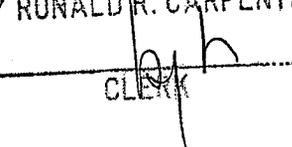


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NO. 82907-1

SUPREME COURT OF THE STATE OF WASHINGTON

In re the Detention of:

JAKE HAWKINS,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

SUPPLEMENTAL BRIEF OF RESPONDENT

ROBERT M. MCKENNA
Attorney General

JOSHUA CHOATE
Assistant Attorney General
WSBA No. 30867
Criminal Justice Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 389-2011

ORIGINAL

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I. INTRODUCTION

When it enacted the statutory provisions governing psychological evaluations in Sexually Violent Predator ("SVP") cases, the Washington State Legislature properly delegated rule-making authority to the Department of Social and Health Services ("DSHS") regarding the parameters of those evaluations. DSHS accordingly promulgated administrative rules that govern such evaluations, give deference to the expert psychologists' professional opinions, and allow for substantive decisions to be made on a case by case basis. In this case, the trial court appropriately exercised its discretion in reviewing the request for physiological testing as part of the evaluation, and determined that the testing was warranted in this case.

II. ISSUES

Two issues are presented on appeal:

- A. **Did DSHS exceed its authority by enacting administrative rules that set minimum guidelines to be followed by psychologists who conduct Sexually Violent Predator evaluations on behalf of DSHS?**
- B. **Did the trial court abuse its discretion by ordering Mr. Ritter to participate in a sexual history polygraph examination as part of a statutorily required pretrial Sexually Violent Predator evaluation?**

III. STATEMENT OF THE CASE

The State filed this SVP case on February 21, 2006, seeking the involuntary civil commitment of Mr. Hawkins pursuant to RCW 71.09. CP at 8-9. This action arises out of a pre-trial discovery order pursuant to RCW 71.09.040(4) compelling Mr. Hawkins to submit to the physiological testing requested by the assigned evaluator, Dr. Christopher North, Ph.D.

Dr. North is a licensed psychologist who has specialized in the evaluation of sex offenders since 1996. CP at 21. He has been a member of the Joint Forensic Unit (JFU), the panel of experts selected to conduct SVP evaluations in Washington, since 2003. *Id.* Dr. North is familiar with SVP civil commitment statutes, and has conducted approximately 500 SVP evaluations, including 15 in Washington. *Id.* He has testified as an expert witness in SVP matters approximately 100 times. *Id.* Dr. North's initial evaluation of Mr. Hawkins was based upon a records review and a January 7, 2005, clinical interview. *Id.*

In this case, it is Dr. North's professional opinion that his evaluation of Mr. Hawkins should include a complete sexual history polygraph conducted by a qualified technician. CP at 22. The sexual history polygraph is designed to assist Dr. North in determining whether the offender meets the statutory criteria of an SVP, specifically: 1) that he

currently suffers from a mental abnormality or personality disorder; 2) that makes him more likely than not to commit predatory acts of sexual violence if not confined in a secure facility. *Id.*; RCW 71.09.020(18).

It is Dr. North's professional opinion that this component of his evaluation is necessary in order to ensure it is as comprehensive as possible. CP at 22. In evaluating a sex offender who has been referred for possible SVP civil commitment, the current standard of practice in the profession includes a complete sexual history polygraph as part of the materials and information upon which an expert must rely. *Id.*

Mr. Hawkins declined to participate in the polygraph exam, and the state filed a motion to compel his participation. After considering the evidence and arguments presented by the parties, the trial court entered an order compelling Mr. Hawkins to submit to a sexual history polygraph. CP at 6-7. This appeal followed. On February 12, 2009, the Court of Appeals affirmed the order compelling Mr. Hawkins' participation in the polygraph exam in an unpublished decision. *In re the Detention of: Jake Hawkins*, No. 36492-1-II.

IV. ARGUMENT

A. The RCW 71.09.040(4) Pretrial SVP Evaluation Generally

Once a court determines there is probable cause to believe an offender meets the definition of an SVP,

the judge *shall* direct that the person be transferred to an appropriate facility for an evaluation as to whether the person is a sexually violent predator. The evaluation shall be conducted by a person deemed to be professionally qualified to conduct such an examination pursuant to *rules developed by the department of social and health services*.

RCW 71.09.040(4) (emphasis added).

