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NO. 63052-1-I

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

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STATE OF WASHINGTON,

Respondent,

v.

JOHN ROBERT HURST,

Petitioner.

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MOTION FOR DISCRETIONARY REVIEW

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COURT OF APPEALS  
STATE OF WASHINGTON  
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TABLE OF CONTENTS

A. IDENTITY OF MOVING PARTY.....1

B. STATEMENT OF RELIEF REQUESTED.....1

C. FACTS RELEVANT TO MOTION.....1

D. ARGUMENT WHY REVIEW SHOULD BE GRANTED.....8

    1. THE SUPERIOR COURT COMMITTED PROBABLE  
    ERROR WHEN IT DENIED MR. HURST THE  
    RIGHT TO A HEARING BEFORE A JURY ON THE  
    ISSUE OF COMPETENCY.....8

    2. THE SUPERIOR COURT COMMITTED PROBABLE  
    ERROR WHEN IT IMPROPERLY EXCLUDED  
    EVIDENCE OF THE POSSIBILITY OF CIVIL  
    COMMITMENT IN THE EVENT OF A JURY  
    FINDING THAT MR. HURST WAS NOT  
    RESTORABLE.....14

    3. THE SUPERIOR COURT COMMITTED PROBABLE  
    ERROR WHEN IT INCORRECTLY INSTRUCTED  
    THE JURY ON THE STATE’S BURDEN OF PROOF... 16

    4. THIS CASE PRESENTS MATTERS OF  
    CONTINUING AND SUBSTANTIAL PUBLIC  
    INTEREST.....20

E. CONCLUSION.....23

## TABLE OF AUTHORITIES

### Washington Supreme Court Cases

<u>Born v. Thompson</u> , 154 Wn.2d 749, 117 P.3d 1098 (2005).....	8, 16, 17, 19, 22
<u>Hart v. Department of Social and Health Services</u> , 111 Wn.2d 445, 759 P.2d 1206 (1988).....	20
<u>In re Cross</u> , 99 Wn.2d 373, 662 P.2d 828 (1983).....	20
<u>In re McLaughlin</u> , 100 Wn.2d 832, 676 P.2d 444 (1984).....	18, 19
<u>Sorenson v. City of Bellingham</u> , 80 Wn.2d 547, 496 P.2d 512 (1972).....	20
<u>State v. Jacobs</u> , 154 Wn.2d 596, 115 P.3d 281 (2005).....	9

### Washington Appellate Cases

<u>In re S.V.B.</u> , 75 Wn. App. 762, 880 P.2d 80 (1994).....	18
<u>State v. Stivason</u> , 134 Wn. App. 648, 142 P.3d 189 (2006), <u>rev.</u> <u>denied</u> , 160 Wn.2d 1016, 161 P.3d 1027 (2007).....	9, 13
<u>State v. Swain</u> , 93 Wn. App. 1, 968 P.2d 412 (1998).....	8

### United States Supreme Court Cases

<u>Addington v. Texas</u> , 441 U.S. 418, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979).....	9, 16-19
<u>In re Winship</u> , 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).....	16
<u>Mathews v. Eldridge</u> , 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).....	16
<u>Santosky v. Kramer</u> , 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982).....	18

Other Jurisdictions

People ex rel. Wallace v. Labrenz, 411 Ill. 618,  
104 N.E.2d 769 (1952).....20

Tippett v. Maryland, 436 F.2d 1153 (4th Cir. 1971).....16

Statutes

RCW 10.77.086.....2, 5, 9, 11, 12, 18, 19, 21

RCW 71.09.060.....17

Rules

RAP 2.3.....1, 8, 23

A. IDENTITY OF MOVING PARTY

The petitioner, John Robert Hurst, requests this Court accept discretionary review of the decisions designated in Part B.

B. STATEMENT OF RELIEF REQUESTED

So that the ends of justice might be served, and pursuant to RAP 2.3, Mr. Hurst seeks discretionary review of the superior court's order finding him incompetent and committing him to Western State Hospital for 180 days.

C. FACTS RELEVANT TO MOTION

John Hurst was charged with Assault in the Third Degree for allegedly striking a nurse and throwing a shoe at her at Swedish Medical Center on March 11, 2008. Appendix A.

On March 31, 2008, prior to arraignment, Mr. Hurst's defense counsel raised the issue of competency over Mr. Hurst's objection, and the trial court ordered a competency evaluation by Western State Hospital (WSH). Appendix B. On May 12, 2008, the trial court found Mr. Hurst incompetent and ordered him to be committed to WSH for 90 days. Appendix C. On August 20, 2009, the court found Mr. Hurst incompetent again and ordered him to be committed for another 90 days. Appendix D. On November 17, 2008, Western State Hospital reported that Hurst remained

incompetent and requested a further restoration period of 180 days.

Appendix H.

Mr. Hurst's trial counsel requested and was granted a jury trial pursuant to RCW 10.77.086 on the issue of whether there was a substantial probability Mr. Hurst would regain competency within the 180-day restoration period. 12/16/08RP 3; Appendix E.<sup>1</sup> On December 16, 2009, Mr. Hurst requested a separate jury trial on the issue of competency. 12/16/08RP 8; Appendix F. Mr. Hurst requested independent counsel to present the argument at trial that he was competent, because his trial counsel believed he was neither competent nor restorable. 12/16/08RP 12-13; 1/15/09RP 2; Appendix F. Mr. Hurst's trial counsel explained the difficulty of presenting Mr. Hurst's argument while presenting the conflicting argument that restoration was unlikely:

[M]y duties have me to go two different directions. If I were to represent him, it would be very difficult for me to even consult with him about whether or not he were to testify. I would be in a position to consider whether or not to cross-examine my own expert. I wouldn't know how to advise him whether or not he should waive any of his attorney-client privileges. It puts me in a very difficult position for my ethical duties.

1/15/09RP 9-10.

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<sup>1</sup> The verbatim report of proceedings consists of ten non-consecutively paginated volumes referred to as 12/16/RP, 1/15/09RP, 1/20/09RP, 1/23/09RP, 1/28/09RP, 2/2/09RP, 2/3/09AMRP, 2/3/09PMRP, 2/4/09RP, and 2/5/09RP.

The trial court denied the motion for independent counsel, reasoning that Mr. Hurst lacked the capacity to make decisions in his best interest. 1/15/09RP 31-32; Appendix J. The trial court then denied defense counsel's motion to appoint a guardian ad litem to advise Mr. Hurst. 1/15/09RP 34.

Mr. Hurst's trial counsel again raised the motion to appoint independent counsel, explaining her conflict of interest:

[O]n the question of, for example, whether or not my client should choose to testify, I have attempted to have that conversation with Mr. Hurst. And the problem in talking about it wasn't with him, but with me, and how I can talk with him about it, given my objectives being so different from him. For example, to even go through pros and cons, what kinds of questions I will ask him, what I'm trying to show, those kinds of answers, the information that I would be giving to Mr. Hurst makes it already tricky, and I'm in a position of feeling like when I'm advising him about that question, that I have to be at the same time deceiving him. And I can't. I had to stop talking with him about even my advice about whether or not he should testify and what kinds of questions that I would ask him because the kinds of goals that I would have would be to show how long he has had these delusions and how he has reacted in Western State Hospital to his restoration process, and whether or not it's authentic because he tells me things that he doesn't tell his doctors. And that wouldn't be his goal at all. His goal would be quite opposite.

1/15/09RP 40-41. The court agreed there was a conflict:

DEFENSE COUNSEL: Your honor, I just want to put on the record that this decision puts me in a

position where I believe no matter what I do, I will be violating some RPC.

THE COURT: I think you are correct.

1/15/09RP 42.

On January 20, 2009, the trial court reversed its prior ruling and authorized appointment of independent counsel. 1/20/09RP 11; Appendix J. On January 23, 2009, independent counsel appeared before the court and argued that as a result of previous evaluations and judicial opinions finding Mr. Hurst incompetent, competency was not at issue, and Mr. Hurst had no right to present an argument that the jury find him competent. 1/23/09RP 5. The trial court responded,

The reason that I'm confused, and I think the only issue here, is does – I mean there's an assertion by everyone here that because of that perception by others that he is incompetent, he has no right to contest his personal capacity before a jury. That seems to me to be a rather cavalier dismissal of the notion of personal sovereignty and the dignity of an individual to be able to maintain a position with regard to his own capacity to deal with the outside world. [. . .] [T]here's a reference by the Supreme Court to the personal sovereignty of individuals and how they have the ability to make these decisions on their own as ill-informed as they may be.

1/23/09RP 9-10.

Then, Mr. Hurst spoke at length. 1/23/09RP 13-16. Based on Mr. Hurst's delusional thinking, the trial court found that he was not competent, and not entitled to a jury trial on the issue of competency. 1/23/09RP 16. The court dictated the order:

This matter having come on before the undersigned judge of this court, the Court examined the attached report of Western State Hospital from Dr. Julie Gallagher dated November 17, 2008; the defense expert's report from Dr. Peterson dated January 5, 2009; and considered the records herein and heard the statements of the defendant and counsel; and now finds that the defendant is presently incompetent to stand trial, and his lack of competence precludes him from asserting his right to a jury trial regarding his competency.

1/23/09RP 22-23; Appendix K. The court added, "Mr. Hurst has no legal right under these circumstances to contest his competency before a jury." Appendix K.

On January 28, 2009, Mr. Hurst's trial counsel moved to clarify the burden of proof required under RCW 10.77.086 as clear, cogent, and convincing evidence. 1/28/09RP 9-31; Appendix H. Mr. Hurst's trial counsel proposed jury instructions incorporated this burden of proof.<sup>2</sup> Appendix I. The trial court ruled that the burden of proof was preponderance of the evidence. 1/28/09RP 32.

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<sup>2</sup> Although the proposed jury instructions did not address the issue of competency, Mr. Hurst's trial counsel emphasized that the issue was not waived. 1/28/09RP 34-35.

The State moved to prevent the defense from discussing the possibility of civil commitment in the event the jury found Mr. Hurst not restorable. 1/28/09RP 46. The defense argued that this would mislead the jury into believing that Mr. Hurst would not receive treatment if the jury found him to not be restorable. 1/28/09RP 47-49. The court granted the State's motion, reasoning that informing the jury about the civil commitment process

would be inviting the jury to disregard some of the other jury instructions I anticipate we are going to be giving to them. At the same time, I expect that the State will [ . . . ] not be arguing that deciding in a certain way will release him to the street. I think that's also an argument that should not be permitted for the same reasons.

1/28/09RP 50.

King County Superior Court Judge Michael J. Fox presided over Mr. Hurst's jury trial on January 28, 2009, and February 3-4, 2009. At trial, several witnesses testified, including the State's witnesses, Dr. Julie Gallagher, Ph.D. and Dr. Peter Bingcang, M.D., as well as defense witness Dr. Kevin Petersen, Ph.D. All of the witnesses testified that Mr. Hurst was incompetent. 2/3/09AMRP 26; 2/4/09RP 10, 58. The State's experts testified that there was a substantial probability of restoration within 180 days because Mr. Hurst had shown some improvement, and competency had been

restored in the past. 2/3/09AMRP 26, 32-33; 2/4/09RP 10, 30-32.

The defense expert testified that Mr. Hurst was not likely to be restored because his delusions do not respond to medication and affect his ability to help his attorney in his defense. 2/4/09RP 62-65. Mr. Hurst did not cross-examine any of the witnesses and did not testify.

In closing, the State implied that Mr. Hurst would not receive treatment unless the court committed him for further restoration:

Ladies and gentlemen, the State of Washington is not giving up on Mr. Hurst. He's mentally ill and he needs treatment. And in our society when a person is charged with a felony, there are certain laws that allow for that treatment. And, yes, it is a long period of time, however, Mr. Hurst is substantially mentally ill, and sometimes it takes a long time to get through the fog that is in a person's brain whether they were born with it or whether it was exasperated because of drug use. It doesn't matter. Mr. Hurst is a human being as he sits before you today in desperate need of treatment.

2/5/09RP 22. Defense counsel objected to this argument.

2/5/09RP 56-57.

On February 5, the jury rendered a verdict finding that (1) Mr. Hurst presents a substantial likelihood of committing criminal acts jeopardizing public safety or security; and (2) there is a

substantial probability that the defendant will regain competency within a reasonable period of time (180 days). Appendix M.

Mr. Hurst appeals the order finding him incompetent and committing him for 180 days at WSH. Appendix N.

D. ARGUMENT WHY REVIEW SHOULD BE GRANTED

Under RAP 2.3(b)(2), this Court may grant discretionary review if the superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act. In State v. Swain, 93 Wn. App. 1, 8, 968 P.2d 412 (1998), the Court of Appeals found that the superior court's finding of incompetency substantially limited the defendant's ability to act by delaying his arraignment and trial. Therefore, as in Swain, the remaining issue of whether to grant review under RAP 2.3(b)(2) is whether the superior court committed probable error.

1. THE SUPERIOR COURT COMMITTED  
PROBABLE ERROR WHEN IT DENIED MR.  
HURST THE RIGHT TO A HEARING BEFORE A  
JURY ON THE ISSUE OF COMPETENCY

"[C]ommitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." Born v. Thompson, 154 Wn.2d 749, 755, 117 P.3d 1098 (2005) (quoting

Addington v. Texas, 441 U.S. 418, 425, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979).

Under RCW 10.77.086, if a superior court determines a defendant charged with a felony is incompetent, it may commit the defendant for evaluation and treatment for no more than ninety days.<sup>3</sup> After this 90-day period, the superior court must hold a hearing to determine the defendant's current competency before it may commit the defendant for a second 90-day period. RCW 10.77.086(2)-(3). Before the expiration of the second 90-day period, the court must conduct another competency hearing before it may commit the defendant for a final 180-day commitment period. RCW 10.77.086(3)-(4). The defendant has the right to demand that this hearing be held before a jury – as does the prosecutor and defense counsel. Id.

In construing a statute, the objective is to ascertain and give effect to the legislature's intent. State v. Jacobs, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). If a statute uses plain language and defines essential terms, the statute is unambiguous. State v. Stivason, 134 Wn. App. 648, 651, 142 P.3d 189 (2006), rev. denied, 160 Wn.2d 1016, 161 P.3d 1027 (2007). If the statute is

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<sup>3</sup> See Appendix P for full text of RCW 10.77.086.

unambiguous, a court may not look beyond its plain meaning or consider legislative history; rather, the court must determine legislative intent through the plain meaning of the statute. *Id.*

It is clear from the plain meaning of the statute that the right to a jury applies to the hearing before the final 180-day commitment, because the sentence, “The defendant, the defendant's attorney, or the prosecutor has the right to demand that *the* hearing be before a jury,” immediately follows a discussion of “a prompt hearing to determine the defendant's competency before the expiration of the second ninety-day period.” RCW 10.77.086(3). Thus, “*the* hearing” refers to the hearing prior to the final 180-day commitment. Moreover, RCW 10.77.086(4) provides that the charges shall be dismissed after the second 90-day commitment if the “*jury* or court” finds that a defendant with a developmental disability is incompetent, or if the “court or *jury*” determines there is not a substantial probability that the defendant will regain competency within a reasonable time.

