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SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOHN ROBERT HURST,

Petitioner.

**SUPPLEMENTAL BRIEF OF RESPONDENT -
STATE OF WASHINGTON**

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ORIGINAL

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A. ISSUES PRESENTED

1. Did the Washington legislature establish a standard of proof of a preponderance of the evidence in RCW 10.77.086, to be applied to statutorily mandated findings related to competency and competency restoration of persons charged with a felony?

2. In this criminal proceeding, should this Court apply the constitutional test of procedural due process applicable to criminal cases, which requires the procedures employed be consistent with principles of justice rooted in the traditions and conscience of this country?

3. For purposes of authorizing a finite commitment (up to six months) for restoration of competency of a person charged with a felony, is application of the preponderance of the evidence standard to the required findings of dangerousness and the likelihood of restoration of competency consistent with principles of justice rooted in the traditions and conscience of this country?

B. STATEMENT OF THE CASE

Defendant John Hurst was charged with one count of assault in the third degree—the State alleged that he punched a nurse at Swedish Hospital in the face when she asked him to move and then told a second nurse, "I should have killed her, I made her bleed." CP 1-2. Hurst has a

history of other violent acts: seven convictions for assault in Washington State since 1999 and two convictions for assaults on officers in Nebraska in 1995 and 1996. CP 3 (Prosecuting Attorney Summary and Request For Bail). Hurst has additional convictions for harassment (in 2003), malicious mischief (in 2004 and 1996) and property destruction (in 2004, 2003, and 2000). CP 3. He was under the supervision of the Department of Corrections at the time of this assault. CP 3.

While this case was ongoing, Hurst told a psychologist that he needed to kill Scott Jordan and that he had access to a gun. 2/3/09A RP 19, 35.¹ Scott Jordan's relationship to Hurst was not stated.

In the case at bar, Hurst was twice found incompetent to stand trial and committed to Western State Hospital for up to 90 days for restoration of competency. CP 12-17. After the second commitment, two mental health professionals (a defense expert and a psychologist at Western State Hospital) concluded that Hurst was still incompetent. 2/3/09A RP 19-20, 26; 2/4/09RP 56-58. Two independently appointed defense attorneys agreed that Hurst was incompetent. 1/15/09RP 5; 1/23/09RP 4-5.

One of Hurst's two trial attorneys, Devon Gibbs, requested a jury trial on the issue of the restorability of Hurst's competency. 12/16/08RP

¹ The verbatim report of proceedings is referenced by the date of each volume, with the exception of the two volumes for 2/3/09, which are referenced as 2/3/09A (reported by Dean) and 2/3/09B (reported by Kennedy).

3, 9. Hurst asserted that he was competent and demanded a jury trial on the issue of competency. 12/16/08RP 8. Gibbs asked the court to appoint independent counsel to assist Hurst on the competency issue. 1/15/09RP 9-10. The court appointed a third attorney as independent counsel and that attorney concluded that there was no material issue as to competency, so a jury trial on that issue was not warranted. 1/20/09RP 11; 1/23/09RP 2, 10-11. After Hurst addressed the court, the court concluded that Hurst was incompetent and found that he was not entitled to a jury trial on the issue of competency. 1/23/09RP 13-18, 22-23.

The court did grant a jury trial pursuant to RCW 10.77.086 on the issues of Hurst's dangerousness and the likelihood that his competency could be restored. 2/3/09A RP 3. The jury found that there was a substantial likelihood that Hurst would commit criminal acts jeopardizing public safety or security and there was a substantial probability that Hurst would regain competency within a reasonable period of time. CP 74. On February 5, 2009, the trial court ordered Hurst be returned to Western State Hospital for treatment to restore his competency. CP 66-68.

On August 3, 2009, Hurst again was found incompetent to proceed and this case was dismissed without prejudice. CP 75-78.

