 254-255. The report states in part:

Beginning 11/9/19, Mr. Farr has been unwilling to submit to requested drug screens and as of this writing he remains unwilling to produce a urine sample or specimen. On 11/10/19 and 11/11/19 ESH staff observed Mr. Farr appearing to be in an "altered state". This to include delayed and latent verbal responses, semi-steady gait and presenting as "half-asleep" in his appearance.

Mr. Farr's room was subsequently searched by the ESH Security Team, in the presence of the patient. Paper items were confiscated and testing conducted by ESH Security yielded positive results for the presence of methamphetamine/MDMA (ecstasy) on various paper items.

CP 254-255.

Eastern State Hospital submitted a 6 month progress report dated November 1, 2019. CP 256-259. The report related an incident that occurred on August 12, 2019:

August 12, 2019, Mr. Farr was observed "staggering around the large day room and dancing". A subsequent urinalysis yielded a positive result for benzodiazepines (a sedating medication used by some for recreational and intoxicating purposes in the community) despite that medication not having been prescribed to him, he was placed on one to one observation for safety.

On August 16, 2019, the treatment team implemented an addendum to the substance use disorder component of his treatment plan, to include specific expectations and criteria to reduce and manage his risk. He refused to comply with requested drug screening efforts (urine, hair, nail or otherwise) through the remainder of August 2019. On August 28, 2019, he was observed tearing a portion of a paper card he was in possession of and ingesting it. The card was confiscated and through subsequent testing, was found to be positive for methamphetamine. Spokane County Sheriff's Department was summoned and Mr. Farr was arrested and taken into custody for possession of a controlled substance. ESH security team summarily examined additional paperwork belonging to Mr. Farr and found multiple paper items that tested positive for the presence of methamphetamine. He was returned to Eastern State Hospital from Spokane County Jail on September 9, 2019 and is awaiting a Spokane County Court hearing for the possession of methamphetamine charge. ESH treatment team requested a court order to mandate drug screenings for Mr. Farr in the event he refuses additional requests for drug screens. This order was granted on October 14, 2019. As of this writing, Mr. Farr has been compliant with drug screens when requested.

CP 257-258.

Eastern State Hospital submitted an unsigned report 30 day progress report dated November 19, 2019. CP 254-255. The report states in part:

Beginning 11/9/19, Mr. Farr has been unwilling to submit to requested drug screens and as of this writing he remains unwilling to produce a urine sample or specimen. On 11/10/19 and 11/11/19 ESH staff observed Mr. Farr appearing to be in an "altered state". This to include delayed and latent verbal responses, semi-steady gait and presenting as "half-asleep" in his appearance.

Mr. Farr's room was subsequently searched by the ESH Security Team, in the presence of the patient. Paper items were confiscated and testing conducted by ESH Security yielded positive results for the presence of methamphetamine/MDMA (ecstasy) on various paper items.

CP 254-255.

Eastern State Hospital has not carried out the measures complained of. The most recent report from Eastern State Hospital indicates that there have been "significant improvements with on-ward behavior, compliance with urinalysis that have yielded negative results for the presence of illicit substances and more effective management of his impulse control disorder," although the report cautions that "this has been demonstrated over a relatively short period of time when considering the overall length of his commitment." CP 270.

C. ARGUMENT

- 1. The trial court did not commit error or abuse its discretion by relying on the written reports of psychiatrists or psychologists at Eastern State Hospital in determining whether drug testing was medically and psychiatrically necessary for the treatment of the appellant.**

The 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? Any person involuntarily detained, hospitalized, or committed pursuant to the provisions of this chapter shall have the right to adequate care and individualized treatment. RCW 10.77.210. In order to provide for that care, Eastern State Hospital needs to know what substances, if any, were being ingested by Mr. Farr that could affect Mr. Farr's health. The trial court had the ability to review the periodic reports submitted pursuant to RCW 10.77.140. The trial court gave Mr. Farr an opportunity to be heard. The trial court considered the arguments and the reports and made a decision that affected Eastern State Hospital's ability to provide adequate care and individualized treatment.