The superior court in this case deprived Mr. Hurst of his right to a jury trial on the issue of competency. Prior to the hearing regarding the final 180-day commitment, Mr. Hurst demanded a jury trial on the issue of competency. Appendix H. He also

requested independent counsel to present an argument for a finding of competency, because his trial counsel believed he was incompetent and wished to present the argument that it was unlikely he would be restored during the 180-day restoration period. 12/16/08RP 12-13; 1/15/09RP 2; Appendix G. Judge Fox acknowledged the dilemma Mr. Hurst's trial counsel faced and recognized that she would likely have to violate the rules of professional conduct no matter what she decided to do. 1/15/09RP 40-42. Judge Fox also recognized "the personal sovereignty of individuals and how they have the ability to make these decisions on their own as ill-informed as they may be." 1/23/09RP 9-10. At one point, Judge Fox suggested that the court bifurcate the jury trial on the issues of competency and restorability. 12/16/08RP 12. The court also noted that Mr. Hurst would require his own expert witness to testify about competency. 12/16/08RP 17.

However, after Mr. Hurst addressed the court, thereby revealing the existence of several delusions, Judge Fox determined that Mr. Hurst was incompetent and found that he did not have the right to present his case to the jury. 2/23/09RP 13-23. Judge Fox found,

the defendant is presently incompetent to stand trial, and his lack of competence precludes him from asserting his right to a jury trial regarding his competency.

1/23/09RP 22-23.

This constitutes probable, if not obvious, error because Judge Fox flagrantly denied Mr. Hurst the right to a hearing before a jury on the issue of competency, and limited the jury trial to the issue of restorability. Appendix L. As soon as Mr. Hurst demanded a jury trial on the issue of competency, determination of competency was not in the hands of the trial court. Further, there is no language in the statute to support the court's finding that Mr. Hurst did not have a right to a hearing on the issue of competency because the court found him incompetent. The court's reasoning is circular and makes little sense. The defendant's right to argue for a finding of competency before a jury means nothing if the defendant must first convince the court to make the same finding. Accordingly, the plain language of the statute requires only that the defendant demand the competency hearing be before a jury. RCW 10.77.086 (4). It was error for the court to look beyond the plain meaning of the statute and to read in a nonexistent condition that the defendant must be deemed competent by the court before he

may assert his right to a competency hearing before a jury.

Stivason, 134 Wn. App. at 651.

The superior court not only denied Mr. Hurst the right to have the jury decide the issue of competency, it also deprived Mr. Hurst of the procedural protections inherent in a hearing before a jury. Before Judge Fox made the finding of incompetency, the court did not hear any sworn testimony regarding competency and did not allow Mr. Hurst or his trial counsel to cross-examine any of the State's experts. 1/23/09RP 2-23. Instead, Judge Fox based his decision on the reports of the State's and defense counsel's experts, and the statements by Mr. Hurst and his counsel. 1/23/09RP 22-23.

It was improper for the court to avoid the complex issues presented by Mr. Hurst's conflict with his trial counsel by outright denying Mr. Hurst's right to a hearing before a jury on the issue of competency. Because Mr. Hurst was deprived of this right, this Court should grant review, and reverse the superior court's finding of incompetency.

2. THE SUPERIOR COURT COMMITTED PROBABLE ERROR WHEN IT IMPROPERLY EXCLUDED EVIDENCE OF THE POSSIBILITY OF CIVIL COMMITMENT IN THE EVENT OF A JURY FINDING THAT MR. HURST WAS NOT RESTORABLE

The superior court, without any legal support, erroneously prevented Mr. Hurst from presenting evidence of the possibility for treatment in the event the jury returned a verdict finding that Mr. Hurst's competency was not likely to be restored within a reasonable period of time. The court reasoned that the State would not be permitted to argue that such a verdict would allow Mr. Hurst to be released from custody without receiving further treatment. 1/28/09RP 50. However, the State did just that in its closing argument:

[T]he State of Washington is not giving up on Mr. Hurst. He's mentally ill and he needs treatment. [. . .] Mr. Hurst is a human being as he sits before you today in desperate need of treatment.

2/5/09RP 22. The prosecutor also emphasized that Mr. Hurst is homeless and has been unable to obtain sufficient mental health treatment in the past because he has only committed misdemeanors, which allow for a commitment period of a maximum of 14 days. 2/5/09RP 6-7. The State's argument, therefore, misled the jury into believing that the only way to ensure that Mr. Hurst

would obtain much-needed mental health treatment would be to permit the court to commit him for the 180-day restoration period.

This argument encouraged the jurors to base their verdicts on sympathy for Mr. Hurst's mental illness and their fear that he might commit further crimes if released. It also asked them to ignore all of the evidence that numerous attempts to restore Mr. Hurst's competency failed. One juror's question for the State's expert, "In 2004, if court did not order restoration, how/why admitted to WSH?" demonstrates that the jury was concerned with other options for treatment. Appendix O. Evidence about the possibility for civil commitment would have educated the jury regarding the distinction between general mental health treatment versus treatment to restore competency, and would have encouraged the jury to properly focus on the question of restorability rather than on Mr. Hurst's need for general mental health treatment.

It was probable error for the court to prevent the defense from presenting evidence of other possibilities for mental health treatment, and to allow the State to mislead the jury. For this reason, this Court should grant review and reverse the superior court's order committing Mr. Hurst to WSH.

3. THE SUPERIOR COURT COMMITTED  
PROBABLE ERROR WHEN IT INCORRECTLY  
INSTRUCTED THE JURY ON THE STATE'S  
BURDEN OF PROOF

Involuntary commitment involves a significant deprivation of liberty that requires due process protection. Addington, 441 U.S. at 425.

Determining the standard of proof that applies for civil commitment is a due process inquiry that requires a court to balance [. . .] “both the extent of the individual’s interest in not being involuntarily confined indefinitely and the state’s interest in committing the emotionally disturbed under a particular standard of proof” [. . . and] “the risk of erroneous decisions.”

Born, 154 Wn.2d at 754 (quoting Addington 441 U.S. at 425); see also Mathews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). The standard of proof “instruct[s] the fact-finder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication.” Addington, 441 U.S. at 423 (quoting In re Winship, 397 U.S. 358, 370, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970)). In cases involving restriction of an individual’s rights, “the standard of proof [. . .] reflects [. . .] the value society places on individual liberty.” Id. at 425 (quoting Tippett v. Maryland, 436 F.2d 1153, 1166 (4th Cir. 1971)).

In Addington, the United States Supreme Court rejected the preponderance of the evidence standard for involuntary civil commitment proceedings because the individual liberty interests were so significant that the State had to justify confinement by a more substantial burden of proof. Id. at 427. In Born, the Washington Supreme Court followed the reasoning in Addington and held that the clear, cogent, and convincing standard of proof applies to commitment for the purpose of restoring competency of a defendant charged with a misdemeanor. 154 Wn.2d at 761-62. The Court reasoned that this standard is justified because of the high risk of erroneous deprivation where a defendant may be committed based solely on probable cause he has committed a crime, and because the individual's liberty interest outweighs the government's interest in public safety and prosecuting misdemeanors. Id. at 756, 761.

The standard of proof in other civil commitment procedures – where a person is deprived of a similar liberty interest as in the final 180-day commitment for incompetency – is much higher than the preponderance standard. Where the State seeks civil commitment of a person under the sexually violent predator statute, it must prove each element beyond a reasonable doubt. RCW 71.09.060.

The standard of proof at a 90-day involuntary commitment proceeding is clear, cogent, and convincing evidence. In re McLaughlin, 100 Wn.2d 832, 843, 676 P.2d 444 (1984) (following Addington to hold preponderance standard insufficient to satisfy due process in involuntary commitment proceedings).

Similarly, when the State seeks to deprive a parent of the fundamental right to parent his children, it must prove the statutory elements by clear, cogent, and convincing evidence. Santosky v. Kramer, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982); In re S.V.B., 75 Wn. App. 762, 768, 880 P.2d 80 (1994).

Under RCW 10.77.086(3), the standard of proof for the court's determination of competency for the second 90-day commitment period is preponderance of the evidence. However, the statute is silent on the standard of proof for the additional elements required to commit the defendant for the final 180-day restoration period. The statute provides in relevant part:

The criminal charges shall not be dismissed if the court or jury finds that: (a) The defendant (i) is a substantial danger to other persons; or (ii) presents a substantial likelihood of committing criminal acts jeopardizing public safety or security; and (b) there is a substantial probability that the defendant will regain competency within a reasonable period of time.

RCW 10.77.086(4). As in Born, Addington, and McLaughlin, the preponderance standard is insufficient to satisfy due process for this additional period of involuntary commitment.

At the stage where a defendant has been committed for two 90-day periods and competency has not yet been restored, his liberty interest is much greater than it was before the second 90-day period. Further, the risk of erroneous deprivation is greater because the lack of success in restoring competency within the first 180-days suggests a low probability for success during an additional 180-days. The State's interest in prosecuting this Third Degree Assault charge – which would have been charged as a misdemeanor but for the fact that the alleged victim was a nurse – does not justify such a low standard of proof. Nor does the State's interest in public safety, because the State had the option of seeking involuntary commitment in order to address any danger Mr. Hurst might have posed to the public. Born, 153 Wn.2d at 756.

Because the State's interests do not justify the use of the low preponderance standard, it was probable error for the superior court to apply the preponderance of the evidence standard, and this Court should grant review.

4. THIS CASE PRESENTS MATTERS OF  
CONTINUING AND SUBSTANTIAL PUBLIC  
INTEREST

A court may decide a technically moot case if it involves “matters of continuing and substantial public interest.” In re Cross, 99 Wn.2d 373, 377, 662 P.2d 828 (1983) (quoting Sorenson v. City of Bellingham, 80 Wn.2d 547, 558, 496 P.2d 512 (1972)). When determining the “requisite degree of public interest,” courts consider (1) “the public or private nature of the question presented,” (2) “the desirability of an authoritative determination for the future guidance of public officers, and” (3) “the likelihood of future recurrence of the question.” Sorenson, 80 Wn.2d at 558 (quoting People ex rel. Wallace v. Labrenz, 411 Ill. 618, 622, 104 N.E.2d 769 (1952)).

In Hart v. Department of Social and Health Services, 111 Wn.2d 445, 449, 759 P.2d 1206 (1988), the Washington Supreme Court observed that most cases where appellate courts have utilized the exception to the mootness doctrine involve issues of constitutional or statutory interpretation. These types of issues, the court stated, tended to be more public in nature, more likely to arise again, and the decisions helped to guide public officials. Id. It further noted that the exception had not been used in cases

involving statutory or regulatory interpretation limited to their facts.

Id.

This Court should grant review in this case because, although this Court may not render a decision before the 180-day restoration period has ended, the issues presented involve matters of continuing and substantial public interest.

The first issue in this case involves matters of continuing and substantial public interest because it concerns the interpretation of RCW 10.77.086, which provides a defendant with the right to a hearing before a jury on the issue of competency. The superior court's incorrect interpretation of the statute in this case eviscerates this right because it provides that the right does not exist unless the court first finds that the defendant is competent. This is a public question because it involves the State's power to commit an individual for long periods of time without a finding that the person committed a crime. This case also allows this Court to provide guidance to public officials that a defendant's right to a hearing before a jury under RCW 10.77.086 is not contingent on the superior court's finding of competency. Further, this issue is likely to arise again as the State continues to pursue the final 180-day restoration period for defendants charged with a felony, as opposed

to dismissing the charges following the first two 90-day restoration periods.

The issue of a defendant's ability to present evidence of the possibility of civil commitment also involves matters of continuing and substantial public interest because it is likely to arise in most jury hearings on the issue of restorability. Where a defendant presents significant mental health issues, it is important for the jury to know that commitment to restore competency is not the only way to ensure the defendant receives treatment. This presents an issue of public concern because the integrity of the jury system and a defendant's right to a jury verdict based on the evidence is at risk if the jury is allowed to be misled by the incorrect notion that the State will only provide treatment for the purpose of restoring competency.

In Born, the Court agreed that the question of the standard of proof required for commitment to restore competency for a misdemeanor charge involved a matter of continuing substantial public interest. 154 Wn.2d at 762. Because the deprivation of liberty involved in commitment for a felony charge is more substantial, the standard of proof issue here also involves matters of continuing and substantial public interest.

Therefore, this Court should grant review.

E. CONCLUSION

For these reasons, the superior court committed probable error, which substantially limited Mr. Hurst's ability to act.

Therefore, Mr. Hurst asks that this Court grant review under RAP 2.3(b)(2), and reverse the superior court's order finding him incompetent and committing him to WSH.

Respectfully submitted this 14th day of July 2009.



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Appendix A	Information
Appendix B	Order for Pretrial Competency Evaluation by Western State Hospital
Appendix C	Order Finding Defendant Incompetent and Committing for Further Evaluation and Treatment (5/12/09)
Appendix D	Order Finding Defendant Incompetent and Committing for Further Evaluation and Treatment (8/20/09)
Appendix E	Trial Set Pursuant to RCW 10.77
Appendix F	Defense Motion for Appointment of Independent Counsel
Appendix G	State's Brief Advising the Court Regarding Appointment of Independent Counsel
Appendix H	Defense Trial Memorandum for Jury Trial Pursuant to RCW 10.77.086
Appendix I	Defense Proposed Jury Instructions
Appendix J	Orders on Criminal Motion
Appendix K	Order Finding Defendant Incompetent
Appendix L	Court's Instructions to the Jury
Appendix M	Order Finding Defendant Incompetent and Committing for Further Evaluation and Treatment for 180 Days
Appendix N	Notice of Appeal to the Court of Appeals, Division I
Appendix O	Jury Questions to Witness
Appendix P	RCW 10.77.086

# Appendix A

FILED  
08 MAR 20 PM 2:37  
KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

WARRANT ISSUED  
CHARGE COUNTY \$200.00

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

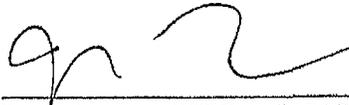
7 THE STATE OF WASHINGTON, )  
Plaintiff, )  
8 v. ) No. 08-1-03298-8 SEA  
9 JOHN ROBERT HURST, ) INFORMATION  
10 )  
11 Defendant. )

12 I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the  
13 authority of the State of Washington, do accuse JOHN ROBERT HURST of the crime of  
**Assault in the Third Degree**, committed as follows:

14 That the defendant JOHN ROBERT HURST in King County, Washington, on or about  
15 March 11, 2008, did intentionally assault Janet Ortis, a licensed nurse, a health care provider as  
16 defined in RCW Title 18 employed by Swedish Medical Center Hospital, who was at that time  
performing her nursing and health care duties;

17 Contrary to RCW 9A.36.031(1)(h), and against the peace and dignity of the State of  
Washington.

18 DANIEL T. SATTERBERG  
Prosecuting Attorney

19  
20 By:   
21 Jamila A. Taylor, WSBA #32177  
Deputy Prosecuting Attorney

22  
23  
INFORMATION - 1

Daniel T. Satterberg, Prosecuting Attorney  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000, FAX (206) 296-0955



CAUSE NO. 08 - 1 - 03298 - 8 SEA

**CERTIFICATION FOR DETERMINATION  
OF PROBABLE CAUSE**

INCIDENT NUMBER	08-091494
UNIT FILE NUMBER	H08-063

That Timothy DeVore is a Detective with the Seattle Police Department and has reviewed the investigation conducted in Seattle Police Department Case Number 08-091494;

There is probable cause to believe that JOHN HURST committed the crime(s) of ASSAULT.