The Court of Appeals granted discretionary review as to the standard of proof applied at the February 2009 jury trial and concluded

that the trial court properly applied the preponderance of the evidence standard. State v. Hurst, 158 Wn. App. 803, 808-09, 244 P.3d 954 (2010). That Court held that the preponderance standard satisfies the requirements of due process as articulated by the United States Supreme Court in Medina v. California,² which applies on review of criminal proceedings.³ Id. at 809-12.

C. ARGUMENT

1. RCW 10.77.086 ESTABLISHES A BURDEN OF PROOF OF A PREPONDERANCE OF THE EVIDENCE AS TO COMPETENCY, DANGEROUSNESS, AND RESTORABILITY.

Hurst does not offer any interpretation of the burden of proof in RCW 10.77.086(4) based on rules of statutory construction. As the Court of Appeals concluded, the preponderance of the evidence is the standard of proof applicable to all findings required in that statute. Hurst, 158 Wn. App. at 808-09.

In Washington, an incompetent person may not be tried, convicted, or sentenced for an offense so long as the incapacity continues. RCW 10.77.050. A defendant is incompetent if he or she "lacks the capacity to

² 505 U.S. 437, 112 S. Ct. 2572, 120 L. Ed. 2d 353 (1992).

³ The Court of Appeals determined that although the issue is potentially moot, the matter is of substantial public interest and warranted review. Hurst, 158 Wn. App. at 805 n.1.

understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect." RCW 10.77.010(15).

RCW 10.77.086⁴ provides the procedures applicable when a defendant who is charged with any felony is found incompetent to proceed. The process begins with up to 90 days of treatment to restore competency. RCW 10.77.086(1). At the end of that period, if the court finds "by a preponderance of the evidence" that the defendant is still incompetent, the court may extend the period of treatment for another 90 days. RCW 10.77.086(3). Treatment ordered pursuant to RCW 10.77.086 may be either in a treatment facility of the Department of Social and Health Services (here, Western State Hospital), in another treatment facility, or out of custody. RCW 10.77.086(1).

At the end of the second 90-day restoration period,⁵ if the defendant is still incompetent, additional findings must be made to justify continued restoration:

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

⁴ The full text of RCW 10.77.086 is set out in Appendix A.

⁵ If the defendant has a developmental disability, this determination must be made after the first 90-day restoration period. RCW 10.77.086(4).

defendant will regain competency within a reasonable period of time.

RCW 10.77.086(4). If the court or a jury makes these findings, the court may extend the commitment for restoration for up to six months. Id.

The length of time each court order for treatment specifies is the maximum period of treatment. During any restoration period, if a mental health professional determines that competency has been restored or that competency is not likely to be restored, the defendant is returned to court for a hearing. RCW 10.77.084(1)(c). If the court at any point finds that the defendant is incompetent and unlikely to be restored, the case is dismissed without prejudice. RCW 10.77.084(1)(c), (d).

At the hearing described in RCW 10.77.086(4), as the Court of Appeals concluded, the State is required either to prove competency or to prove incompetency, dangerousness, and probable restorability, by a preponderance of the evidence. Hurst, 158 Wn. App. at 808-09.

The meaning of a statute is a question of law reviewed de novo. Cockle v. Dep't of Labor & Indus., 142 Wn.2d 801, 807, 16 P.3d 583 (2001). The court's fundamental objective is to ascertain and carry out legislative intent. State v. Alvarez, 128 Wn.2d 1, 11, 904 P.2d 754 (1995). The plain meaning of a statute is determined based on the language used,

the context of the statute, related provisions, and the statutory scheme as a whole. State v. Jacobs, 154 Wn.2d 596, 600, 115 P.3d 281 (2005).

The previous subsection of the same statute explicitly imposes a standard of proof of the preponderance of the evidence. RCW 10.77.086(3). There is no reference to any other standard of proof anywhere in this statute or in related statutes that address the determination of competency. See RCW 10.77.084, 10.77.088. As the Court of Appeals concluded:

Had the legislature intended that a different standard of proof applies to the third finding of incompetency, it would have explicitly so stated. The fact that the findings of additional grounds are included in the same section under which a fact finder must find incompetency leads to the inevitable conclusion that the same standard applies to the entire section. This is particularly true because, unlike the present case, the jury is normally presented with the question of competency at the same time it decides the additional factors.