The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 902, 47 L. Ed. 2d 18 (1976). "(D)ue process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484 (1972). "More precisely, our prior decisions indicate that identification of the specific dictates of due process

generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews v. Eldridge*, *supra*, 424 U.S. at 334–35. *See also State v. Derenoff*, 182 Wn. App. 458, 466 ¶ 18, 332 P.3d 1005 (2014).

The first *Mathews* factor, regarding Mr. Farr’s private interests, clearly weighs in Mr. Farr’s favor because forced hospitalization deprives him of significant liberty interests. *State v. Derenoff*, 182 Wash. App. 458, 466 ¶ 19, 332 P.3d 1001, 1005 (2014). The State does not contest this.

Under the second *Mathews* factor, the procedure of having Eastern State Hospital submit periodic reports to the court for review in conjunction with a motion and a hearing with counsel safeguard against the erroneous deprivation of Mr. Farr’s liberty interests in his medical diagnoses. The reports from Eastern State Hospital assured the trial court that it had expert information concerning Mr. Farr’s condition and needs for treatment. He is reexamined every six months and the report of that

examination is submitted to the trial court (and counsel) for review. RCW 10.77.140. Following such examination, the secretary of the Department of Social and Health Services (or his or her designee) or Mr. Farr, may request conditional release. RCW 10.77.150. Furthermore, an insanity acquittee may request conditional release every six months. RCW 10.77.150(5). Although risk of an erroneous deprivation of liberty in the obtaining of a urine, hair or fingernail sample is a real concern, the procedures currently in place under chapter 10.77 RCW, requiring reports to the trial court and the ability to petition for release, provide significant procedural safeguards for insanity acquittees.

The third *Mathews* factor weighs heavily in favor of the State. When a person is institutionalized and wholly dependent on the State, a duty to provide certain services and care does exist, although a State necessarily has considerable discretion in determining the nature and scope of its responsibilities. *Youngberg v. Romeo*, 457 U.S. 307, 317, 102 S. Ct. 2452, 2459, 73 L. Ed. 2d 28 (1982). Eastern State Hospital is required to take steps to provide medical care for its patients, and Mr. Farr is dependent on that medical care while a patient. Eastern State Hospital is also required to provide for the safety of Mr. Farr and other patients and the staff. The State has a strong interest in detaining “mentally unstable individuals who present a danger to the public.” *State v. Derenoff*, 182

Wash. App. 458, 467–68 ¶ 23, 332 P.3d 1001, 1006 (2014) (citing *United States v. Salerno*, 481 U.S. 739, 748–49, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987)).

The trial court’s action was not so arbitrary and capricious as to deny a Mr. Farr a fundamentally fair proceeding so as to work to his prejudice. In contrast with prison disciplinary hearings, which rely on written infraction reports, the hearing was adequate. A prisoner by comparison is entitled to only minimum due process protections, which include notice, and an opportunity to provide evidence and call witnesses “when not unduly hazardous to institutional safety and correctional goals,” and to receive a written statement of the evidence relied upon and the reasons for the discipline. *In re Grantham*, 168 Wn. 2d 204, 215–16, 227 P.3d 285, 292 (2010).

2. Persons committed as criminally insane have a reduced expectation of privacy because they are persons whom a court has ordered to confinement and random urinalysis is necessary to manage their health and safety.

The plain language of the Fourth Amendment prohibits government officials only from conducting unreasonable searches. U.S. Const. amend. IV; *Carroll v. United States*, 267 U.S. 132, 147, 5 S. Ct. 280, 69 L. Ed. 543 (1925); *see also United States v. Sharpe*, 470 U.S. 675,

682, 105 S. Ct. 1568, 84 L. Ed.2d 605 (1985) (stating that Fourth Amendment provides guarantee only against unreasonable searches). In *Bell v. Wolfish*, 441 U.S. 520, 558, 99 S. Ct. 1861, 60 L.Ed.2d 447 (1979), pretrial detainees challenged visual body cavity searches that prison officials conducted on them following their contact visits with outside persons. 441 U.S. at 558. The Court held that the searches were reasonable because the need for the searches outweighed the detainees' personal rights. *Id.* 558-60. In reaching its conclusion, the Court considered the dangers from inmates smuggling contraband and the need to ensure security and order in the institution. *Id.* 559, 561. The Court also considered the need to deter smuggling, the officials' invasion of the inmates' privacy, and the availability of less intrusive search methods. *Id.* At 559. The *Bell* test to determine a search's reasonableness thus requires courts to balance the government's need for the search against an individual's privacy interest. The Court explained that the manner, scope, location, and justification of a particular search are factors courts must weigh in determining its reasonableness. *Id.*