This belief is predicated on the following facts and circumstances:

On March 11, 2008 at about 0440 hrs, in the State of Washington, County of King, City of Seattle, suspect Hurst had been treated in the ER of Swedish Medical Center – located at 700 Minor Avenue – and was in the process of being discharged.

Charge nurse, victim Jenet Ortis, was in Hurst's hospital room attempting to prepare the room for the next patient. Hurst was sitting on the end of the bed when Nurse Ortis asked him to move to a chair, so she could make the bed. Suspect Hurst told Nurse Ortis, "I can sit wherever I want, fuck you bitch." Hurst then lunged at victim Ortis with a closed fist and swung at her face. Ortis partially deflected the punch from her face with her right hand and was struck on her forehead. Victim Ortis felt immediate pain to her right hand and her forehead. Suspect Hurst then threw one of his shoes at Nurse Ortis.

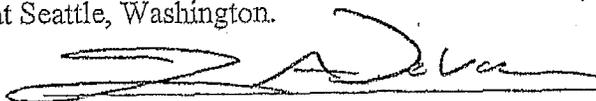
Additional hospital staffed rushed into the room and restrained suspect Hurst for the police. Witness Blackburn, also a nurse at Swedish, heard suspect Hurst say, "I should have killed her, I made her bleed."

Seattle Police officer, N. Zech arrived and took custody of suspect Hurst. Hurst was provided his Miranda Warnings and declined to make any statements. Hurst was booked into the KCJ for Investigation of Assault.

Nurse Ortis' injuries did not require medical treatment.

Suspect Hurst is a psychiatric patient and was scheduled to have his medication adjusted that day at 1300 hrs.

Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct to best of my knowledge and belief. Signed and dated by me this 11<sup>th</sup> day of MARCH, 2008, at Seattle, Washington.

 5497

**ORIGINAL**

FILED  
08 MAR 20 PM 2:37  
KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON, )  
 )  
 ) Plaintiff, )  
 )  
 ) v. ) No. 08-1-03298-8 SEA  
 )  
 )  
 ) JOHN ROBERT HURST, )  
 )  
 ) MOTION, FINDING OF PROBABLE  
 ) CAUSE AND ORDER DIRECTING  
 ) ISSUANCE OF SUMMONS OR  
 )  
 ) Defendant. ) WARRANT AND FIXING BAIL

The plaintiff, having informed the court that it is filing herein an Information charging the defendant with the crime of **Assault in the Third Degree**, now moves the court pursuant to CrR 2.2(a) for a determination of probable cause and an order directing the issuance of a summons or warrant for the arrest of the defendant, and

fixing the bail of the defendant in the amount of \$5,000, cash or approved surety bond; and **no contact direct or indirect with Janet Ortis. The no contact order issued at the time of first appearance remains in effect until arraignment.**

directing the issuance of a summons; and **no contact direct or indirect with Janet Ortis. The no contact order issued at the time of first appearance remains in effect until arraignment.**

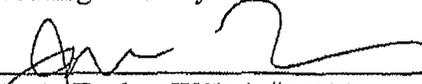
In connection with this motion, the plaintiff offers the following incorporated materials: The Seattle Police Department certification or affidavit for determination of probable cause; the Seattle Police Department suspect identification data; and the prosecutor's summary in support of order directing issuance of summons or order fixing bail and/or conditions of release.

MOTION, FINDING OF PROBABLE CAUSE AND ORDER DIRECTING ISSUANCE OF SUMMONS OR WARRANT AND FIXING BAIL - 1

Daniel T. Satterberg, Prosecuting Attorney  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000, FAX (206) 296-0955

1 If the defendant is not in custody, the plaintiff has attempted to ascertain the defendant's  
2 current address by searching the District Court Information System database, the driver's license  
3 and identicard database maintained by the Department of Licenses, and the database maintained  
4 by the Department of Corrections listing persons incarcerated and under supervision.

5 DANIEL T. SATTERBERG  
6 Prosecuting Attorney

7 By:   
8 Jamita A. Taylor, WSBA #32177  
9 Deputy Prosecuting Attorney

10 FINDING OF PROBABLE CAUSE AND ORDER FOR ARREST WARRANT

11 The court finds that probable cause exists to believe that the above-named defendant  
12 committed an offense or offenses charged in the information herein based upon the police agency  
13 certification/affidavit of probable cause incorporated and pursuant to CrR 2.2(a).

14 IT IS ORDERED that the Clerk of this Court issue a summons or warrant of arrest for the  
15 above-named defendant; and

16 IT IS FURTHER ORDERED that

17  the bail of the defendant be fixed in the amount of \$5,000, cash  
18 or approved surety bond; and no contact direct or indirect with  
19 Janet Ortis. The no contact order issued at the time of first  
20 appearance remains in effect until arraignment.

21  directing the issuance of a summons; if the defendant is  
22 incarcerated on the investigation charge herein the defendant shall  
23 be released from custody; and no contact direct or indirect with  
Janet Ortis. The no contact order issued at the time of first  
appearance remains in effect until arraignment.

Additional Conditions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

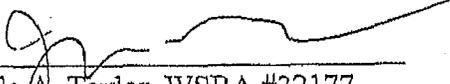
1 IT IS FURTHER ORDERED that the defendant be advised of the amount of bail fixed by  
2 the court and/or conditions of his or her release, and of his or her right to request a bail reduction.  
3 Service of the warrant by telegraph or teletype is authorized.

4 SIGNED this 20 day of March, 2008.

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23  
JUDGE

  
CHERYL B. CAREY

Presented by:

  
Jamila A. Taylor, WSBA #32177  
Deputy Prosecuting Attorney

MOTION, FINDING OF PROBABLE CAUSE AND  
ORDER DIRECTING ISSUANCE OF SUMMONS OR  
WARRANT AND FIXING BAIL - 3

Daniel T. Satterberg, Prosecuting Attorney  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000, FAX (206) 296-0955

SUPERFORM

1734164

CCN/JCN NUMBER	B/A NUMBER	PCN NUMBER
	208009707	214011409
AGENCY: <input type="checkbox"/> UNINCORPORATED KING COUNTY	<input checked="" type="checkbox"/> CITY OF Seattle	<input checked="" type="checkbox"/> MISDEMEANOR
DAJD <input type="checkbox"/> KCCF	<input type="checkbox"/> FELONY	
<input type="checkbox"/> RJC		
CASE NUMBER		FILE NUMBER
08-091494		H08-063
Court _____		

DATE OF ARREST/TIME	BOOKING DATE/TIME	ARREST LOCATION
3/11/2008 / 502	3/11/2008 /	700 Minor Ave
NAME (LAST, FIRST, MIDDLE, JR., SR., 1ST, 2ND)		ALIAS, NICKNAMES
Hurst, John Robert		
IDENTITY IN DOUBT?	DOB	SEX RACE HGT WGT EYES HAIR SKIN TONE
YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	10/22/1973	M W 6-00 165 Haz Bro Lt
SCARS, MARKS, TATTOOS, DEFORMITIES		ARMED/DANGEROUS
		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
LAST KNOWN ADDRESS	CITY STATE ZIP	RESIDENCE PHONE BUSINESS PHONE CITIZENSHIP
Transient	Seattle	
OCCUPATION	EMPLOYER, SCHOOL (ADDRESS, SHOP/UNION NUMBER)	SOCIAL SECURITY NUMBER
DRIVER'S LICENSE #	STATE APIS #	FBI# STATE ID #
VEHICLE LICENSE #	STATE YEAR MAKE MODEL	VEHICLE LOCATION TOW COMPANY
PERSON TO BE CONTACTED IN CASE OF EMERGENCY	RELATIONSHIP ADDRESS	CITY STATE PHONE

1) OFFENSE	RCWORD #	COURT/CAU #	CITATION #
<input type="checkbox"/> DV INVESTIGATION OF ASSAULT			
2) OFFENSE	RCWORD #	COURT/CAU #	CITATION #
<input type="checkbox"/> DV			
3) OFFENSE	RCWORD #	COURT/CAU #	CITATION #
<input type="checkbox"/> DV			
4) OFFENSE	RCWORD #	COURT/CAU #	CITATION #
<input type="checkbox"/> DV			
ANY OTHER ADDITIONAL CHARGES	CRIMINAL TRAFFIC CITATION ATTACHED?	ACCOMPLICES	
None	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		

LIST VALUABLE ITEMS OR PROPERTY LEFT FOR ARRESTEE AT JAIL		
LIST VALUABLE ITEMS OR PROPERTY ENTERED INTO EVIDENCE		
YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	IF YES, DESCRIBE (SIMPLE DESCRIPTION, IDENTIFYING MARKS, SERIAL #)	
TOTAL CASH OF ARRESTEE	WAS CASH TAKEN INTO EVIDENCE?	
\$1.28	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
SIGNATURE OF JAIL STAFF RECEIVING ITEM	SERIAL #	
ARRESTING OFFICER/SERIAL #	TRANSPORTING OFFICER/SERIAL #	SUPERVISOR SIGNATURE/SERIAL #
Zech 6927		WALL Sgt 6400
SUPERFORM COMPLETED BY (SIGNATURE/SERIAL #)	CONTACT PERSON FOR ADDITIONAL INFORMATION (NAME/SERIAL/PHONE)	
	N. Zech / 6927 / 206-684-4300 / Devore 206-684-5569	

ADULT MISDEMEANOR BOOKINGS: Complete to this line. FELONY & ALL JUVENILE BOOKINGS: Complete both sides COMPLETE DIRECTION TO RELEASE ON REVERSE SIDE FOR ALL BOOKINGS

SUPERIOR COURT	<input type="checkbox"/> IN CUSTODY	COURT CAUSE (STAMP OR WRITE)
FILING INFO	<input type="checkbox"/> AT LARGE	08 - 1 - 03298 - 8 SEA
	<input type="checkbox"/> OUT ON BOND	
COURT/DIST. CT. NO.	DIST. CT. BOND \$	BOND REQUESTED: \$
		3-27 crm
WARRANT DATE	OFF CODE OFFENSE	AMOUNT OF BAIL \$
POLICE AGENCY ISSUING	COURT	WARRANT RELEASED TO: SERIAL UNIT DATE TIME
PERSON APPROVING EXTRADITION	SEAKING-LOCAL ONLY WACIC-STATE WIDE	NCIC-WILL EXTRADITE FROM ID & OR ONLY
	<input type="checkbox"/>	<input type="checkbox"/>
		NCIC-WILL EXTRADITE FROM OR, ID, MT, WY, CA, NV, UT, CO, AZ, NM, HI, AK
		<input type="checkbox"/>
		NCIC-WILL EXTRADITE FROM ALL 50 STATES <input type="checkbox"/>
CCN#	DOE	DOC
1734164		
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NIC#	OP#	OP#

## Appendix B

FILED

2008 MAR 31 PM 2:35

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

MAR 31 2008

CERTIFIED COPY TO WARRANTS

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 08-1-03298-8 SEA

vs.

John Hurst

Defendant,

ORDER FOR PRETRIAL  
COMPETENCY EVALUATION BY  
WESTERN STATE HOSPITAL

THIS MATTER coming on in open court upon the motion of the defense, and there being reason to doubt the defendant's fitness to proceed, and the court being in all things duly advised; the plaintiff being represented by the undersigned Deputy Prosecuting Attorney; Daniel T. Satterberg, the Defendant is/is not present and being represented by undersigned counsel; now, therefore,

THE COURT FINDS the defendant is in need of forensic mental health evaluation for the items listed below; and

IT IS HEREBY ORDERED, under the authority of RCW 10.77.060, that the defendant, who is charged with the crime(s) of Assault 3 be evaluated by an expert of the staff of Western State Hospital, who are designated by the Secretary of the Department of Social and Health Services, including both a psychiatrist and a psychologist, if necessary. The examination may include psychological and medical tests, and voluntary treatment if conducted inpatient at Western State Hospital, and shall be completed as specified below:

ORDER FOR EXAMINATION BY WESTERN  
STATE HOSPITAL - 1

Daniel T. Satterberg, Prosecuting Attorney  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000  
FAX (206) 296-0955



1  
2 PLACE OF EXAMINATION

3 [ ] **A.(1) KING COUNTY JAIL.** The examination shall take place in the King County  
4 Jail. If the expert determines that the examination should take place or be completed at Western  
5 State Hospital, the expert shall notify the parties in writing, and defendant shall be transported to  
6 Western State Hospital, and at the end of such period of examination and testing, return the  
7 defendant to the custody of the King County Jail. The report is to be submitted to this court in  
8 writing as soon as practical following the receipt of all of **(a.) this order, (b.) the charging**  
9 **documents and (c.) the prosecutor's discovery** by Western State Hospital, unless the court  
10 grants further time. If the defendant is transferred to another detention or correctional facility or a  
11 treatment facility under RCW 71.05, the jail &/or the parties are to immediately inform Western  
12 State Hospital at 253-761-7565 and the facility is ordered to make the defendant available for the  
13 purposes of this evaluation order. If the defendant is released from jail prior to the examination,  
14 the defendant shall contact the staff at Western State Hospital at (253) 761-7565 within the next  
15 working day following his/her release from jail to schedule an appointment for examination at  
16 Western State Hospital or an agreed facility.

17 [ ] **A.(2) OUT OF CUSTODY.** As the defendant is not currently in custody, the  
18 defendant shall contact the staff at Western State Hospital at (253) 761-7565 within the next  
19 working day following the date of this order to schedule and arrange an appointment for  
20 examination at Western State Hospital or an agreed facility. If the defense attorney requests to  
21 be present, Western State Hospital staff shall give defendant's counsel reasonable notice of the  
22 time and place of the evaluation. If the defendant is committed to a treatment facility before the  
23 evaluation, the facility is ordered to make the defendant available for the purposes of this  
evaluation order. The examination shall occur, and the report be submitted to this court, as soon  
as practical following the receipt of all of **(a.) the order, (b.) the charging documents and (c.)**  
**the prosecutor's discovery** by Western State Hospital, unless the court grants further time. A  
new order must be entered to authorize inpatient examination if necessary to complete the  
evaluation.

~~X~~ **A.(3) INPATIENT at WESTERN STATE HOSPITAL.** The examination is to  
occur at Western State Hospital and the defendant is hereby committed to the care of the  
Division of Social and Health Services for up to fifteen days from the date of admission to the

1 hospital and the hospital's receipt of all of (a.) the order, (b.) the charging documents and (c.)  
2 the prosecutor's discovery. Following the examination the defendant is to be returned to the  
3 King County Jail for further proceedings in this matter. The initial or final report shall be  
4 furnished to the court in not less than twenty-four hours preceding the transfer of the defendant  
back to jail, unless further time is granted by the court.