DSHS has promulgated rules to effectuate the statute's requirement that a comprehensive post-probable cause psychological evaluation be conducted by a qualified expert. *See* WAC 388-880. RCW 71.09.090(4) also requires that the evaluation must be done by a "professionally qualified person," which includes a licensed psychologist who has expertise in conducting evaluations of sex offenders and providing expert testimony relating to sex offenders. WAC 388-880-010, -033.

The evaluation itself must include an "examination" of the alleged SVP, as well as a review of all pertinent available records. WAC 388-880-034. If the person being evaluated "refuses to participate in examinations, forensic interviews, psychological testing or any other interviews necessary" as part of the RCW 71.09.040(4) evaluation, the evaluator is instructed to notify DSHS, through the Special Commitment Center, so that court enforcement may be sought if necessary. WAC 388-880-035.

This case does not present the issue of whether the results of the

sexual history polygraph examination will be *admissible* at trial.¹ Rather, the sole issue is whether such an exam can be *ordered* as part of an RCW 71.09.040(4) evaluation.

B. Mr. Hawkins' Claim That The Department Of Social And Health Services Exceeded Its Authority In Adopting WAC 388-880-034 Is Without Merit

Mr. Hawkins claims that DSHS exceeded its authority in adopting WAC 388-880-034, the provision outlining the minimum requirements of the RCW 71.09.040 evaluation. Because RCW 71.09.040(4) specifically authorizes DSHS to adopt rules governing evaluations conducted pursuant to RCW 71.09.040, Mr. Hawkins' claim fails.

1. Standard Of Review

The extent of DSHS' rule-making authority is a question of law, which is reviewed *de novo*. *Washington Public Ports Ass'n*, 148 Wn.2d 637, 645, 62 P.3d 462 (2003). The regulation is presumed valid, and its challenger bears the burden of overcoming this presumption. RCW 34.05.570(1)(a); *Association of Washington Business v. Dep't of*

¹ While ER 703 is very broad, it is possible that some of the information gained during the evaluation may not be admissible at trial. Indeed, the evaluator may not be able to testify at trial regarding some of the data he or she gathers or reviews during the evaluation if the necessary foundation cannot be made. ER 703; ER 705; CR 26(b)(1). The trial court is granted discretion to allow a testifying expert to relate hearsay or otherwise inadmissible evidence to the trier of fact to explain the reasons for his or her expert opinion, subject to appropriate limiting instructions. *In re the Detention of Marshall*, 156 Wn.2d 150, 163, 125 P.3d 111, 117 (2005) (citing ER 705; 5B Karl Tegland, *Washington Practice: Evidence Law and Practice* §§ 705.4, 705.5 (1999)).

Revenue, 121 Wn. App. 766, 770, 90 P.3d 1128, 1130 (2004). This Court may declare an agency rule invalid if it: (1) violates constitutional provisions; (2) exceeds statutory authority of the agency; (3) was adopted without compliance with statutory rule-making procedures; or (4) is arbitrary and capricious. RCW 34.05.570(2)(c). Despite the plain language of the statute granting DSHS the authority to adopt rules governing the evaluations, Mr. Hawkins invokes RCW 34.05.570(2)(c), asserting WAC 388-880-034 is invalid because the DSHS exceeded its statutory authority in promulgating the rule.

Like all state agencies, DSHS possesses those powers either expressly granted or necessarily implied from statutory grants of authority. *Washington Public Ports Ass'n.*, 148 Wn.2d at 646; *Green River Cmty. Coll. v. Higher Educ. Pers. Bd.*, 95 Wn.2d 108, 112, 622 P.2d 826 (1980). Agency rules may be used to "fill in the gaps" in legislation if such rules are "necessary to the effectuation of a general statutory scheme." *Washington Public Ports Ass'n.*, 148 Wn.2d at 645-46 (quoting *Hama Hama Co. v. Shorelines Hearings Bd.*, 85 Wn.2d 441, 448, 536 P.2d 157 (1975)). Such administrative rules adopted pursuant to a legislative grant of authority are presumed valid, and are upheld if they are reasonably consistent with the controlling statute. *Campbell v. Dep't of Soc. & Health Servs.*, 150 Wn.2d 881, 892, 83 P.3d 999 (2004); *Green River*

Cnty. Coll., 95 Wn.2d at 112.

