

Appellant, John Anderson, by and through his counsel of record, Judith M. Mandel, replies to the brief of Respondent, State of Washington as follows:

I. Reply re First Assignment of Error: The trial court erred when it allowed the use of records generated in a confidential and protected treatment environment to be used in this civil commitment proceeding.

The State of Washington argues that Mr. Anderson has wrongly characterized the trial court's decision to admit his Western State treatment records as a "judicially conferred or implied exception" to confidentiality. (Br. of Resp at 25). In response , Mr. Anderson, refers this Court to the trial court's decision that the statute "impliedly" permits the release of such information to the appropriate authorities. (App. A-Appellant's Opening Brief). Respondent is correct that the phrase "judicially conferred or implied" is in artful. More accurately phrased, Mr. Anderson asserts that trial court found that the legislature "implied" an exception to confidentiality; that the exception has to be read into the statute by the court because the legislature failed to make the exception unambiguous and explicit. This is, of course, the gravamen of appellant's

argument.

In response to Mr. Anderson's argument that the trial court's interpretation of the statutes in question is error, the State relies upon R.C.W. 71.05.630 (1) which provides for an exception to confidentiality of **treatment records** "...as otherwise provided by law ..." The State argues that this language conclusively defeats appellant's claim that the legislature intended his **treatment records** to remain confidential in face of the implied exceptions of R.C.W. 71.05.390 final paragraph. However, R.C.W. 71.05.390 does not reference **treatment records**. Applying basic principles of statutory construction as previously set forth in App. Opening Brief at 9-11, R.C.W. 71.05.630 (1) permits exceptions for the release of **treatment records** as "provided by law" only if **treatment records** are specifically referenced.

II. Reply to Second Assignment of Error : The trial court erred in concluding that respondent, John Anderson committed a "recent overt act," a necessary element as required by statute and Wash Const Art. I § 3 and U.S. Const. Amend 14 (due process) for civil commitment as Mr. Anderson was not confined at the time of the filing of the Petition.

The State devoted considerable time describing the mental and physical attributes of the persons with whom Mr. Anderson engaged in consensual sexual acts while at Western State Hospital (Br. Of Resp 17-24). The state relies on these sexual relationships with “vulnerable” patients as legally sufficient evidence of overt acts which satisfy the due process demand of sexual dangerousness. According to the hospital, the staff would have disapproved of any consensual relationship between patients (App. Opening Brief at 5). Any mental patient would and should be described as “vulnerable.” The trial court’s ruling in reliance upon in re Pugh, 68 Wn App. at 695, remains inapposite since Mr. Anderson did have access to “vulnerable” individuals. The trial court’s finding that his consensual relationships with these individuals were sufficient evidence of a reasonable apprehension of sexually violent harm was not supported by the evidence.

III. Reply to Third Assignment of Error: The trial court erred in refusing to allow Dr. Richard Wollert to testify for respondent as a rebuttal witness.

Mr. Anderson sought to present the testimony of an expert to rebut the expert opinions upon which the state relied to commit him. The trial

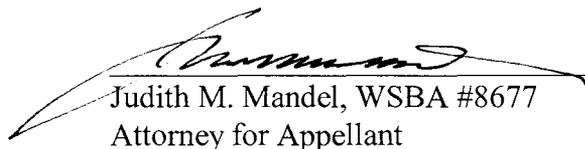
court disallowed the testimony for untenable reasons and on untenable grounds (Appellant's Opening Brief at 16-18). The trial court's exercise of its discretion is not made reasonable because appellant's trial counsel erroneously called the expert a "rebuttal" expert. The State argues that the WACs regarding the appointment of experts at public expense provide justification for the trial court's action (Br. Of Resp at 39). How Dr. Wollert was to be paid and by whom is irrelevant to the question of whether Mr. Anderson received a fair trial without the assistance of the expert he had endorsed. Whether he could have endorsed a different, equally capable expert is irrelevant. The success of his counsel in cross-examining the state's expert, in the opinion of the prevailing party, should be given no weight in determining the reasonableness of the trial court's action. (Br. Of Resp 39-41.)

IV: Conclusion :

This Court should grant the relief requested.

DATED this 27 day of October, 2005

Respectfully submitted,


Judith M. Mandel, WSBA #8677
Attorney for Appellant

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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY [Signature]
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JOHN CHARLES ANDERSON,)
)
Appellant,)
)
v.)
)
STATE OF WASHINGTON,)
)
Respondent.)

No. 31915-2-II

DECLARATION OF MAILING,
SERVICE AND/OR FACSIMILE

I, Stacy Massey, declare under penalty of perjury under the laws of the State of Washington that on the 28th day of October, 2005, I deposited in the U.S. mail, properly stamped and addressed, or sent by facsimile, or by legal messenger service, or hand delivered a copy of APPELLANT'S REPLY BRIEF to the following:

Krista Kay Bush
Attorney General
900 Fourth Ave Suite 2000
Seattle, WA 98164-1012

U.S. Mail
 Hand Delivered
 Overnight Mail
 Legal Messenger Service
 Fax

DECLARATION OF MAILING, SERVICE AND/OR FACSIMILE

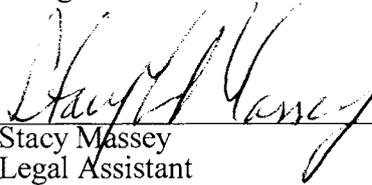
Judith M. Mandel
Attorney at Law
524 Tacoma Ave So
Tacoma, WA 98402

ORIGINAL

1 The original APPELLANT'S REPLY BRIEF and a copy for conforming were also filed on
2 October 28, 2005 with:

3 Washington State Court of Appeals [X] U.S. Mail
4 Division II [] Hand Delivered
5 Clerk's Office [] Legal Messenger Service
6 950 Broadway, Suite 300 [] Overnight Mail
7 Tacoma, WA 98402-4454 [] Fax

8 Dated this 28th day of October, 2005 in Tacoma, Washington.

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10 Stacy Massey
11 Legal Assistant

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DECLARATION OF MAILING, SERVICE AND/OR FACSIMILE

Judith M. Mandel
Attorney at Law
524 Tacoma Ave So
Tacoma, WA 98402