5 King County Department of Adult and Juvenile Detention shall transport the defendant to  
6 Western State Hospital as soon as possible for the purposes set forth above, and at the end of  
7 such period of examination and/or testing return the defendant to the custody of the King County  
Jail to be held pending further proceedings against the defendant.

8 EXAMINER REQUIREMENTS:

9 [ ] B(1). DEVELOPMENTAL DISABILITIES PROFESSIONAL: The court has  
10 been advised by a party to the proceedings that the defendant may be developmentally disabled  
and hereby orders that one of the expert(s) qualify as a Developmental Disabilities Professional.

11 [ ] B(2). INTERPRETER REQUIRED: The parties have determined that the defendant  
12 requires the assistance of a qualified interpreter of the \_\_\_\_\_ language, to  
be arranged by Western State Hospital.

13  B(3). NUMBER OF EXAMINERS: The parties stipulate that the in-jail examination  
14 may be performed by only one examiner, for purposes of expediting the proceedings waiving the  
15 RCW 10.77.060(1) requirement of two examiners for this in-jail examination only.

16 REPORT REQUIREMENTS:

17 The staff of Western State Hospital shall file the report with the undersigned court, and  
18 provide copies to the Prosecuting Attorney, the Defense Counsel and others as designated in  
RCW 10.77.060 and 10.77.065. The report of the evaluation shall include the following  
pursuant to RCW 10.77.060:

19 C(1). A description of the nature of the examination;

20 C(2). A diagnosis of the defendant's mental condition;

21 C(3). COMPETENCY: an opinion as to the defendant's capacity to understand the  
22 Proceedings and to assist in defendant's own defense; If the report concludes the defendant is  
23 incompetent to proceed, an opinion whether psychotropic medications are necessary and  
appropriate to restore the defendant's competency;

*WSH will notify defense counsel prior to the evaluation so she  
can be present, if necessary.*

ORDER FOR EXAMINATION BY WESTERN  
STATE HOSPITAL - 3

Daniel T. Satterberg, Prosecuting Attorney  
W554 King County Courthouse  
516 Third Avenue.  
Seattle, Washington 98104  
(206) 296-9000  
FAX (206) 296-0955

1 C(6). An opinion as to whether the defendant is a substantial danger to other persons or  
2 presents a substantial likelihood of committing criminal acts jeopardizing public safety or  
3 security, unless kept under further control by the court or other persons, as required by RCW  
4 10.77.060(3);

5 C(7). An opinion as to whether the defendant should be evaluated by a County Designated  
6 Mental Health Professional under RCW 71.05.

7 RECORDS:

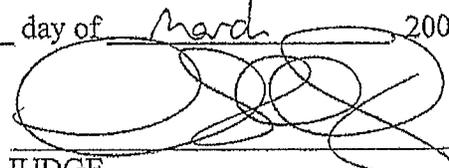
8 D(1) In accordance with RCW 10.77.060 (1)(a) the staff of Western State Hospital is  
9 granted access to all records held by any mental health, medical, educational, or correctional  
10 facility that relate to the present or past mental, emotional, or physical condition of the defendant  
11 for the purpose of conducting the examination.

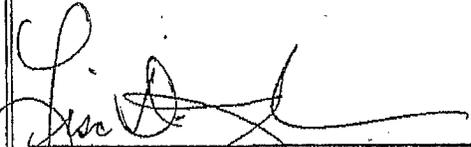
12 This action is stayed during this examination period and until this court enters an order  
13 finding the defendant to be competent to proceed.

14 The next hearing date is scheduled for: \_\_\_\_\_

4/14/08 (SATTERBERG)

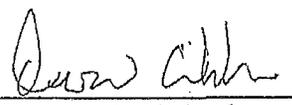
15 DONE IN OPEN COURT this 31<sup>st</sup> day of March 2008.

16   
17 JUDGE

18   
19 Deputy Prosecuting Attorney 16334

20 PRINT NAME: Devon Gibbs WSBA No. 31438

21 PHONE NUMBER: (206) 447-3900x779 FAX Number (206) 447-2349

22  31438 dgibbs@defender.org  
23 Attorney for defendant email

24 PRINT NAME: Lisa Johnson WSBA No. 16334

25 PHONE NUMBER: 206-296-9504 FAX Number 206-205-6104

ORDER FOR EXAMINATION BY WESTERN  
STATE HOSPITAL - 4

Daniel T. Satterberg, Prosecuting Attorney  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000  
FAX (206) 296-0955

## Appendix C

FILED

2008 MAY 12 PM 2:42

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

CERTIFIED COPY TO WARRANTS MAY 12 2008 (3)

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

Defendant.

John Hurst

No. 08-1-03298-8 SEA

ORDER FINDING DEFENDANT  
INCOMPETENT AND COMMITTING  
FOR FURTHER EVALUATION AND  
TREATMENT

THIS MATTER having come on before the undersigned judge of this court, the court examined the attached report of Western State Hospital, dated April 30th, 2008, and considered the records herein, and heard the statements of the defendant and counsel, and now finds that the defendant is presently incompetent to stand trial.

IT IS HEREBY ORDERED:

1. That the defendant is committed to Western State Hospital for a period of ninety days from date of admission, or until such earlier time as the defendant becomes competent to stand trial.

ORDER FINDING DEFENDANT INCOMPETENT  
AND COMMITTING FOR FURTHER EVALUATION  
AND TREATMENT - 1  
90 day order incompetent.doc

Daniel T. Satterberg, Prosecuting Attorney  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000  
FAX (206) 296-0955



1           2. That psychotropic medication may be administered to the defendant as deemed  
2 clinically appropriate by the staff of Western State Hospital, against the defendant's will if  
3 necessary, as the court finds that there is no less intrusive form of treatment which is likely to  
4 restore the defendant's competency.

5           3. The proceedings in the above-entitled matter continue stayed until such time as the  
6 defendant is found competent to stand trial.

7           4. The King County Department of Adult Detention shall transport the defendant to  
8 Western State Hospital and shall return him/her to the King County Jail at such time as ~~he~~she  
9 becomes competent or ninety days has elapsed.

10          5. When the defendant regains competency, or at the end of the ninety day period, a  
11 medical report shall be furnished to this court, counsel for both parties, and the King County Jail  
12 Psychiatric Unit professional staff, setting forth the findings of the staff, detailing ~~his~~her present  
13 mental condition, and indicating whether ~~he~~she is competent to enter a plea to the charges and to  
14 stand trial and whether psychotropic medications will be required to assist the defendant to  
15 maintain competency.

16          6. When the defendant regains competency, ~~he~~she shall be evaluated to determine  
17 whether ~~he~~she suffered from a mental disease or defect including insanity and diminished  
18 capacity, excluding responsibility at the time of the alleged crime referred to in the Information  
19 prior to further proceedings and acting under the authority of Washington Laws (Chapter 10.77  
20 RCW); now, therefore,

21  
22  
23  
ORDER FINDING DEFENDANT INCOMPETENT  
AND COMMITTING FOR FURTHER EVALUATION  
AND TREATMENT - 2  
90 day order incompetent.doc

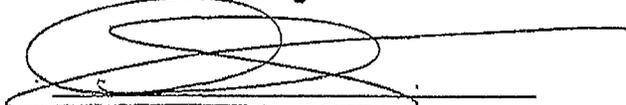
Daniel T. Satterberg, Prosecuting Attorney  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000  
FAX (206) 296-0955

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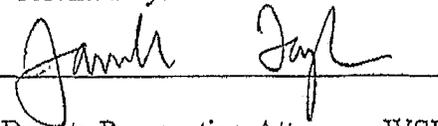
(REARRANGEMENT)

7. This matter is next scheduled for court on the 12th day of August, 2008

DONE IN OPEN COURT this 12th day of May, 2008

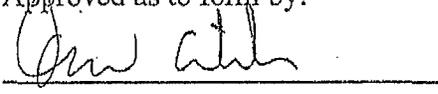
  
JUDGE

Presented by:



Deputy Prosecuting Attorney, WSBA ID # 32177

Approved as to form by:



Attorney for Defendant, WSBA # 31438

## Appendix D

1 FILED  
2 2008 AUG 20 PM 2: 39  
3 KING COUNTY  
4 SUPERIOR COURT CLERK  
5 SEATTLE, WA

6 (3) CERTIFIED COPY TO WARRANTS AUG 20 2008

7 SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

8 STATE OF WASHINGTON, )  
9 )  
10 Plaintiff, ) No. 08-1-03298-8 SEA  
11 vs. )  
12 )  
13 JOHN ROBERT HURST, ) ORDER FINDING DEFENDANT  
14 ) INCOMPETENT AND COMMITTING  
15 ) FOR FURTHER EVALUATION AND  
16 Defendant. ) TREATMENT  
17 )  
18 )  
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23 )

THIS MATTER having come on before the undersigned judge of this court, the court examined the attached report of Western State Hospital, dated August 14, 2008, and considered the records herein, and heard the statements of the defendant and counsel, and now finds that the defendant is presently incompetent to stand trial.

IT IS HEREBY ORDERED:

1. That the defendant is committed to Western State Hospital for a period of ninety days from date of admission, or until such earlier time as the defendant becomes competent to stand trial.
2. That psychotropic medication may be administered to the defendant as deemed clinically appropriate by the staff of Western State Hospital, against the defendant's will if

ORDER FINDING DEFENDANT INCOMPETENT AND COMMITTING FOR FURTHER EVALUATION AND TREATMENT - 1

Daniel T. Satterberg, Prosecuting Attorney  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000, FAX (206) 296-0955



1 necessary, as the court finds that there is no less intrusive form of treatment which is likely to  
2 restore the defendant's competency.

3 3. The proceedings in the above-entitled matter continue stayed until such time as the  
4 defendant is found competent to stand trial.

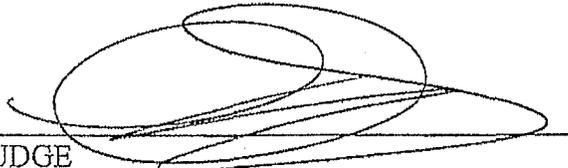
5 4. The King County Department of Adult Detention shall transport the defendant to  
6 Western State Hospital and shall return him/her to the King County Jail at such time as he/she  
7 becomes competent or ninety days has elapsed.

8 5. When the defendant regains competency, or at the end of the ninety day period, a  
9 medical report shall be furnished to this court, counsel for both parties, and the King County Jail  
10 Psychiatric Unit professional staff, setting forth the findings of the staff, detailing his/her present  
11 mental condition, and indicating whether he/she is competent to enter a plea to the charges and to  
12 stand trial and whether psychotropic medications will be required to assist the defendant to  
13 maintain competency.

14 6. When the defendant regains competency, he/she shall be evaluated to determine  
15 whether he/she suffered from a mental disease or defect including insanity and diminished  
16 capacity, excluding responsibility at the time of the alleged crime referred to in the Information  
17 prior to further proceedings and acting under the authority of Washington Laws (Chapter 10.77  
18 RCW); now, therefore,

19 7. This matter is next scheduled for court on the 19 day of NOVEMBER 2008 <sup>CAMPAINMENTS</sup>.

20 DONE IN OPEN COURT this 20 day of August, 2008.

21  
22  
23  
JUDGE 

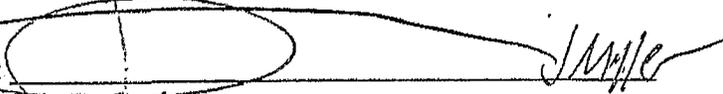
ORDER FINDING DEFENDANT INCOMPETENT  
AND COMMITTING FOR FURTHER EVALUATION  
AND TREATMENT - 2

Daniel T. Satterberg, Prosecuting Attorney  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000, FAX (206) 296-0955

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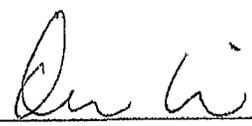
Presented by:

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By: 

Julie D. Cook  
Deputy Prosecuting Attorney, WSBA # 28271

Copy received, notice of presentation waived  
and approved for entry by:

By: 

Devon Gibbs  
Attorney for Defendant, WSBA # 31438

ORDER FINDING DEFENDANT INCOMPETENT  
AND COMMITTING FOR FURTHER EVALUATION  
AND TREATMENT - 3

Daniel T. Satterberg, Prosecuting Attorney  
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516 Third Avenue  
Seattle, Washington 98104  
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# Appendix E

FILED

2008 DEC 16 PM 3:40

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

SUPERIOR COURT OF WASHINGTON, COUNTY OF KING

STATE OF WASHINGTON,  
Plaintiff,

vs.  
John Hurst

Defendant

In custody     Out of custody

No.: 08-1-03298-8 SEA  
TRIAL SET PURSUANT TO RCW 10.77  
SCHEDULING ORDER- TRIAL AND OTHER  
HEARINGS - WAIVER (Seattle - E-1201)  
(ORCNT; ORSTD; WVSPDT) (Clerk's Action Required)

The following court dates are set based on a commencement date of \_\_\_\_\_.

a) Case Scheduling Hearing: \_\_\_\_\_ at 1:00 p.m. in courtroom E1201

b) Omnibus Hearing: \_\_\_\_\_ in custody - 8:30 a.m. in courtroom E1201  
Out of custody- 9:30 a. m. in courtroom \_\_\_\_\_

c) Trial date: 1/20/09 at 9 a.m. Agencies, private attorneys and pro se will receive assignment and standby status by e-mail or telephone by 3:00 p.m. the judicial day prior to the trial date. If no response is received from litigants, the court will presume that the case is ready for trial.

The expiration date is TOLLED.

Plaintiff  Defendant moves to continue case setting hearing because \_\_\_\_\_

DATED this 14<sup>th</sup> day of DEC, 2008

[Signature]  
Deputy Prosecutor    WSBA No. 2591

[Signature] JUDGE MICHAEL FOX  
Judge.

Attorney for Defendant    WSBA No. 51458

[Signature]  
Defendant

**Waiver:** I understand that I have the right pursuant to Criminal Rule 3.3 to a trial within 60 days of the commencement date if I am in jail on this case, or 90 days of the commencement date if I am not in jail on this case. I am voluntarily and knowingly giving up this right for a specific period of time to allow my attorney to negotiate with the prosecuting attorney and/or to investigate and/or prepare my case. I agree that the new commencement date is \_\_\_\_\_ and that the expiration date is \_\_\_\_\_. I have read and discussed this waiver with the defendant and believe that the defendant fully understands it.

\_\_\_\_\_  
Attorney for Defendant

\_\_\_\_\_  
Defendant

I am fluent in the \_\_\_\_\_ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

\_\_\_\_\_  
Interpreter    King County, Washington



# Appendix F

FILED

2009 JAN -5 AM 10:28

CLERK OF SUPERIOR COURT  
SEATTLE, WA.

COPY RECEIVED

JAN 05 2009  
CRIMINAL DIVISION  
KING COUNTY PROSECUTORS OFFICE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF KING

STATE OF WASHINGTON,  
Plaintiff

Vs.