In addition, the rules of statutory construction apply to administrative rules and regulations, particularly where they are adopted pursuant to express legislative authority. *Department of Licensing v. Cannon*, 147 Wn.2d 41, 56, 50 P.3d 627, 636 (2002); *City of Kent v. Beigh*, 145 Wn.2d 33, 45, 32 P.3d 258 (2001). The primary objective of any statutory construction inquiry "is to ascertain and carry out the intent of the Legislature." *Rozner v. City of Bellevue*, 116 Wn.2d 342, 347, 804 P.2d 24 (1991). *In re the Detention of Strand*, No. 80570-9, 2009 WL 3210402 at 5 (Wash. Oct. 8, 2009). To determine that intent, the court looks first to the language of the provision. "Plain meaning is 'discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.'" *Id.* (citing *Udall v. T.D. Escrow Servs., Inc.*, 159 Wn.2d 903, 909, 154 P.3d 882 (2007) (quoting *Tingey v. Haisch*, 159 Wn.2d 652, 657, 152 P.3d 1020 (2007))).

2. Since WAC 388-880-034 Is Consistent With RCW 71.09.040, Mr. Hawkins' Claim Is Without Merit

WAC 388-880-034 sets forth the minimum requirements for the RCW 71.09.040(4) pretrial SVP psychological evaluation. Mr. Hawkins argues that RCW 71.09.040 does not authorize DSHS to develop rules

regarding the conduct of pretrial evaluations. Pet. for Review at 11. However, great deference is afforded to an agency's interpretation of a statute "when the statute is within the agency's field of expertise." *Inland Empire Distribution Sys., Inc. v. Utilities & Transp. Commission*, 112 Wn.2d 278, 282, 770 P.2d 624 (1989); see also *Youngberg v. Romeo*, 457 U.S. 307, 322-23, 102 S.Ct. 2452, 2461-62 (1982) (In determining what is "reasonable" in any case involving treatment by the state of an involuntarily committed individual, courts must show deference to the judgment exercised by a qualified professional, whose decision is presumptively valid.) Also, where the Legislature has specifically delegated rulemaking power to an agency, its regulations are presumed valid. *Anderson, Leech & Morse, Inc. v. Washington State Liquor Control Bd.*, 89 Wn.2d 688, 695, 575 P.2d 221 (1978). "One asserting invalidity has the burden of proof, and the challenged regulations need only be reasonably consistent with the statutes they implement." *Anderson*, 89 Wash.2d at 695. Only compelling reasons demonstrating that the regulation is in conflict with the intent and purpose of the legislation warrant striking down a challenged regulation. *Anderson*, 89 Wash.2d at 695.

Here, within RCW 71.09.040(4), the legislature expressly granted DSHS the authority to make rules governing the pretrial SVP evaluation.

The plain language of the statute states the evaluation "shall be conducted by a person deemed to be professionally qualified to conduct such an examination *pursuant to rules developed by the department of social and health services.*" RCW 71.09.040(4). DSHS complied with the statutory grant by implementing the relevant rules.

Nonetheless, Mr. Hawkins argues that the legislature only intended DSHS adopt rules regarding the qualifications of the evaluator, not the substance of the evaluation itself. Such an argument renders the "to conduct" language of the RCW 71.09.040(4) either inoperative or superfluous. Under rules of statutory construction "no part of a statute should be deemed inoperative or superfluous unless it is the result of obvious mistake or error." *Strand* at 5 (*citing Klein v. Pyrodyne Corp.*, 117 Wn.2d 1, 13, 810 P.2d 917, 817 P.2d 1359 (1991)).

No such obvious mistake or error can be found within the test of RCW 71.09.040(4). Thus, DSHS has, by administrative code provision, set forth the minimum requirements that a pretrial SVP evaluation must meet. One of those requirements is that an "examination" of the alleged SVP be conducted. WAC 388-880-034(1). The mechanics of the examination are left to the discretion of a professional psychologist with expertise in the field of assessing and evaluating sex offenders. Such a course is logical, and is indicative of consideration for the obvious

individualized and case specific nature of psychological examinations, and the expertise of the evaluators involved.

For example, physiological tests such as the penile plethysmograph (PPG) can provide information that is relevant to the questions posed to an SVP evaluator. See e.g. *In re the Detention of Halgren*, 156 Wn.2d 795, 806, 132 P.3d 714 (2006). However, a requirement that the person being evaluated must undergo a new PPG in every evaluation pursuant to RCW 71.09.040(4) would be unwarranted, especially if the individual has undergone such testing numerous times previously. However, Mr. Hawkins nonetheless argues that the decision to request another PPG be made for the evaluator by the legislature.

Rather than making rules that would deny the complexity of psychological assessment, the legislature has properly deferred to those with the expertise to ensure complete results with only the necessary amount of intrusion upon the person being evaluated. Thus, redundant physiological examinations can be avoided in a case where there are existing tests results and the expert does not require a new one.