Hurst, 158 Wn. App. 808-09. The burden of proof applicable to all provisions of the statute is a preponderance of the evidence.

2. THE PREPONDERANCE OF THE EVIDENCE
STANDARD OF PROOF SATISFIES THE
REQUIREMENTS OF DUE PROCESS.

Hurst argues that the Due Process Clause of the United States Constitution⁶ requires that the State prove by clear, cogent, and convincing proof all of the facts that are predicate to a six-month commitment for restoration of the competency of a felony defendant. That argument is without support in the law and should be rejected by this Court. The United States Supreme Court has approved the use of a preponderance of the evidence standard for determination of incompetency. Medina v. California, supra. Due process demands no more for the determination of dangerousness and restorability that is the basis of a six-month commitment for restoration under Washington law. The trial court properly instructed the jury as to that standard of proof.

a. Medina v. California Established The Requirements
Of Due Process As To Criminal Procedure.

The United States Supreme Court in Medina v. California concluded that a state criminal procedure does not violate the due process clause unless it offends a principle of justice that is "so rooted in the

⁶ U.S. Const. amend. XIV, § 1. Although the Court of Appeals cited the State Constitution as well, 158 Wn. App. at 809 n. 9, citing Wa. Const. art. I, § 3, Hurst has made no argument for independent analysis under the State constitutional provision.

traditions and conscience of our people as to be ranked as fundamental." Medina, 505 U.S. at 445, quoting Patterson v. New York, 432 U.S. 197, 201-02, 97 S. Ct. 2319, 53 L. Ed. 2d 281 (1977) (internal citations omitted). The Supreme Court rejected application of the balancing test of Mathews v. Eldridge,⁷ upon which Hurst relies, concluding: "the Mathews balancing test does not provide the appropriate framework for assessing the validity of state procedural rules which, like the one at bar, are part of the criminal process." Medina, 505 U.S. at 443. The Supreme Court reaffirmed and applied this due process analysis in the context of competency proceedings in a criminal case in Cooper v. Oklahoma, 517 U.S. 348, 116 S. Ct. 1373, 134 L. Ed. 2d 498 (1996).

This Court has recognized that the proper framework for analyzing due process claims in criminal cases is the deferential standard articulated in Medina. State v. Heddrick, 166 Wn.2d 898, 904 n.3, 215 P.3d 201 (2009). This Court held that the Mathews balancing test "is not appropriate in criminal cases." Id.; accord, State v. Green, 157 Wn. App. 833, 847-48 n.9, 239 P.3d 1130 (2010).

Four years before the Heddrick decision, this Court did apply the Mathews balancing test in a criminal case, Born v. Thompson, 154 Wn.2d 749, 117 P.3d 1098 (2005). The applicable due process standard was not

⁷ 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

contested in the parties' briefing in Born,⁸ and the distinct standard established by Medina for criminal cases apparently was not considered; the opinion does not refer to Medina or to the standard generally applied in criminal cases.⁹ Born, 154 Wn.2d at 754-62. In rejecting the application of the Mathews balancing test to a criminal case, the Heddrick opinion did not mention the Born case. Heddrick, 166 Wn.2d at 904 n.3.

Hurst argues that the criminal due process test is inappropriate because the legislature did not specify a standard of proof in RCW 10.77.086(4); that argument is unsupported by legal authority or logic. The proper standard of proof is a matter of statutory construction with the fundamental objective to carry out the legislature's intent, even when the legislative intent is not clear on the face of the statute. Rozner v. City of Bellevue, 116 Wn.2d 342, 347, 804 P.2d 24 (1991). The legislature's intent to impose the preponderance standard to the findings of fact under RCW 10.77.086(4) is established by specific adoption of that standard in the statute. Moreover there is no logic to the argument that lack of a specified standard would warrant imposition of a standard of proof by

⁸ Counsel has reviewed the briefs filed at the King County Law Library and determined that neither party cited Medina or Cooper and neither party identified the separate due process test that applies to criminal proceedings.