John Robert Hurst,  
Defendant.

NO.: 08-1-03298-8 SEA

DEFENSE MOTION FOR  
APPOINTMENT OF INDEPENDENT  
COUNSEL

MOTION

John Robert Hurst, defendant, through counsel, Devon Gibbs, respectfully moves this court for appointment of independent counsel to Mr. Hurst during the jury trial deciding the issue of competency pursuant to RCW 10.77.086. This request is based on CrR 3.1; the Fifth, Sixth and Fourteenth Amendments to the Constitution; Article 1, sections 3 and 22 of the Washington State Constitution; RCW 10.77.086, RCW 10.77.020, RPC 1.14, RPC 1.2, RPC 1.6, and State v. Webbe, 122 Wash.App. 683, 94 P.3d 994 (2004).

DEFENSE MOTION FOR APPOINTMENT OF  
INDEPENDENT COUNSEL- 1

Devon Gibbs  
Law Offices of the Defender Association  
810 Third Ave., 8<sup>th</sup> floor,  
Seattle, WA 98104  
206-447-3900x779  
dgibbs@defender.org

DECLARATION

I, Devon Gibbs, declare as follows:

1. I am assigned counsel for John Hurst. Mr. Hurst is charged with one count of Assault in the Third Degree for striking a nurse and throwing a shoe at her in Swedish Medical Center on March 11, 2008.

2. On March 31, 2008, the issue of Mr. Hurst's competency was raised prior to his arraignment. The issue of competency was raised by defense counsel over Mr. Hurst's objection. Mr. Hurst was sent to Western State Hospital for a 14 day competency evaluation.

3. On May 12, 2008 the Court found Mr. Hurst to be incompetent and he was sent to Western State Hospital for a ninety day period of restoration.

4. On August 20, 2008, the Court again found Mr. Hurst incompetent and he again was sent to Western State for a ninety day period of restoration.

5. On November 17, 2008, Western State Hospital reported that Mr. Hurst remains incompetent and requests he be returned for a further period of restoration for up to 180 days. On December 4, 2008 this matter was set for a contested competency hearing before a jury pursuant to RCW 10.77.086.

6. On December 16, 2008, at a hearing to set schedule for the jury trial, Mr. Hurst indicated in open court he wished to contest the issue of competence. Defense counsel indicated that it wished only to contest the issue of restorability. Defense counsel requested the appointment of independent counsel to assist Mr. Hurst in representing his position regarding competency at the jury trial.

1 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF  
2 WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY  
3 INFORMATION AND BELIEF.

4 DATED this 2nd day of January, 2009.

5 THE DEFENDER ASSOCIATION

6 

7 

---

Devon Gibbs, WSBA No 31438  
8 Attorney for Defendant

9  
10 MEMORANDUM

11 The Court should appoint independent counsel to represent Mr. Hurst's objectives solely  
12 regarding the issue of Competency in the jury trial pursuant to RCW 10.77.086, which will  
13 address both the issues of Mr. Hurst's competency and his restorability.

14 RCW 10.77 governs the procedures for mentally incompetent defendants. The Rights of  
15 mentally incompetent defendants are contained in RCW 10.77.020. The first Right listed is the  
16 right to counsel: "At any and all stages of the proceedings pursuant to this chapter, any person  
17 subject to the provisions of this chapter shall be entitled to the assistance of counsel." RCW  
18 10.77.020(1).

19 The Rules of Professional Conduct provide for how an attorney is to conduct his  
20 representation of a client who suffers from diminished mental competence:

21 (a) When a client's capacity to make adequately considered decisions in connection with a  
22 representation is diminished, whether because of minority, mental impairment or for some other  
23 reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship  
24 with the client.

25 (b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of  
substantial physical, financial or other harm unless action is taken and cannot adequately act in the  
client's own interest, the lawyer may take reasonably necessary protective action, including  
consulting with individuals or entities that have the ability to take action to protect the client  
and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or  
guardian.

DEFENSE MOTION FOR APPOINTMENT OF  
INDEPENDENT COUNSEL- 3

Devon Gibbs  
Law Offices of the Defender Association  
810 Third Ave., 8<sup>th</sup> floor,  
Seattle, WA 98104  
206-447-3900x779  
dgibbs@defender.org

1 (c) Information relating to the representation of a client with diminished capacity is protected by  
2 Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly  
3 authorized under Rule 1.6(a) to reveal information about the client, but only to the extent  
4 reasonably necessary to protect the client's interests.

5 RPC 1.14 Client with Diminished Capacity {Emphasis added}

6 An attorney who represents a client who is mentally incompetent has two duties which can  
7 sometimes conflict. One is the duty to advocate for the client, "abide by the client's decisions  
8 regarding the objectives of representation," under RPC 1.2, and to protect their confidences under  
9 RPC 1.6. However, also there is a duty to raise the issue of competency. RCW 10.77.050  
10 provides, "[n]o incompetent person shall be tried, convicted, or sentenced for the commission of  
11 an offense so long as such incapacity continues." Failure to raise the issue can be the ineffective  
12 assistance of counsel. In re Flemming, 142 Wash.2d 853, 866, 16 P.3d 610 ("failure to raise the  
13 issue of Fleming's competency was not within the realm of reasonable professional judgment.  
14 This court has held that a defendant's counsel does not have the power to waive the defendant's  
15 right under RCW 10.77.050.")

16 In order to protect the defendant's rights under RCW 10.77.050 and provide evidence of a  
17 defendant's lack of competence, an attorney may be required to testify about certain confidences  
18 of the defendant which are protected by RPC 1.6. This occurred in State v. Webbe, which  
19 required the court to appoint criminal defense attorney Robert Goldsmith, as Webbe's limited  
20 guardian ad litem (GAL), to determine whether Webbe should waive his attorney-client privilege  
21 for purposes of allowing his attorney to testify in the competency proceeding. Goldsmith was  
22 subsequently redesignated "independent counsel." State v. Webbe, 122 Wash.App. 683, 689, 94  
23 P.3d 994 (2004).

24 The issue in Webbe is somewhat different from the issue in Mr. Hurst's case. In Webbe,  
25 the experts for the State, doctors from Western State Hospital, opined that Mr. Webbe was  
competent. Id at 687. Mr. Webbe and his attorneys Mr. Prothero and Mr. Williams all contested

1 this finding. Id. When it was decided that Mr. Williams would testify, he remained present in the  
2 courtroom, but took no active role as counsel. Id. at 688.. The appointment of the GAL was  
3 initially solely for the purpose of helping Mr. Webbe decide whether or not to waive his attorney-  
4 client privilege to allow his attorney Mr. Williams to testify. Id. at 689.

5 Mr. Webbe appealed his case and argued that a conflict existed in his case because his  
6 counsel had effectively joined the State in its efforts to convict him. Id. at 696. Mr. Webbe  
7 argued that this resulted the breakdown of the adversarial process, quoting from Osborn v.  
8 Shillinger, 861 F.2d 612, 629(10<sup>th</sup> Cir. 1988) and Fraser v. United States, 18 F.3d 788, 782 (9<sup>th</sup>  
9 Cir. 1994). The Court of Appeals in the Webbe case found that the attorneys for Mr. Webbe did  
10 not betray their duty of loyalty because “they had no sympathy whatsoever with the State’s  
11 position.” Webbe at 696. And further indicated, “they mounted a vigorous defense and subjected  
12 the State’s case to every form of adversarial testing.” Id. The same cannot be done in Mr. Hurst’s  
13 case, because on the main issue of competence, defense counsel and the State agree, while the  
14 defendant alone disagrees.

15 Here, in Mr. Hurst’s case, the goals of Mr. Hurst and counsel are not the same. Defense  
16 counsel is the moving party, as the initiator of the competency proceedings, over the defendant’s  
17 objections. The State and Defense Counsel both agree that Mr. Hurst is not competent, and thus  
18 on the issue of competence, there is a conflict between Mr. Hurst’s interests and his counsel’s.

19 Mr. Hurst has his own independent right to demand a jury trial to contest the State’s  
20 findings on the issue of competency. RCW 10.77.086(3) clearly indicates that at the end of the  
21 second ninety day restoration period there shall be “a prompt hearing to determine the defendant’s  
22 competency,” and “**the defendant**, the defendant’s attorney, **or** the prosecutor has the right to  
23 demand that the hearing be before the jury.” {Emphasis added} The word “or” is used, so it  
24 appears that the plain language of the statute allows the defendant, on his own, to demand a jury  
25

1 trial on the issue of competency.

2 Mr. Hurst has the right to counsel at this proceeding pursuant to RCW 10.77.020(1),  
3 which indicates that "at any and all stages of the proceedings," any person "shall be entitled to the  
4 assistance of counsel." Mr. Hurst's appointed counsel cannot be effective counsel regarding the  
5 issue of competency due to the conflict of interest. Webbe at 696. Therefore, Mr. Hurst should  
6 be appointed independent counsel to assist him in representing his position at the jury trial, which  
7 is contrary to the positions Defense Counsel and the State will represent.

8 The duties of the independent counsel should include the duties of a GAL in advising Mr.  
9 Hurst whether to waive his attorney-client privilege should his counsel become a potential witness  
10 as to Mr. Hurst's competency, similar to the GAL in Webbe. Id at 689. However, the  
11 independent counsel would need to further represent Mr. Hurst beyond that advice due to his right  
12 to effective assistance of counsel. For example, Mr. Hurst may wish to hire another expert on his  
13 own behalf to provide an opinion that he is competent, or to contest the findings of the State's  
14 expert and Defense counsel's expert. Also, Mr. Hurst will need independent counsel to cross-  
15 examine the State's and Defense counsel's experts on their opinions as to his competency. Mr.  
16 Hurst will also need independent counsel to subpoena witnesses he may wish to call to help  
17 establish his competency. Mr. Hurst may have legal motions to bring to the court which conflict  
18 with the Defense Counsel's interests. Finally, Mr. Hurst will need independent counsel to advise  
19 him whether to testify, and to ask him questions during such testimony regarding his competency,  
20 and to protect him from questions from either the State or from Defense Counsel during cross-  
21 examination. This is not an exhaustive list of the areas where Mr. Hurst will need the effective  
22 assistance of counsel during the complexities of a jury trial on the issues of competency and  
23 restorability.

24

25

**DEFENSE MOTION FOR APPOINTMENT OF  
INDEPENDENT COUNSEL- 6**

Devon Gibbs  
Law Offices of the Defender Association  
810 Third Ave., 8<sup>th</sup> floor,  
Seattle, WA 98104  
206-447-3900x779  
dgibbs@defender.org

CONCLUSION

In summary, Mr. Hurst and his assigned counsel have an irreconcilable conflict of interest regarding the issue of Mr. Hurst's competency. Mr. Hurst has a right to contest the finding of competency and have the issue decided by a jury. Mr. Hurst has the right to effective assistance of counsel at this proceeding. Therefore, Mr. Hurst needs to have independent counsel appointed to represent his interests and goals at the jury trial.

DATED this 2nd day of January, 2009.

THE DEFENDER ASSOCIATION

  
\_\_\_\_\_  
Devon Gibbs, WSBA No 31438  
Attorney for Defendant

# Appendix G

FILED

2009 JAN 14 AM 10:07

KING COUNTY  
SUPERIOR COURT  
SEATTLE, WA.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

JOHN ROBERT HURST,

Defendant.

No. 08-1-03298-8 SEA

STATE'S BRIEF ADVISING THE  
COURT REGARDING  
APPOINTMENT OF INDEPENDENT  
COUNSEL

I. INTRODUCTION

The defense has requested the Court authorize appointment of independent counsel to represent Mr. Hurst during the jury trial deciding the issue of competency pursuant to RCW 10.77.086. This brief is written to advise the Court of appropriate case law to aid its decision regarding defense's request.

II. PROCEDURAL HISTORY

The State adopts Ms. Gibbs declaration as an accurate recitation of the procedural history of this case.



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### III. CASE LAW

No incompetent person shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues. RCW 10.77.050. Failure to observe procedures adequate to protect an accused's right not to be tried while incompetent to stand trial is a denial of due process. In re Flemming, 142 Wn.2d 853, 16 P.3d 610 (2001). Failure to raise the issue of a client's incompetence is not within the realm of reasonable professional judgment and will be determined to be ineffective assistance of counsel. Flemming, 142 Wn.2d at 866. The trial court may proceed on defense counsel's oral representation concerning a defendant's competence to stand trial, and while not determinative, defense counsel's opinion as to the defendant's competence is a factor that carries considerable weight with the court. State v. Harris, 122 Wash.App. 498, 94 P.3d 379 (2004).

RCW 10.77.086(3) states that the defendant, the defendant's attorney or the prosecutor has the right to demand that a hearing be before a jury. Subsection four (4) is silent as to who can demand that the issue of competency or amenability to be restored can be heard by a jury. The State concedes that the parties outlined in subsection (3) are the same parties that may request a jury trial under subsection (4).

The State is not requesting a jury determination as to competency or the amenability of restoration. The State takes the position that Mr. Hurst is incompetent, that the defendant is a substantial danger to other persons or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, and that there is a substantial probability that the defendant will regain competency within a reasonable period of time.

1 Defense counsel, Devon Gibbs, has appropriately raised the issue of her client's  
2 incompetence and has stated in open court that she believes her client is incompetent. This  
3 opinion is supported by the evaluations of Dr. Gallagher, Psychologist for Western State  
4 Hospital, and Dr. Peterson, Clinical Psychologist and defense expert, who have determined Mr.  
5 Hurst to be incompetent. Furthermore, on May 12, 2008 and August 20, 2008, the Court has  
6 determined Mr. Hurst is incompetent to proceed.

7 It remains unclear whether Ms. Gibbs is requesting a jury determination regarding  
8 competency. This issue needs to be resolved. Ms. Gibbs, on behalf of her client, has requested a  
9 jury determination regarding the defendant's amenability to be restored.

10 The only remaining party that has the authority to request a jury determination as to  
11 competency is the defendant. In open court, on December 16, 2008, Mr. Hurst, not Ms. Gibbs,  
12 requested a jury determination as to competency.

13 If Ms. Gibbs is not requesting a jury determination as to competency and only Mr. Hurst  
14 is advancing such a request, this Court cannot entertain such a motion from an incompetent  
15 defendant. Mr. Hurst has competent and effective counsel representing him. Considerable  
16 weight should be afforded to her position that her client continues to be incompetent. Ms.  
17 Gibbs's opinion regarding her client's incompetence is currently supported by the State and  
18 defense expert. As such, the Court cannot entertain a motion from an incompetent defendant. If  
19 the Court did entertain such a motion it would be a per se due process violation.

20 If Ms. Gibbs is joining in Mr. Hurst's request for a jury determination regarding  
21 competency, she cannot contest the State's and her own expert's evidence when she believes her  
22 client to be incompetent. If she did contest such a finding, this would be deemed ineffective  
23

1 assistance of counsel. Knowing that to be true, Ms. Gibbs is asking this court appoint  
2 independent counsel.