Under Fourth Amendment analysis, the need to determine if a person commitment to Eastern State Hospital is using illicit drugs outweighs the person's personal expectation of privacy. The hospital is required to treat the defendant for psychiatric conditions, and the hospital

staff cannot be expected to do so if they cannot determine what substances the defendant is ingesting without the hospital's knowledge or control. There is also an implication of the need to care for the defendant's medical condition as a patient.

The 8th Circuit Court of Appeals has held that on balance, body-cavity searches do not infringe on the Fourth Amendment as applied to involuntarily civilly committed patients. *Serna v. Goodno*, 567 F.3d 944, 946 (8th Cir. 2009) *cert. denied* 558 U.S. 972, 130 S.Ct. 465, 175 L.Ed.2d 312 (2009).

Our State Supreme Court has consistently held that the nonconsensual removal of bodily fluids implicates privacy interests. Urinalysis tests implicate privacy interests in two ways. First, the act of providing a urine sample is fundamentally intrusive, particularly where urine samples are collected under observation to ensure compliance. Second, chemical analysis of urine, like that of blood, reveals private medical facts. These privacy interests are protected by article I, section 7 of the State constitution. *State v. Olsen*, 189 Wn. 2d 118, 124, 399 P.3d 1141, 1144–45 (2017).

Persons ordered to remain in the custody and control of the department of social and health services after being found criminally insane do not enjoy constitutional privacy protections to the same degree

as other citizens. Those committed to Eastern State Hospital have a reduced expectation of privacy because they are, at most, like those persons committed to the custody of the department of corrections, and, at a minimum, like probationers or parolees. Probationers have a reduced expectation of privacy because they are “persons whom a court has sentenced to confinement but who are serving their time outside the prison walls.” *State v. Olsen*, 189 Wn. 2d at 124–25, 399 P.3d at 1145 (citing *State v. Jardinez*, 184 Wn.App. 518, 523, 338 P.3d 292 (2014)). In *State v. Olsen*, the court held in the context of requiring UAs as part of probation for DUI convictions:

¶37 While random UAs of DUI probationers do implicate privacy interests, the UAs here are narrowly tailored and imposed to monitor compliance with a valid probation condition. The judgment and sentence impliedly limits the scope of testing to monitor only for alcohol and controlled substances. Taking into consideration Olsen’s reduced privacy interests as a probationer, we conclude that the random UAs here were conducted with “authority of law” under article I, section 7 of our state constitution.

State v. Olsen, 189 Wn. 2d at 135, 399 P.3d at 1150.

Random UAs of Mr. Farr do not violate article 1, section 7 because they are conducted with the authority of law. The government has a compelling interest in disturbing Mr. Farr’s privacy interest in order to protect his health, promote his rehabilitation and protect the public. The random testing here is narrowly tailored to monitor compliance with a

validly imposed commitment and treatment. Thus, the order committing the defendant to Eastern State Hospital constitutes sufficient “authority of law” to require random UAs. Furthermore, the authorized testing is related to Eastern State Hospital’s ability to maintain Mr. Farr’s overall health, and is therefore limited in scope. Every 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.

D. CONCLUSION

The goal of Eastern State Hospital’s request for urinalysis testing was to provide for the medical care and treatment of Mr. Farr as well as his safety and the safety of other patients and the staff. Eastern State Hospital has a duty to provide Mr. Farr with medical care and safety. The six month reports to the Superior Court documented the need for urinalysis or other testing to achieve those medical and safety goals. Mr. Farr was afforded a hearing with counsel who argued vigorously for his position. The trial court judge considered the records submitted by Eastern State Hospital in making his ruling. The 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. Therefore, this

appeal should be dismissed and the decision of the trial court should be affirmed.

Respectfully submitted this 12th day of June, 2020.


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