In addition, while this delegation permits some essential flexibility in evaluation procedure, it also operates to give the trial court oversight and allows an opportunity for any proposed evaluation procedure to be challenged. Such was the case here. Thus, the statutory scheme, and

corresponding administrative code provisions, appropriately enabled the particulars of Mr. Hawkins' case to be considered, and an informed decision to be made regarding the parameters of his pretrial evaluation.

The statutory provision, and corresponding administrative rules, are reasonably consistent, and assist in achieving the stated goals of Ch. 71.09 RCW. Mr. Hawkins has failed to meet his burden to show otherwise. For these reasons, Mr. Hawkins' claim should be denied.

C. The Trial Court Did Not Abuse Its Discretion By Requiring Mr. Hawkins To Participate In A Polygraph Examination As Part Of The Psychological Evaluation Required By RCW 71.09.040

"Under [RCW 71.09.040(4)] the State has the right to conduct a mental health examination of the individual following the probable cause hearing." *Strand* at 10 (Sanders, J. dissenting) (citing *In re the Detention of Williams*, 147 Wn.2d 476, 55 P.3d 597 (2002)). Mr. Hawkins claims that this required examination can not include a sexual history polygraph examination, a test that is routinely utilized during sex offender evaluations and was requested by the State's expert. This argument is without merit because the statutory scheme allows for such decisions to be made on a case by case basis. Further, Mr. Hawkins' references to other portions of RCW 71.09 are misplaced because the cited provisions were not intended to address the "precommitment" portion of an SVP

proceeding. For these reasons, the trial court's order to compel Mr. Hawkins' participation in a sexual history polygraph exam should be affirmed.

1. Standard Of Review

"SVP proceedings are not governed by the civil rules, where the rules conflict with statutory provisions governing SVP proceedings." *In re Detention of Young*, 163 Wn.2d 684, 693, 185 P.3d 1180 (2008). However, where the statutory provisions are consistent with the civil rules, or are silent, the civil rules will apply. *Id.*; see also *In re Estate of Kordon*, 157 Wn.2d 206, 213, 137 P.3d 16, 19 (2006). Here, the trial court entered a discovery order concerning a portion of the psychological evaluation mandated by RCW 71.09.040(4). While that evaluation is required by the statute, the statute is silent regarding the parameters of the evaluation. In such a case, the trial court will rely on the rules of pretrial discovery to define the parameters of the event in question for purposes of applying the statute.² See *In re the Detention of Petersen*, 145 Wn.2d 789, 801, 42 P.3d 952, 959 (2002) ("Even assuming former RCW 71.09.090(2)

² Mr. Hawkins also argues that the court of appeals confused CR 26(a) with CR 35 in its opinion. This is untrue. In truth, the appellate court agreed with the state's position that CR 26(a) granted the trial court additional authority to order a polygraph exam as part of the RCW 71.09.040(4) pretrial evaluation. See CR 26(a) (listing methods of proper pre-trial discovery, including "depositions upon oral or written questions; written interrogatories; production of documents or things or permission to enter upon land or property, for inspection and other purposes; physical and mental examinations; and requests for admission").

probable cause hearings were special proceedings, nothing in that statute is inconsistent with the civil discovery rules." Thus, the statute did not prevent the parties from deposing witnesses and conducting such discovery as is permitted by the civil rules.)³ See also *Limstrom v. Ladenburg*, 136 Wn.2d 595, 605, 963 P.2d 869, 874 (1998) (citing *Dawson v. Daly*, 120 Wn.2d 782, 789-90, 845 P.2d 995 (1993); *Overlake Fund v. City of Bellevue*, 60 Wn. App. 787, 795, 810 P.2d 507 (1991)).

A trial court is afforded broad discretion to implement controls on the discovery process to permit full disclosure of relevant information while guarding against harmful side effects. *Rhinehart v. Seattle Times Co.*, 98 Wn.2d 226, 232, 654 P.2d 673 (1982), *aff'd*, 467 U.S. 20, 104 S.Ct. 2199, 81 L.Ed.2d 17 (1984). Such discovery orders are reviewed for abuse of discretion that results in prejudice to a party or person. *John Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 777, 819 P.2d 370 (1991).

An appellate court will find an abuse of discretion only "on a clear showing" that the court's exercise of discretion was "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775

³ RCW 71.09.090(2) provides the mechanism through which persons civilly committed as SVPs may have a hearing on whether probable cause exists to warrant a hearing on whether the person's condition has so changed that: (i) he or she no longer meets the definition of a sexually violent predator; or (ii) conditional release to a proposed less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community.