3 If the Court were to appoint independent counsel to represent Mr. Hurst during a jury trial  
4 regarding competency that Ms. Gibbs requested, that independent attorney would be in no  
5 different position than Ms. Gibbs. Independent counsel would review the same evidence as  
6 previously gathered by Ms. Gibbs. Independent counsel would have no choice but to come to  
7 the same conclusion as Ms. Gibbs, the State, Western State Hospital and the defense expert that  
8 Mr. Hurst is incompetent. As such, independent counsel, just like Ms. Gibbs, could not ethically  
9 advance a theory that Mr. Hurst was competent or they would be deemed ineffective. In the  
10 end, independent counsel would be in the same position as Ms. Gibbs, therefore it serves no  
11 purpose to appoint independent, duplicative counsel.

12 IV. CONCLUSION

13 The Court cannot entertain a motion by a defendant when his attorney and two experts  
14 believe he is incompetent. Such action would violate a defendant's due process rights.  
15 Independent, duplicative counsel would be in no better position than the defendant's current  
16 attorney, Ms. Gibbs, to protect his rights during a jury determination as to his competency.

17  
18 DATED this 13<sup>th</sup> day of January, 2009.

19 DANIEL T. SATTERBERG

20 By:

21 

22 Cindi S. Port, WSBA #25191  
23 Senior Deputy Prosecuting Attorney

Case # 08-1-03298-8  
Sub # 28

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FILED  
KING COUNTY WASHINGTON

JAN 15 2009

SUPERIOR COURT CLERK  
BY D. COLE MAHER  
DEPUTY

ORIGINAL

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF KING

STATE OF WASHINGTON,  
Plaintiff

Vs.

John Robert Hurst,  
Defendant.

NO.: 08-1-03298-8 SEA

WAIVER OF DEFENDANT'S  
PRESENCE AT DEFENSE MOTION  
FOR APPOINTMENT OF  
INDEPENDENT COUNSEL

I, John Robert Hurst, defendant, hereby waive my presence at the hearing regarding the motion for appointment for independent counsel, and allow my attorney, Devon Gibbs, to make this argument on my behalf.

DATED this 14 day of January, 2009.

*John Hurst*  
John Hurst, Defendant

WAIVER OF DEFENDANT'S PRESENCE AT  
DEFENSE MOTION FOR APPOINTMENT OF  
INDEPENDENT COUNSEL- 1

Devon Gibbs  
Law Offices of the Defender Association  
810 Third Ave., 8<sup>th</sup> floor,  
Seattle, WA 98104  
206-447-3900x779  
dgbbs@defender.org

# Appendix H

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**FILED**  
KING COUNTY, WASHINGTON

JAN 20 2009

SUPERIOR COURT CLERK  
BY D. COLE MAIER  
DEPUTY

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 John Hurst )  
 )  
 Defendant. )

No. 08-1-03298-8 SEA  
DEFENSE TRIAL MEMORANDUM  
FOR JURY TRIAL PURSUANT  
TO RCW 10.77.086

CURRENT ISSUE

Mr. Hurst is charged with one count of Assault in the Third Degree for allegedly striking a nurse and throwing a shoe at her in Swedish Medical Center on March 11, 2008. Before Mr. Hurst could be arraigned, the issue of competency has been raised. Twice Mr. Hurst was sent to

DEFENSE TRIAL MEMORANDUM- 1

Devon Gibbs  
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1 Western State Hospital for restoration, which has failed, and now the hospital requests a third try  
2 for 180 days. This matter was set for a contested competency hearing before a jury pursuant to  
3 RCW 10.77.086.

4 **TIME ESTIMATES**

5 Trial, including motions and jury selection, should last approximately 3 days.  
6

7 **WITNESSES**

8 Defense anticipates calling the following witnesses:

9 Dr. Kevin Petersen, forensic psychologist

10 The defense reserves the right to call State's witnesses not called by the State, and to call any  
11 witness who is referenced in the discovery. The defense also reserves Mr. Hurst's right to choose  
12 whether or not to testify.  
13

14 **PRELIMINARY MOTIONS**

15 **I. Motion to Request the Court Reconsider its Denial of Defense Motion for Independent**  
16 **Counsel**

17 On January 15, 2008, Defense made a motion for independent counsel to represent Mr.  
18 Hurst regarding the issue of Mr. Hurst's competence in this jury trial. Defense counsel Devon  
19 Gibbs would be addressing the issue of restorability. The Court denied this request, but indicated  
20 that this issue is "confusing" and agreed that with Defense Counsel's assertion that the Court's  
21 decision would put her in the position of violating at least one RPC. At that time, Deputy  
22 Prosecutor Cindi Port joined in defense motion for independent counsel, given the Court's  
23 posture. The Court reasoned that any independent counsel would be in the same position as  
24  
25

1 Defense Counsel Gibbs and therefore the appointment of independent counsel would not resolve  
2 the conflict.

3 Defense respectfully requests the Court reconsider this ruling. Independent counsel would  
4 not be in the same position as Ms. Gibbs. Ms. Gibbs is assigned to represent Mr. Hurst for the  
5 *criminal* matter regarding the Assault charge and must therefore raise an issue if he cannot assist  
6 her in *that* defense. Independent counsel would only represent him for the competency portion of  
7 the jury trial, alongside Ms. Gibbs, who would address only the issue of restorability.  
8 Independent Counsel would not be violating an RPC because he would not be assigned to the  
9 criminal case and would only need to assess whether Mr. Hurst could assist in his own defense in  
10 the competency hearing alone. Since Mr. Hurst only remains incompetent as it relates to his  
11 specific defense to the *criminal* offense, independent counsel may well find that Mr. Hurst is  
12 competent to make his own decisions during the jury trial on the issue of competence.

13 If independent counsel were appointed, he could cross examine the experts, advise Mr.  
14 Hurst on whether to testify, counsel Mr. Hurst on whether to waive his attorney-client privilege,  
15 and make objections or motions on his behalf pursuant to Mr. Hurst's objectives to representation.  
16 The trial could be conducted similar to a co-defendant trial, where two defense attorneys can  
17 challenge the State and each other as to their opposing theories and defenses. Neither  
18 independent counsel, nor assigned counsel Gibbs would be violating any ethical rule or  
19 requirement and Mr. Hurst would have his right to contest the issue of competence.

## 20 **II. Motion to Appoint New Counsel (Motion by Defendant)**

21 Mr. Hurst now wishes to have new counsel appointed. After the Court's ruling on January  
22 15, 2009, denying independent counsel, Counsel Gibbs spoke to Mr. Hurst and informed him of  
23 the court's decision. Counsel briefly was able to discuss with Mr. Hurst about the remaining  
24 goals of trial, i.e. the issue of restorability, and what counsel's job was during the trial. Mr. Hurst  
25

1 indicated that he wanted a new attorney. He indicated that he cannot talk to his attorney any  
2 longer because she is not "on his side." Further, that if the need should arise for counsel to testify  
3 to contradict something presented by the State that he would not waive the attorney-client  
4 privilege because counsel would "say something against him." Defense Counsel would have to  
5 concur that Mr. Hurst's assessment is correct.

6 This request could be remedied by the appointment of independent counsel who would not  
7 be subjected to the inevitable breakdown of the attorney-client relationship because the  
8 independent counsel would be assigned to "be on his side" and abide by Mr. Hurst's objectives  
9 during the competency jury trial.

### 10 III. Motion to Establish Burden of Proof

11 **Due process requires the standard of proof under RCWA §10.77.086 is proof by clear,  
12 cogent and convincing evidence.**

13 The Supreme Court noted the function of the standard of proof for due process was 'to  
14 'instruct the fact finder concerning the degree of confidence our society thinks he should have in  
15 the correctness of factual conclusions for a particular type of adjudication.' Addington v Texas,  
16 441 U.S. 418, 425, 99 S. Ct. 1804, 60 L.Ed 2d 323 (1979) (citing Mathews v Eldridge, 424 U.S.  
17 319, 335, 96 S. Ct. 893, 47 L.Ed. 2d 18 (1976)). In Mathews, the Supreme Court outlined a three  
18 part balancing test to determine what standard of proof is required to satisfy procedural due  
19 process concerns. 424 U.S. at 334-35 (1976). This test attempts to strike a proper balance between  
20 an individual's liberty interests, the nature and extent of a governmental interest and the interests  
21 of the public. Mathews, 424 U.S. 334; Foucha v. Louisiana, 504 U.S. 71, 80 (1992).<sup>1</sup> In addition  
22 to this test, courts must weigh the risk of erroneous deprivation through the procedures used.  
23

24 <sup>1</sup> Balancing the individual's right to freedom from restraint with the state's interest in protecting  
25 society.

1 Mathews at 335. This consideration should be given significant merit when a determination of  
2 involuntary commitment is made without the precursor of a determination of guilt. Following  
3 Mathews, the case of Born v. Thompson, the Supreme Court of Washington adopted the clear and  
4 convincing evidence standard of proof for competency restoration. 154 Wash. 2d 749 (2005).

5 "Due process requires that State prove that misdemeanant has been charged  
6 with violent act, warranting civil mental health commitment pending  
7 restoration of competency, by clear and convincing evidence, rather than by  
8 preponderance of evidence; high level of risk of erroneous deprivation of  
liberty in this situation and heavier weight accorded individual liberty interest,  
as balanced against governmental interests in public safety and prosecution of  
misdemeanors, warrant application of higher standard of proof."

9 Born at 749, citing U.S.C.A. Const. Amend. 14; West's RCWA 10.77.090(1)(d)(i). The Court left  
10 the question regarding an appropriate standard of proof in felony commitment unanswered.  
11 However, following the analysis in Matter of Detention of Dydasco, 135 Wash.2d 943, 959 P.2d  
12 1111 (Wash. Aug 06, 1998), that a person facing 180 days of restoration would have at least the  
13 same procedural safeguards as a person facing 15 days of restoration as in the case of Born. The  
14 Court in Dydasco interpreted the statute for 180 day civil commitment to include at least the same  
15 procedural safeguards as a 90 day commitment, though the statute itself was silent on the issue.  
16

17 [W]hile the statute does not set out the procedural requirements for a 180-day  
18 petition, it does state that the hearing is the same as that for a 90-day petition.  
19 The Legislature assured patients' due process rights for each duration of  
20 commitment. As the length of detention increases, the statute provides  
21 additional procedural rights. This is what we would expect because the  
deprivation of liberty increases each time. Therefore, it is unlikely that the  
Legislature intended to exclude the notice provision for patients who face the  
longest period of commitment. We construe statutes to effect their purpose  
and avoid unlikely or strained interpretations.

22 Dydasco at 950.

23 Therefore, it is the defense's position the Mathews' test is applicable to determine the standard of  
24 proof, after taking into account the specific facts of this case, and should dictate the appropriate  
25

1 burden of proof is clear, cogent and convincing evidence.

2 Turning to the individual interests at stake, the Court has stated “a commitment for any  
3 purpose constitutes a significant deprivation of liberty that requires due process protection.”  
4 Addington, 441 U.S. at 425, 99 S. Ct. 1804. Under RCWA §10.77.086, 4.(a)-(b), a person  
5 charged with a felony who meets specified criteria and “there is a substantial probability that the  
6 defendant will regain competency within a reasonable period of time[.],” may be committed for  
7 up to 180 days.<sup>2</sup> Involuntarily commitment for time period of this magnitude most certainly robs  
8 a person of their own physical liberty. Therefore, a higher standard of proof to establish both of  
9 these factors are met would decrease the risk of an erroneous deprivation of liberty. The court  
10 also states, “In cases involving individual rights, whether criminal or civil, ‘[t]he standard of  
11 proof...reflects...the value society places on individual liberty.’ Addington, 441 U.S. at 425, 99  
12 S.Ct. 1804 (quoting Tippett v Maryland, 436 R. 2d 1153, 1166 (4<sup>th</sup> Cir. 1971). (Sobeloff, J.,  
13 concurring in part, dissenting in part)). Additionally, at this stage of the judicial process, the only  
14 indication of a defendant’s guilt is the magistrate’s determination that the prosecution’s charging  
15 instrument is supported by probable cause and the defendant has been afforded no opportunity to  
16 challenge the information presented by the prosecution. Where loss of liberty may result from  
17 proof of misconduct, the courts have repeatedly rejected the preponderance standard. Addington,

19 \_\_\_\_\_  
20 <sup>2</sup> RCWA §10.77.086 (4) For persons charged with a felony, at the hearing upon the expiration of  
21 the second ninety-day period or at the end of the first ninety-day period, in the case of a defendant  
22 with a developmental disability, if the jury or court finds that the defendant is incompetent, the  
23 charges shall be dismissed without prejudice, and either civil commitment proceedings shall be  
24 instituted or the court shall order the release of the defendant. The criminal charges shall not be  
25 dismissed if the court or jury finds that: (a) The defendant (i) is a substantial danger to other  
persons; or (ii) presents a substantial likelihood of committing criminal acts jeopardizing public  
safety or security; and (b) there is a substantial probability that the defendant will regain  
competency within a reasonable period of time. In the event that the court or jury makes such a  
fining, the court may extend the period of commitment for up to an additional six months....

1 441 U.S. 418, 432-33 (1979). (stating that due process demands a more quantum of evidence in  
2 civil commitment cases); United States v. F/V Repulse, 688 F. 2d 1283, 1284 (9<sup>th</sup> Cir. 1982).  
3 (stating in dicta that a more exacting evidentiary standard is required in cases involving a possible  
4 loss of individual liberty).

5 Another factor which pushes the balance in favor of this higher standard of proof is that an  
6 incompetent defendant lacks the capacity to assist their attorney in the fact finding process. "The  
7 incompetence of the defendant thus may impede investigation of whether he or she engaged in a  
8 violent act because the defendant is unable to help challenge the State's claim about the alleged  
9 conduct." Born, 154 Wn. 2d at 761. The constitutionally required case-by case analysis  
10 necessarily involves a review of the facts of the case. The potential for error is high because  
11 defendant is incompetent, and consequently, he is unable to help counsel challenge the State's  
12 claims regarding his conduct.

13  
14 Due process balances the competing individual and government interest at stake to  
15 minimize the risk of an erroneous decision. Born, 154 Wn. 2d 749, 754. With the variables of:  
16 inability to assist counsel, the presumption of innocence, and the great duration of time (up to 180  
17 days) involved with the involuntary commitment, there is too great a risk of an erroneous  
18 deprivation of liberty and a greater degree of certitude is required. Therefore, the foregoing  
19 suggests strongly the impropriety of requiring less than clear, cogent and convincing evidence of  
20 a defendant's dangerous propensity and the determination that competency can be restored.

21  
22 **IV. Motion for a Closed Hearing and Sealing of Court Records**  
23  
24  
25

1 GR 15(2) indicates that that Court may order court files and records sealed if the court  
2 makes written findings that the sealing or redaction is justified by "identified compelling privacy  
3 or safety concerns that outweigh the public interest in access to the court record."

4 This hearing is not a criminal jury trial, but an issue of competence. The Court has  
5 previously sealed the evaluations from Western State Hospital in this case. The experts will be  
6 testifying about certain personal information about Mr. Hurst, primarily his past and current  
7 mental health records, medications, diagnosis, and treatment. Mr. Hurst has a compelling privacy  
8 interest in his mental health records, diagnosis and treatment.