⁹ Two post-Medina cases in the Courts of Appeal have applied the Mathews balancing analysis in criminal cases involving issues unrelated to competency, but neither addressed the Medina test. In re Price, 157 Wn. App. 889, 240 P.3d 188 (2010)(hearing to revoke drug offender alternative sentence); Butler v. Kato, 137 Wn. App. 515, 154 P.3d 259 (2007) (pretrial release conditions).

reference to a civil due process analysis that is inapplicable in this criminal case.

Hurst claims for the first time in his Petition For Review that the Court in Born did not apply the due process test that applies to criminal cases because it did not "label the case as a criminal case," and that the Court applied the due process test used in civil commitment cases because "the outcome faced by Born was involuntary civil commitment . . . although it stemmed from a criminal case." Petition at 9-10. The opinion in Born, however, simply applies the Mathews balancing without discussion of the Medina standard. There is nothing to support Hurst's theory that the Court decided to silently reject the test established by United States Supreme Court precedent by the expedient of labeling a criminal case as a civil commitment case so that the civil due process standard could be applied. The more likely explanation is that the issue was not addressed because it was not raised by the parties.

The procedure challenged applies only to persons charged with felonies. RCW 10.77.086(1). Hurst's commitment for restoration of his competency to stand trial on this felony assault charge is an integral part of this criminal prosecution, necessary to bring Hurst to trial, to obtain a conviction, and to impose punishment. RCW 10.77.050. Failure of the State to sustain the burdens imposed by RCW 10.77.086(4) will result in

dismissal of the criminal charge. RCW 10.77.084(1). Thus, the proceedings at issue are in all respects criminal and the due process test of Medina is the appropriate standard of review of that procedure.

b. Application Of The Preponderance Standard To Competency Restoration Issues Satisfies The Requirements Of Due Process In Criminal Cases.

Hurst has never argued that the preponderance standard violates the due process test adopted in Medina for review of criminal procedures. The Due Process Clause does not require the State to adopt a procedure simply because that procedure may produce results more favorable to the defendant. Medina, 505 U.S. at 451. The Supreme Court has explained:

[A] state procedure "does not run foul of the Fourteenth Amendment because another method may seem to our thinking to be fairer or wiser or to give a surer promise of protection to the prisoner at the bar."

Id. at 451 (quoting Snyder v. Massachusetts, 291 U.S. 97, 105, 54 S. Ct. 330, 78 L. Ed. 674 (1934)). Due process requires only the most basic procedural safeguards; "more subtle balancing of society's interests against those of the accused ha[s] been left to the legislative branch." Medina, 505 U.S. at 453 (quoting Patterson v. New York, 432 U.S. at 210).

As established in the State's briefing in the Court of Appeals, the standard of proof adopted by the legislature in RCW 10.77.086 is the same

standard of proof traditionally applied to competency decisions, the preponderance standard. Brief of Respondent at pp. 12-17. Application of the preponderance standard to the issues of dangerousness and restorability of an incompetent felony defendant does not offend deeply rooted principles of justice. The State relies on its briefing below and the decision of the Court of Appeals for the details of due process analysis under the Medina test. Hurst, 158 Wn. App. at 809-12; Brief of Respondent at pp. 10-24.

c. The Preponderance Standard Also Satisfies The Requirements Of Due Process For Civil Cases, The Balancing Test Of Mathews v. Eldridge.

Even if the Mathews balancing test is applied, the preponderance standard of RCW 10.77.086 satisfies constitutional due process. The governmental interest in prosecution of felonies, including murder, rape, and arson, is extremely weighty and the procedural safeguards in place are substantial. While a defendant's interest in his personal liberty is very important, it is outweighed by the governmental interest in prosecution of felonies and consequent protection of the public from violent individuals.