(1971). A trial court's discretionary decision "is based 'on untenable grounds' or made 'for untenable reasons' if it rests on facts unsupported in the record or was reached by applying the wrong legal standard." *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003). A court's exercise of discretion is "manifestly unreasonable" if "the court, despite applying the correct legal standard to the supported facts, adopts a view 'that no reasonable person would take.'" *Id.* (quoting *State v. Lewis*, 115 Wn.2d 294, 298-99, 797 P.2d 1141 (1990)).

2. A Plain Reading Of The Applicable Statutory And Administrative Code Provisions Validate The Trial Court's Order In This Case

Mr. Hawkins argues that the trial court lacked the authority to order the polygraph examination because RCW 71.09.040(4) does not codify the evaluation parameters or expressly include polygraph examinations as part of the evaluation process. Mr. Hawkins interprets the requirement that an evaluation be conducted as signaling the legislature's legislative intent to foreclose polygraph exams, and potentially any other physiological or psychological testing. Mr. Hawkins' argument fails because it ignores what the plain language of the statute does allow, as well as the language of the corresponding WAC provisions.

RCW 71.09.040(4) requires "an evaluation as to whether the person is a sexually violent predator." The corresponding

WAC provisions states that, among other things, the "evaluation" must include an "examination" of the person. WAC 388-880-304(1). For purposes of the pretrial SVP evaluation, "[e]valuation" means an examination, report, or recommendation by a professionally qualified person to determine if a person has a personality disorder and/or mental abnormality which renders the person likely to engage in predatory acts of sexual violence if not confined in a secure facility." WAC 388-880-010. If the person being evaluated "refuses to participate in examinations, forensic interviews, psychological testing or any other interviews necessary" as part of the RCW 71.09.040(4) evaluation, the evaluator is instructed to notify DSHS, through the Special Commitment Center, so that court enforcement may be sought if necessary. WAC 388-880-035.

In this case, a sexual history polygraph examination was recommended by Dr. North, a qualified evaluator who noted that the examination would likely result in useful information, and was something Mr. Hawkins had not previously undergone. Specifically, Dr. North advised,

The questions asked during the sexual history polygraph examination would be designed to provide [Dr. North] with necessary and relevant information relating to the central issues in this SVP matter ... [and the] results of sexual history polygraph examinations are routinely used by mental health professionals in conducting sex offender and sexually violent predator evaluations.

CP at 21.

In sum, the relevant WAC provisions, the declaration of Dr. North, and relevant professional standards all support the conclusion that such an examination is part of a comprehensive sex offender evaluation. In addition, the trial court also had the opportunity to consider argument and opposing evidence regarding whether or not Mr. Hawkins' participation in the exam should be ordered. CP at 6-7. For these reasons, ample authority permitted the trial court to order Mr. Hawkins to participate in a sexual history polygraph examination as part of Dr. North's evaluation. Thus, the trial court did not abuse its discretion in issuing that order.

3. The Psychological Community Agrees That Polygraph Examinations Are An Important Part Of The Sex Offender Evaluation Process

While Mr. Hawkins argues that the trial court in his SVP case can't legally order him to participate in a polygraph examination, he does not allege that conducting a sexual history polygraph exam during his evaluation would be improper practice. The reason is because the use of such examinations during sex offender evaluations is a routine and accepted practice.

Therapists evaluating and/or treating sexual assaulters need valid, reliable information from the sex offender... Since much valuable information is frequently unobservable by the therapist, steps must be taken to insure valid, reliable

offender reports.

Abel, G. and Rouleau, J. L. (1990), The nature and extent of sexual assault. In W. L. Marshall, D. R. Laws, and H. E. Barbaree (Eds.), *Handbook of Sexual Assault: Issues, Theories, and Treatment of the Offender*, New York: Plenum Press, 10 (1990).

Consequently, the use of a sexual history polygraph as part of a sex offender evaluation is endorsed by the Association for the Treatment of Sexual Abusers (ATSA). ATSA is an international organization consisting of mental health professionals who engage in evaluating and treating sex offenders. See <http://www.atsa.com> (last visited October 8, 2009). It has issued standards for evaluating sex offenders, which provide that an evaluation may include physiological assessments, including a sexual history polygraph that has been conducted according to generally accepted standards. Seto, et al., *ATSA Practice Standards and Guidelines* (2001).