#### 9 V. Motion to Exclude Witnesses

10 All witnesses not actively testifying should remain outside the courtroom as provided by ER  
11 615. Moreover, the witnesses should be admonished not to discuss their testimony with one  
12 another. The State should also be directed not to discuss the testimony of one witness with  
13 another.

14 If the State is choosing to have one officer stay in the courtroom to assist, the defense requests  
15 that the designated officer be called to testify first Pursuant to ER 611(a) the Court may order the  
16 testimony in a manner most "effective for the ascertainment of the truth."

17 If the State intends to ask witnesses to utilize charts or diagrams by marking on them, the  
18 defense asks that each witness be provided a "fresh" chart or diagram. A witness's markings upon  
19 a chart or diagram are testimonial in nature, subsequent witnesses should not be allowed to utilize  
20 a prior witness's markings until they have testified from their own memory.

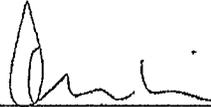
#### 21 V. Motion To Require Counsel To Specifically Advise Witnesses Of All Applicable Pre- 22 Trial Motions.

23 The purposes of obtaining pre-trial rulings on evidentiary issues are to ensure the defendant's  
24 right to a fair trial and to preserve the integrity of the fact-finding process. Such rulings would be  
25 meaningless if not communicated in a timely manner to the witnesses. Tegland, 5A Washington

1 practice: Evidence Sec. 266 (3rd Ed. 1989); United States v. Buchanan, 787 F.2d 477, 485 (10th  
2 Cir. 1986); United States v. Johnston, 578 F.2d 1352, 1355 (10th Cir.), cert den. 439 U.S. 931  
3 (1978).

4  
5 DATED this 20<sup>th</sup> day of January, 2007.

6  
7 **THE DEFENDER ASSOCIATION**

8 

9 \_\_\_\_\_  
10 Devon Gibbs, WSBA No 31438  
11 Attorney for Defendant  
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DEFENSE TRIAL MEMORANDUM- 9

Devon Gibbs  
Law Offices of the Defender Association  
810 Third Ave., 8<sup>th</sup> floor  
Seattle, WA 98104  
(206)447-3900x779  
dgibbs@defender.org

# Appendix I



Instruction No.

Defendant John Hurst is charged with a criminal offense. He has previously been found to be incompetent to stand trial on the criminal charge. A person is incompetent if he lacks the present ability to understand the nature of the proceedings against him or if he is incapable of assisting in his defense. The United States Constitution prohibits a defendant from being tried on a criminal charge if he is not competent.

This is a trial to determine whether John Hurst should be returned to Western State Hospital to have his competency restored. This is not a trial of the criminal charge. Nor is it a trial to determine Mr. Hurst's competence. Both the State and the Defense agree that Mr. Hurst is not competent to stand trial. The State is asserting that there is a substantial probability Mr. Hurst can be restored to competence in a reasonable period of time; Defense maintains that there is not a substantial probability that he can be restored in a reasonable period of time.

The State has the burden of establishing Mr. Hurst's ability to be restored to competence by clear, cogent and convincing evidence. If at the conclusion of trial, the jury is satisfied that Mr. Hurst cannot be restored, he may be assessed for civil commitment proceedings and he may be released from the criminal charges. If you find that Mr. Hurst can be restored, he will be returned to Western State Hospital for a period of further restoration for up to six months.

You are not to speculate as to what may occur at the criminal trial if Mr. Hurst is restored to competence. Nor shall you speculate as to what will occur at a civil commitment proceeding should he be released from the criminal charges.

The summary I just provided is simply that: a summary of the claims of the parties. It is not evidence. Evidence consists of the testimony given by witnesses and the exhibits admitted during trial.

If you are selected to sit on the jury, it will be your duty to determine the facts in this case from the evidence produced in court. It will also be your duty to accept the law from the court, regardless of what you personally believe the law is or ought to be. Jurors apply the law to the facts in this way to decide the case.

No. \_\_\_\_\_

It is your duty to determine which facts have been proved in this case from the evidence produced in court. It also is your duty to accept the law from the court, regardless of what you personally believe the law is or ought to be. You are to apply the law to the facts and in this way decide the case.

The order in which these instructions are given has no significance as to their relative importance. The attorneys may properly discuss any specific instructions they think are particularly significant. You should consider the instructions as a whole and should not place undue emphasis on any particular instruction or part thereof.

The only evidence you are to consider consists of the testimony of witnesses and the exhibits admitted into evidence. It has been my duty to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings. You will disregard any evidence that either was not admitted or that was stricken by the court. You will not be provided with a written copy of testimony during your deliberations. Any exhibits admitted into evidence will go to the jury room with you during your deliberations.

In determining whether any proposition has been proved, you should consider all of the evidence introduced by all parties bearing on the question. Every party is entitled to the benefit of the evidence whether produced by that party or by another party.

You are the sole judges of the credibility of the witnesses and of what weight is to be given to the testimony of each. In considering the testimony of any witness, you may take into account the opportunity and ability of the witness to observe, the witness's memory and manner while testifying, any interest, bias or prejudice the witness may have, the reasonableness of the testimony of the witness considered in light of all the evidence, and any other factors that bear on believability

and weight.

The attorneys' remarks, statements and arguments are intended to help you understand the evidence and apply the law. They are not evidence. Disregard any remark, statement or argument that is not supported by the evidence or the law as stated by the court.

The attorneys have the right and the duty to make any objections that they deem appropriate. These objections should not influence you, and you should make no assumptions because of objections by the attorneys.

The law does not permit a judge to comment on the evidence in any way. A judge comments on the evidence if the judge indicates, by words or conduct, a personal opinion as to the weight or believability of the testimony of a witness or of other evidence. Although I have not intentionally done so, if it appears to you that I have made a comment during the trial or in giving these instructions, you must disregard the apparent comment entirely.

You are officers of the court and must act impartially and with an earnest desire to determine and declare the proper verdict. Throughout your deliberations you will permit neither sympathy nor prejudice to influence your verdict.

WPIC 1.02 (revised)

Instruction No.

No person may be placed on trial unless that person is competent to stand trial.  
The defendant is presumed incompetent. Both parties in this case have stipulated that the  
defendant is not competent to stand trial.

RCW 10.77.050

INSTRUCTION NO. \_\_\_\_\_

“Incompetency” means a person lacks the capacity to understand the nature of the proceedings against him or to assist in his own defense as a result of mental disease or defect.

RCW 10.77.010(14)

Instruction No.

The issue before the jury in this case is whether the defendant can be restored to competency in a reasonable period of time. The defendant has been charged with a criminal offense. The question of whether the defendant is guilty or not guilty of the criminal offense is not before this jury.

In this proceeding you must decide the answer to the following questions:

- 1) Is the defendant a substantial danger to other persons, or does the defendant present a substantial likelihood of committing criminal acts jeopardizing public safety or security? If you find that the defendant is not a danger to other persons and does not present a substantial likelihood of committing criminal acts, you do not have to go any further. If you find the defendant is a substantial danger to other persons or presents a likelihood of committing criminal acts jeopardizing public safety, proceed to question two.
- 2) Is there is a substantial probability that the defendant will regain competency within a reasonable period of time? If you determine that there is a substantial probability that the defendant's competency will be restored within six months, he will be returned to Western State Hospital for a further period of competency restoration. If you find that there is not a substantial probability of the defendant's competency being restored, the defendant may remain in the custody of the Department of Social and Health Services at Western State Hospital, pursuant to civil commitment laws.

RCW 10.77.086

Instruction No.

The burden is on the State to establish that the defendant is a substantial danger to other persons or presents as substantial likelihood of committing criminal acts jeopardizing public safety. The burden is on the State to establish there is a substantial probability that the defendant will regain competency in a reasonable period of time.

The State must prove each of these elements by clear, cogent, and convincing evidence.

Born v. Thompson, 154 Wash.2d 749, 117 P.3d 1098

Instruction No.

The State has the burden of proving the defendant is restorable by clear, cogent, and convincing evidence.

When it is said that a proposition must be proved by clear, cogent, and convincing evidence, it means that the proposition must be proved by evidence that carries greater weight and is more convincing than a preponderance of evidence. However, it does not mean that the proposition must be proved by evidence that is convincing beyond a reasonable doubt.

A "preponderance of the evidence" means that you must be persuaded, considering all the evidence in the case, that a proposition is more probably true than not true. "Preponderance of the evidence" is defined here solely to aid you in understanding the meaning of "clear, cogent, and convincing."

**WPI 160.02**

Bland v. Mentor, 63 Wn.2d 150, 385 P.2d 727 (1963).

Instruction No.

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses. Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

WPIC 5.01

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Instruction No.

A witness who has special training, education or experience in a particular science, profession or calling, may be allowed to express an opinion in addition to giving testimony as to facts. You are not bound, however, by such an opinion. In determining the credibility and weight to be given such opinion evidence, you may consider, among other things, the education, training, experience, knowledge and ability of that witness, the reasons given for the opinion, the sources of the witness' information, together with the factors already given you for evaluating the testimony of any other witness.

WPIC 6.51

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No. \_\_\_\_\_

Evidence has been introduced in this case on the subject of the defendant's prior criminal record and the crime with which the defendant is now charged. This evidence has been introduced for the limited purpose of its contribution to the basis of the experts' opinions regarding the defendant's competency. You must not consider this evidence for any other purpose.

WPIC 5.30 (revised)

No. \_\_\_\_\_

The defendant is not compelled to testify. You should not consider the fact that the defendant has not testified for any purpose. The fact that the defendant has not testified cannot be used to infer the presence or absence of a mental disorder, or competence or incompetence, and should not prejudice him in any way.

WPIC 200.14 (revised)

Instruction No.

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to reexamine your own views and change your opinion if you become convinced that it is wrong. However, you should not change your honest belief as to the weight or effect of the evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

WPIC 1.04

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Instruction No.

Upon retiring to the jury room for your deliberation of this case, your first duty is to select a foreperson. It is his or her duty to see that discussion is carried out in a sensible and orderly fashion, that the issues submitted for your decision are fully and fairly discussed, and that every juror has an opportunity to be heard and to participate in the deliberations upon each question before the jury.

You will be furnished with any exhibits admitted into evidence, these instructions, and verdict forms A and B.

You must fill in the blanks provided in Verdict form A the word "yes" or "no," according to the decision you reach for each question. If you write "no" on both questions in verdict form A, you do not need to answer verdict form B. If you write "yes" to either question 1 or question 2, or to both, you must then consider the question in verdict form B.

On verdict form B, you must fill in the blank with the word "yes" or "no" according to the decision you reach for the question. Each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict form to express your decision. The foreperson will sign it and notify the bailiff, who will declare your verdict.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF KING

STATE OF WASHINGTON,	)	NO.: 08-1-03298-8 SEA
Plaintiff	)	
Vs.	)	
	)	Verdict Form A
John Robert Hurst,	)	
	)	
Defendant.	)	
_____	)	

We, the jury, understanding that John Hurst has been determined to be incompetent to stand trial, answer the following special interrogatories:

1) Is John Hurst a substantial danger to other persons?

\_\_\_\_\_  
(yes or no)

2) Does John Hurst present a substantial likelihood of committing criminal acts jeopardizing public safety or security?

\_\_\_\_\_  
(yes or no)

\_\_\_\_\_  
Foreperson



## Appendix J

FILED  
KING COUNTY, WASHINGTON

JAN 20 2009

SUPERIOR COURT CLERK  
BY D. COLE MAIER  
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF KING

STATE OF WASHINGTON,  
Plaintiff

Vs.

John Robert Hurst,

Defendant.

NO.: 08-1-03298-8 SEA

ORDER ON CRIMINAL MOTION  
*(Reconsidered on 1/20/09)*

The above-entitled Court, having heard a motion by defense for the appointment of independent counsel for Mr. Hurst in a jury trial regarding competency pursuant to RCW 10.77.086.

It is HEREBY ORDERED that the motion by defense is denied. The State and defense counsel are not seeking a jury determination regarding competency under RCW 10.77.086(4), however the defendant is requesting a jury determination regarding competency. In order to protect the defendant's due process rights, this court reviewed Dr. Gallagher and Dr. Peterson's reports and heard representations from defense counsel, Devon Gibbs, to determine if the defendant has the present capacity to request a jury determination regarding competency. This Court finds that the defendant is presently incompetent; therefore he does not have the capacity to request a jury determination as to competency. The court does find that there exists an irreconcilable conflict regarding the defendant's competency between defense counsel and the defendant. However, the court also finds that this conflict cannot be remedied by the appointment of independent counsel, or by the appointment of a Guardian Ad Litem. As such, neither independent counsel nor a Guardian Ad Litem is needed to advise the defendant regarding issues of competency.

ORDER ON CRIMINAL MOTION- 1

Devon Gibbs  
Law Offices of the Defender Association  
810 Third Ave., 8<sup>th</sup> floor,  
Seattle, WA 98104  
206-447-3900x779  
dgibbs@defender.org

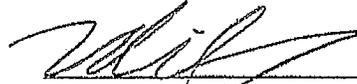


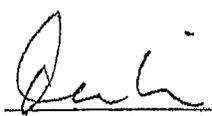
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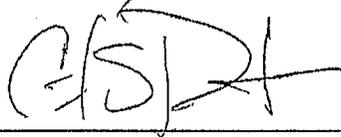
DATED this ~~15th~~ day of January, 2008.

THIS ORDER WAS RECONSIDERED ON January 20, 2008

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JUDGE MICHAEL FOX  
Hon. Judge Michael J. Fox

  
Devon Gibbs, WSBA No 31438  
Attorney for Defendant

  
Cindi Port, WSBA #25191  
Senior Deputy Prosecuting Attorney

FILED  
KING COUNTY SUPERIOR COURT

JAN 20 2009

SUPERIOR COURT CLERK  
BY D. COLE MAIER  
DEPUTY

SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF KING

STATE OF WASHINGTON

Plaintiff,

NO. 08-1-03298-8 SEA

vs.

ORDER ON CRIMINAL MOTION  
(ORCM)

JOHN R. HURST

Defendant.

\*CLERK'S ACTION REQUIRED\*

The above-entitled Court, having heard a motion TO RECONSIDER THE DEFENSE MOTION TO APPOINT INDEPENDENT COUNSEL.

IT IS HEREBY ORDERED that INDEPENDENT COUNSEL SHALL BE APPOINTED.  
A HEARING IS SCHEDULED FOR 8:30 AM ON THURSDAY,  
JANUARY 22<sup>ND</sup>, 2009 FOR CONFIRMATION OF ~~THE~~ INDEPENDENT  
COUNSEL AND TO RE-SET THE JURY TRIAL UNDER  
RCW 10.77.086 (4)

DATED: JANUARY 20, 2009

[Signature]  
CINDI PORT  
Deputy Prosecuting Attorney 25791

[Signature]  
JUDGE

JUDGE MICHAEL FOX

[Signature] 31438  
Attorney for the Defendant

Order on Criminal Motion (ORCM)

05/02



FILED  
KING COUNTY WASHINGTON

JAN 23 2009

SUPERIOR COURT CLERK  
BY D. COLE MAIER  
DEPUTY

SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF KING

STATE OF WASHINGTON

Plaintiff,

NO. 08-1-03298-8 Sea

vs.