The Mathews balancing test requires the court to balance the private interest at stake in a civil context, the risk of erroneous deprivation

of that interest by the governmental procedure, and the government interest in maintaining the procedure. Mathews, 424 U.S. at 334-35.

Without question, a commitment for restoration of competency is a significant deprivation of liberty.¹⁰ Born, 154 Wn.2d at 755. While this Court in Born also recognized possible adverse social consequences of commitment for mental health treatment because of stigma associated with civil commitment,¹¹ that concern would not apply in the context of RCW 10.77.086(4), because this proceeding does not occur unless the defendant already has been committed for at least one previous 90-day period.

The risk of an erroneous decision is reduced by the procedural safeguards that accompany a proceeding under RCW 10.77.086(4). As this Court has recognized, the protections of the right to counsel, the right to present evidence, the right to cross-examine witnesses, and the application of the rules of evidence are additional safeguards relevant to the balancing of interests of the Mathews test. In re LaBelle, 107 Wn.2d 196, 222-23, 728 P.2d 138 (1986)(preponderance standard satisfies due process as to 14-day civil commitment).

¹⁰ There was no request for an order authorizing forced medication in this case. Determination of that issue is controlled by Sell v. United States, 539 U.S. 166, 123 S. Ct. 2174, 156 L. Ed. 2d 197 (2003), RCW 10.77.092, and RCW 10.77.093.

¹¹ 154 Wn.2d at 755.

Further protections of the interests of the defendant were included by the legislature when it required a finding of both dangerousness and restorability. To warrant commitment, the fact-finder must conclude both: (1) 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 (2) there is a substantial probability that the defendant will regain competency within a reasonable period of time. RCW 10.77.086(4). Moreover, the addition of the qualifier "substantial" in each of these clauses creates a higher bar to commitment.

The government has a strong interest in bringing a person accused of a serious crime to trial. The "power to bring an accused to trial is fundamental to a scheme of 'ordered liberty' and prerequisite to social justice and peace." Illinois v. Allen, 397 U.S. 337, 347, 90 S. Ct. 1057, 25 L. Ed. 2d 353 (1970) (Brennan, J., concurring); United States v. Bush, 585 F.3d 806, 813 (4th Cir. 2009).

The State's interest in promoting public safety also must be weighed in the due process analysis. The defendant who is committed under RCW 10.77.086(4) is charged with a felony and either is a substantial danger to other persons, or presents a substantial likelihood of committing crimes that jeopardize public safety or security. RCW

10.77.086(4). This defendant was charged with a felony assault and had a long history of violent acts. CP 1-3.

Moreover, any greater constitutional standard grafted onto the statutory procedure in RCW 10.77.086(4) would apply to all felony defendants, including those charged with robbery, rape, and murder. E.g., State v. Carneh, 149 Wn. App. 402, 203 P.3d 1073, rev. denied, 166 Wn.2d 1030 (2009)(four counts of aggravated first degree murder). The State's interest in bringing these defendants to trial can hardly be overstated.

Hurst's reliance on Born v. Thompson, supra, is misplaced. The Court in Born analyzed the appropriate burden of proof relating to the finding of a "violent act" necessary at that time for commitment for restoration of competency of persons charged with nonfelony offenses. Born, 154 Wn.2d at 751. The Court recognized the qualitative difference between the State's much greater interest in prosecuting felonies as opposed to nonfelonies. Id. at 756-57. It recognized that the burden of proof in the felony context was established by statute as a preponderance of the evidence. Id. at 757 and n.10. It concluded that a higher standard of proof should apply in the nonfelony context, because the government has a less important interest in prosecuting nonfelony crimes than felonies and because the incompetent nonfelony defendant would be at a

disadvantage in the litigation of whether a violent act was involved in the current offense, an issue only in the nonfelony context.¹² Id. at 756, 761-62.