Those standards include recommended procedures for use during sex offender evaluations such as the following passage:

Members should use phallometric testing to corroborate the self-report of male clients regarding their sexual arousal patterns and sexual interests; polygraphy to corroborate client self-report regarding their sexual offenses, sexual histories, and compliance with treatment and supervision requirements; and viewing time measures to corroborate client self-report their sexual interests in children when phallometric testing is unavailable. (emphasis in original)

Id at 13.

"The polygraph exam is integrated into these treatment and supervision practices to verify that the offender is being truthful about his or her past and present harmful behaviors." English et al., *The Value of Polygraph Testing in Sex Offender Treatment* at 14 (2000). This Court has recognized the value of polygraph testing in the context of a SVP evaluation. *In re the Detention of Petersen*, 145 Wn.2d 789, 802, 42 P.3d 952, 960 (2002) (noting the positive effect sex offender treatment had on appellant was confirmed by blood tests, polygraph tests, and plethysmograph tests).

Here, a sexual history polygraph examination was requested by a qualified psychologist, and in order to complete a statutorily required psychological evaluation. The request conforms to accepted and recommended standards of practice. Thus, the trial court had ample justification for ordering the exam be completed. For this reason, Mr. Hawkins' appeal should be denied.

4. Mr. Hawkins' References To RCW 71.09.096 Are Irrelevant To His Claim On Appeal

Mr. Hawkins argues that the lack of reference to polygraph examinations within RCW 71.09.040 invokes the statutory construction rule of *expression unius est exclusion alterius* since polygraph examinations are referenced elsewhere in the statute. Specifically, he

references RCW 71.09.096(4). That provision sets forth the monitoring requirements for persons who have already been determined to meet the SVP definition and are released into a "less restrictive alternative" form of confinement. The released person must participate "in a specific course of inpatient or outpatient treatment that may include monitoring by the use of polygraph or plethysmograph." RCW 71.09.096(4). This provision is specific to individuals who have been committed to the care and custody of DSHS and who will be living in the community on conditional release. Obviously, there are legitimate and compelling reasons to require polygraph exams to assist in the supervision of these conditionally released individuals. This differs from the pretrial evaluation stage of SVP proceedings where the use of polygraphs is best determined by the professionally qualified person conducting the evaluation on a case by case basis.

Mr. Hawkins' analogy to RCW 71.09.096 is misplaced. Not only is he referencing a statutory provision that addresses an entirely different stage of the proceedings, but he also implies that any potential part of the RCW 71.09.040(4) evaluation that is not specifically included in the statute is barred. As discussed above, his argument is impractical given the legislature's inherent inability to foresee the case specific complexities that may be presented to the psychologist who is tasked with performing

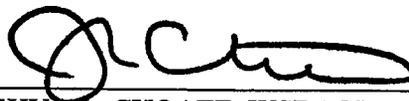
the evaluation. Rather than reading RCW 71.09.040(4) as embodying a supposed legislative intent to limit the tools available to the evaluator, it should be read as written – as requiring a psychological evaluation without attempting to micromanage the designated evaluator. For these reasons, Mr. Hawkins claim is without merit and should be denied.

V. CONCLUSION

For the foregoing reasons, the State requests that this Court reject Mr. Hawkins challenge to the rules adopted in WAC 388-880 in response to the statutory directive from the legislature, and affirm the trial court's order requiring Mr. Hawkins to participate in a polygraph examination.

RESPECTFULLY SUBMITTED this 15th day of October, 2009.

ROBERT M. MCKENNA
Attorney General



JOSHUA L. CHOATE, WSBA No. 30867
Assistant Attorney General
Attorneys for Petitioner

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WASHINGTON STATE SUPREME COURT

In re the Detention of:

JAKE HAWKINS,

Appellant/Petitioner

DECLARATION OF
SERVICE

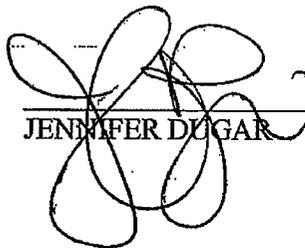
I, Jennifer Dugar, declare as follows:

On October 15, 2009, I deposited in the United States mail true and correct cop(ies) of Supplemental Brief Of Respondent and Declaration of Service, postage affixed, addressed as follows:

Manek Mistry
Jodi Backlund
203 4th Ave E, Ste 404
Olympia, WA 98501

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 15th day of October, 2009, at Seattle, Washington.


JENNIFER DUGAR

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