ORDER ON CRIMINAL MOTION  
(ORCM)

John Hurst

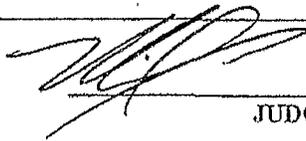
Defendant.

\*CLERK'S ACTION REQUIRED\*

The above-entitled Court, having heard a motion to allow Gary Davis to appear  
for without an independent counsel.

IT IS HEREBY ORDERED that GARY DAVIS withdraw as independent counsel  
for the above-named defendant on the above cause.  
Dated.

DATED: 1/23/09



JUDGE FOX

X [Signature]  
Deputy Prosecuting Attorney

X [Signature]  
Attorney for the Defendant 14019

X  
Order on Criminal Motion (ORCM)

05/02  
FOSTER

# Appendix K

JAN 23 2009

SUPERIOR COURT CLERK  
BY D. COLE MAHER  
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 08-1-03298-8 SEA

vs.

JOHN ROBERT HURST,

Defendant.

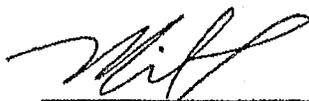
ORDER FINDING DEFENDANT  
INCOMPETENT

THIS MATTER having come on before the undersigned judge of this court, the court examined the attached report of Western State Hospital from Dr. Julie Gallagher, dated November 17, 2008, the defense expert's report from Dr. Peterson, dated January 5, 2009, and considered the records herein, and heard the statements of the defendant and counsel, and now

finds that the defendant is presently incompetent to stand trial and his lack of competence precludes him from asserting his right to a jury trial regarding his competency.

Further findings will be entered after a jury determination regarding restoration pursuant to 10.77.086. Mr. Hurst has no legal right under these circumstances to contest his competency before a jury.

DONE IN OPEN COURT this 23 day of January, 2009.

  
\_\_\_\_\_  
JUDGE

JUDGE MICHAEL FOX



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Presented by:

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By:   
Cindi S. Port  
Deputy Prosecuting Attorney, WSBA # 25191

Copy received, notice of presentation waived  
and approved for entry by:

By: \_\_\_\_\_  
Devon Gibbs  
Attorney for Defendant, WSBA # 31438

# Appendix L

**FILED**  
KING COUNTY, WASHINGTON

FEB 05 2009

SUPERIOR COURT CLERK  
BY *Anne C. Smart*  
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

)))

Plaintiff,

)))

No. 08-1-03298-8 SEA

)))

vs.

JOHN ROBERT HURST,

Defendant.

---

COURT'S INSTRUCTIONS TO THE JURY

DATED this 4 day of ~~January~~ <sup>Feb</sup>, 2009.



The Honorable Judge Michael J. Fox

No.   /  

It is your duty to decide the facts in this case based on the evidence presented to you during the trial. It also is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses and the exhibits that I have admitted during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict.

In order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that relates to the proposition. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the

things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

The lawyers' remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers' statements are not evidence. The evidence is the testimony and the exhibits. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during the trial or in giving these instructions, you must disregard the apparent comment entirely.

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. You may not consider the fact that punishment may follow conviction, except insofar as it may tend to make you careful.

The order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions. During your deliberations, you must consider the instructions as a whole.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

No. 2

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses. Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

No. 3

A witness who has special training, education or experience in a particular science, profession or calling, may be allowed to express an opinion in addition to giving testimony as to facts. You are not bound, however, by such an opinion. In determining the credibility and weight to be given such opinion evidence, you may consider, among other things, the education, training, experience, knowledge and ability of that witness, the reasons given for the opinion, the sources of the witness' information, together with the factors already given you for evaluating the testimony of any other witness.

No. 4

Evidence has been introduced in this case on the subject of the defendant's prior criminal record and the crime with which the defendant is now charged. This evidence has been introduced for the limited purposes of its contribution to the basis of the experts' opinion regarding the defendant's competency restoration and whether the defendant is a substantial danger to other persons or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security. You must not consider this evidence for any other purpose.

No. 5

The defendant is not compelled to testify. You should not consider the fact that the defendant has not testified for any purpose. The fact that the defendant has not testified cannot be used to infer that he does nor does not present a danger to other persons, that there is or is not a substantial likelihood of him committing criminal acts jeopardizing public safety or security, that there is or is not a substantial probability that he will regain competency in a reasonable period of time, and should not prejudice him in any way.

No. 6

The defendant, John Robert Hurst, has been charged with a crime. This trial, however, has nothing whatsoever to do with a finding of guilt or innocence on that charge. This trial is to determine whether the defendant should be returned to Western State Hospital for a period not to exceed 180 days.

In order to return the defendant to Western State Hospital for a period not to exceed 180 days, the State bears the burden of proving by a preponderance of evidence that:

- (1) the defendant presents a substantial danger to others, OR
- (2) the defendant presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, AND
- (3) there is a substantial probability that the defendant will regain competency in a reasonable period of time.

If you find from the evidence that the State has proven EITHER element (1) or element (2) by a preponderance of evidence, then you will consider whether the State has proven element (3) by a preponderance of the evidence. Elements (1) and (2) are alternatives and only one need be proven. You must unanimously agree that (1) has been proved or that (2) has been proved. You must be unanimous that element (3) has been proved.

RCW 10.77.086(4)

No. 7

Preponderance of the evidence means that a proposition is more probably true than not true.

INSTRUCTION NO. 8

No person may be placed on trial unless that person is competent to stand trial.

The Defendant ~~is~~ not competent to stand trial as of February 5, 2009.

*[Handwritten signature]*

INSTRUCTION NO. 9

"Incompetency" means a person lacks the capacity to understand the nature of the proceedings against him or to assist in his own defense as a result of mental disease or defect.

No. 10

In determining whether there is a substantial likelihood that the defendant will become competent within a reasonable period of time, you are instructed that a reasonable period of time, as applied to this case, is 180 days.

No. 11

All of your decision in this case must be unanimous. In order to answer each question on the verdict form, all of you must agree.

No. 12

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to reexamine your own views and to change your opinion based upon further review of the evidence and these instructions. You should not, however, surrender your honest belief about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of reaching a verdict.

No. 13

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instructions and verdict form for recording your verdict. Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

You must fill in the blank provided in the verdict form according to the decision you reach. Each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict form to express your decision. The presiding juror must sign the verdict form and notify the bailiff, who will conduct you into court to declare your verdict.

# Appendix M

1 FILED  
2 2009 FEB -6 AM 9:37  
3 KING COUNTY  
4 SUPERIOR COURT CLERK  
5 SEATTLE, WA

6 (3) CERTIFIED COPY TO WARRANTS FEB 06 2009

7 SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

8 STATE OF WASHINGTON, )

9 Plaintiff, )

No. 08-1-03298-8 SEA )

10 vs. )

11 JOHN HURST, )

12 Defendant. )

ORDER FINDING DEFENDANT  
INCOMPETENT AND COMMITTING  
FOR FURTHER EVALUATION AND  
TREATMENT FOR 180 DAYS )

13 )  
14 )  
15 THIS MATTER came on before the undersigned judge of the above-titled court; the  
16 Court previously issued an order finding the defendant is incompetent to stand trial.

17 )  
18 THE JURY RENDERED A VERDICT on February 5, 2009 and found that:

19 1. The defendant presents a substantial likelihood of committing criminal acts  
20 jeopardizing public safety or security; and

21 2. There is a substantial probability that the defendant will regain competency within a  
22 reasonable period of time (180 days).  
23 )

ORDER FINDING DEFENDANT INCOMPETENT  
AND COMMITTING FOR FURTHER EVALUATION  
AND TREATMENT FOR 180 DAYS - 1

Daniel T. Satterberg, Prosecuting Attorney  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000, FAX (206) 296-0955



1 IT IS THEREFORE ORDERED PURSUANT TO RCW 10.77.090:

2 1. That the defendant is committed to Western State Hospital for a period of 180  
3 days, or until such earlier time as the defendant becomes competent to stand trial.

4 ~~2. That psychotropic medication may be administered to the defendant as deemed  
5 clinically appropriate by the staff of Western State Hospital, against the defendant's will if  
6 necessary, as the court finds that there is no less intrusive form of treatment which is likely to  
7 restore the defendant's competency.~~

8 3. The proceedings in the above-entitled matter continue stayed until such time as  
9 the defendant is found competent to stand trial.

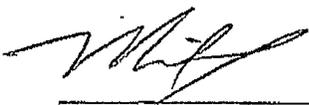
10 4. The King County Department of Public Safety shall transport the defendant to  
11 Western State Hospital and shall return him to the King County Jail at such time as he becomes  
12 competent or 180 days has elapsed, consistent with the next scheduled court appearance  
13 indicated below.

14 5. As soon as the defendant has regained competency, or at the end of the 180 day  
15 period, a medical report shall be furnished to this court by the evaluation and treatment facility  
16 setting forth the findings of the staff, detailing his present mental condition, and indicating  
17 whether he is competent to stand trial and enter a plea to the charges and whether psychotropic  
18 medications will be required to assist the defendant maintain competency.

19 6. This matter is next scheduled for court on AUGUST 3<sup>RD</sup>, 2009.

ARRAIGNMENT  
CALENDAR

20 DONE IN OPEN COURT this 5 day of February, 2009.

21  
22   
23 JUDGE

ORDER FINDING DEFENDANT INCOMPETENT  
AND COMMITTING FOR FURTHER EVALUATION  
AND TREATMENT FOR 180 DAYS - 2

Daniel T. Satterberg, Prosecuting Attorney  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000, FAX (206) 296-0955

1 Presented by:

2 

3 Cindi S. Port, WSBA #25191  
4 Deputy Prosecuting Attorney

5 Approved for entry:

6 

7 Devon Gibbs # 31438  
8 Attorney for Defendant

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ORDER FINDING DEFENDANT INCOMPETENT  
AND COMMITTING FOR FURTHER EVALUATION  
AND TREATMENT FOR 180 DAYS - 3

Daniel T. Satterberg, Prosecuting Attorney  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000, FAX (206) 296-0955

# Appendix N

FILED

2009 FEB 24 PM 1:49

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

FEB 24 2009

COPY TO COURT OF APPEALS

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

STATE OF WASHINGTON, )

Plaintiff, )

v. )

*John Hurst* )

Defendant. )

NO. *08-1-032988SEA*

NOTICE OF APPEAL TO THE  
COURT OF APPEALS,  
DIVISION I

The above-named defendant seeks review by the designated appellate court of  
the Judgment and Sentence entered on February 5, 2009,  
*Court ORDER for restoration  
at Western State Hospital  
for 180 days pursuant to  
a Jury Trial conducted  
under RCW 10.77.080*

Notice of Appeal to the Court of Appeal - 1  
(Form #66)

LAW OFFICES OF  
THE DEFENDER ASSOCIATION  
810 THIRD AVENUE, SUITE 800  
SEATTLE, WASHINGTON 98104  
206-447-3900

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DATED this 20th day of February, 2009.

Devin Gibbs

Attorney for Plaintiff:  
Cindi Port  
King County Prosecutor  
King County Courthouse - W554  
Seattle, WA 98104  
(206) 296-9000

Attorney for Defendant DEVONGIBBS  
The Defender Association  
810 Third Avenue 8th Fl  
Seattle, WA 98104  
(206) 447-3900

Counsel on Appeal:

Address of Defendant:

Western State Hospital

Notice of Appeal to the Court of Appeal - 2  
(Form #66)

LAW OFFICES OF  
THE DEFENDER ASSOCIATION  
810 THIRD AVENUE, SUITE 800  
SEATTLE, WASHINGTON 98104  
206-447-3900

# Appendix O

FILED  
KING COUNTY, WASHINGTON

FEB 05 2009

SUPERIOR COURT CLERK  
BY ~~D. COLEMAIER~~  
Anne C. Smart DEPUTY

THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

State of Washington

vs. Plaintiff/Petitioner  
  
John Hurst  
Defendant/Respondent

No. 08-1-03298-8 SEA  
JURY QUESTIONS TO WITNESS  
DR Gallagher

Attached are witness questions submitted to the Court by the Jury.

Question

In 2004, if court did not  
order restoration, how/why  
admitted to WSH?

From Juror #1  
MP

## Appendix P

RCW 10.77.086 provides:

(1) If the defendant is charged with a felony and determined to be incompetent, until he or she has regained the competency necessary to understand the proceedings against him or her and assist in his or her own defense, or has been determined unlikely to regain competency pursuant to RCW 10.77.084(1)(c), but in any event for a period of no longer than ninety days, the court:

(a) Shall commit the defendant to the custody of the secretary who shall place such defendant in an appropriate facility of the department for evaluation and treatment; or

(b) May alternatively order the defendant to undergo evaluation and treatment at some other facility as determined by the department, or under the guidance and control of a professional person.

(2) On or before expiration of the initial ninety-day period of commitment under subsection (1) of this section the court shall conduct a hearing, at which it shall determine whether or not the defendant is incompetent.

(3) If the court finds by a preponderance of the evidence that a defendant charged with a felony is incompetent, the court shall have the option of extending the order of commitment or alternative treatment for an additional ninety-day period, but the court must at the time of extension set a date for a prompt hearing to determine the defendant's competency before the expiration of the second ninety-day period. The defendant, the defendant's attorney, or the prosecutor has the right to demand that the hearing be before a jury. No extension shall be ordered for a second ninety-day period, nor for any subsequent period as provided in subsection (4) of this section, if the defendant's incompetence has been determined by the secretary to be solely the result of a developmental disability which is such that competence is not reasonably likely to be regained during an extension.

(4) For persons charged with a felony, at the hearing upon the expiration of the second ninety-day period or at the end of the first ninety-day period, in the case of a defendant with a developmental disability, if the jury or court finds that the defendant is incompetent, the charges shall be dismissed without prejudice, and either civil commitment proceedings shall be instituted or the court shall order the release of the defendant. The criminal charges shall not be

dismissed if the court or jury finds that: (a) The defendant (i) is a substantial danger to other persons; or (ii) presents a substantial likelihood of committing criminal acts jeopardizing public safety or security; and (b) there is a substantial probability that the defendant will regain competency within a reasonable period of time. In the event that the court or jury makes such a finding, the court may extend the period of commitment for up to an additional six months.

**DECLARATION OF DOCUMENT FILING AND MAILING/DELIVERY**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Court of Appeals – Division One** under **Case No. 63052-1-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to each attorney or party or record for  **respondent Deborah Dwyer; Donna Wise - King County Prosecuting Attorneys-Appellate Unit**,  **appellant** and/or  **other party**, at the regular office or residence as listed on ACORDS or drop-off box at the prosecutor's office.



MARIA ARRANZA RILEY, Legal Assistant  
Washington Appellate Project

Date: July 14, 2009

FILED  
COURT OF APPEALS DIVISION  
STATE OF WASHINGTON  
2009 JUL 14 PM 4:56