Hurst attempts to minimize the State's interest in public safety in this case, but does not contend that this case was not properly charged as a felony assault. It is the legislature's prerogative to determine the seriousness of crimes. In addition, although the nurse who was the object of the assault in this case was not seriously injured, Hurst clearly does pose a danger to the community. He assaulted and injured a staff member at Western State Hospital in 2004. 2/4/09RP 72-73. He assaulted another patient at the Hospital in 2006. 2/4/09RP 63. Hurst has many prior convictions for assault. CP 3; 2/3/09A RP 36. He told Dr. Gallagher that he wanted to kill Scott Jordan and had access to a gun. 2/3/09A RP 35. Hurst has a history of drinking, using cocaine, and not taking prescribed medication when he is out of custody. 2/3/09A RP 43; 2/4/09RP 60-61. The determination of whether he was dangerous was a matter for the jury to decide, based on the current charge and Hurst's history.

¹² Under the statute in effect at that time, to obtain an order for restorative treatment for a nonfelony defendant, the State was required to prove that the defendant had a history of or a pending charge of one or more "violent acts." RCW 10.77.090(1)(d)(i) (2001). The Court found that the incompetence of the defendant could impede the defense effort to rebut the claim that the current offense involved a violent act. Born, 154 Wn.2d at 761.

Hurst carelessly asserts that the State improperly pursued commitment for restoration of his competency when it should have sought civil commitment. This claim ignores the State's critical interest in bringing to trial violent defendants who are charged with felonies and in protecting public safety by doing so. It is the legislature's judgment that commitment for restoration of incompetency is an appropriate procedure and the State should not be criticized for relying upon that procedure.

Hurst provides no support for his assertion that the risk of erroneous deprivation of liberty is high because he had not become competent during the initial two 90-day commitments to Western State Hospital. Whether Hurst's competency could be restored in the foreseeable future was the subject of expert testimony by both parties. Compare 2/3/09A RP 21, 26, 31-33, 37-44, 50-51, and 2/4/09RP 30-33 with 2/4/09RP 59-60. By its verdict, the jury rejected the defense expert's opinion that Hurst's competency was not likely to be restored, instead finding a substantial probability that Hurst would regain competency. CP 74. Moreover, the risk of error in the finding of restorability is minimized by a continuing safeguard: RCW 10.77.084(1)(c) provides for an immediate hearing and dismissal of the case if a professional person at any time concludes that Hurst is not restorable within a reasonable period and the court makes that finding.

This Court, therefore, should reject the defendant's claim that before a commitment of a felony defendant for six months for restorative treatment, the State must prove the defendant's competency, dangerousness, and the likelihood of restorability by clear, cogent and convincing evidence. The legislatively adopted preponderance standard satisfies the requirements of due process under both the Medina and the Mathews standards.

D. CONCLUSION

For the foregoing reasons, the State respectfully asks this Court to affirm the holding of the Court of Appeals that the standard of proof applicable to RCW 10.77.086(4) is the preponderance of the evidence and that standard satisfies the requirements of due process.

DATED this 30TH day of June, 2011.

Respectfully submitted,

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Appendix A

Appendix A

RCW 10.77.086. Commitment--Procedure in felony charge

(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.

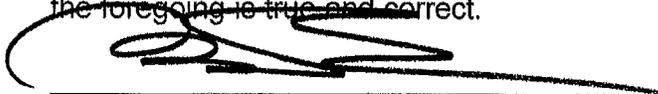
(4) For persons charged with a felony, at the hearing upon the expiration of the second ninety-day period or at the end of the first ninety-day period, in the case of a defendant with a developmental disability, if the jury or court finds that the defendant is incompetent, the charges shall be dismissed 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.

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Mindy Carr and Nancy Collins, the attorneys for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. JOHN HURST, Cause No. 85549-8, in the Supreme Court of the State of Washington.

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



Name
Done in Seattle, Washington

06/30/2011
Date