

70644-6

70644-6

NO. 70644-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

A.L.,

Appellant.

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STATE OF WASHINGTON  
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE BETH ANDRUS, JUDGE

BRIEF OF RESPONDENT

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**A. ISSUES PRESENTED**

6. DID THE TRIAL COURT PROPERLY DENY APPELLANT'S MOTION TO STRIKE RCW 71.34.740(9) AS UNCONSTITUTIONAL?
7. DID THE TRIAL COURT PROPERLY ADMIT A.L.'S MEDICAL RECORDS UNDER THE BUSINESS RECORDS EXCEPTION TO HEARSAY?
8. ALTERNATIVELY, DID THE TRIAL COURT PROPERLY ADMIT A.L.'S MEDICAL RECORDS UNDER MEDICAL TREATMENT AND DIAGNOSIS EXCEPTION TO HEARSAY?
9. DID THE TRIAL COURT PROPERLY FIND THAT THE STATE MET ITS BURDEN OF PROOF ON ALL OF THE ELEMENTS NECESSARY TO COMMIT A.L FOR 14 DAYS OF INPATIENT TREATMENT?
10. IS THIS APPEAL MOOT?

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS**

A.L was detained on June 29, 2013 at Children's Hospital in Seattle, Washington for up to 72 hours. On July 2, 2013, A.L's case came before Judge Beth Andrus for consideration of up to 14 days of inpatient treatment. A.L. is a juvenile (16 years old) and his hearing was governed by RCW 71.34 et seq. RP 30.

At that time, A.L. raised a motion challenging the constitutionality of RCW 71.34.740(9), which states “Rules of evidence shall not apply in 14 day commitment hearings.”

A.L. contended there is an irreconcilable conflict between RCW 71.34.740(9) and ER 101 and ER 1101. Therefore, the trial court should find that the evidence rules trump the statute and RCW 71.34.740(9) should be invalidated to preserve the separation of powers between the Judiciary and Legislature. RP 4 – 19.

The State argued that there was no irreconcilable conflict and the two statutes could be harmonized, as required under Washington case law. The evidence showed that the Legislature first revised RCW 71.34 to include the contested provision, and then the Judiciary subsequently rescinded its own court rule (MPR 2.5) addressing the same topic and simply had the “new” MPR 2.5 reference RCW 71.34 instead. This demonstrated a clear attempt by the Judiciary to defer to the Legislature’s statute as the governing law for juvenile hearings, and RCW 71.34.740(9) should be upheld. RP 19 - 26.

After oral argument and the trial court’s own independent research during a recess, the court agreed with the State and

denied A.L.'s motion. Judge Andrus entered detailed oral findings on the record, explaining her reasoning:

...[H]owever, Mr. Wong has convinced me that we have had subsequent Supreme Court action after the passage of the Minor – Mental Health Services for Minor Act. And here's what I have discovered: Engrossed Substitute Senate Bill No. 3099 was passed by the state legislature in April of 1985. The 1985 version of the statute did contain the provision at issue in Mr. Johnson's motion. The 1985 Act specifically stated that the rules of evidence would not apply to the 14-day commitment hearing for a minor. Rules of evidence shall not apply in 14-day commitment hearings. And that was in Section 8, Subsection 8, of the original statute.

The effective date of this legislation was January 1, 1986. MPR 2.5 was rescinded by the legis-- or the State Supreme Court in -- on December 19, 1986. The rescinding of the rule is located at 107 Wn.2d 1101.

I couldn't find that recision (*sic*) language online. What I found was a table identifying the cite. When I tried to do the cite online, it's clear Westlaw doesn't have rule rescissions and orders rescinding rules. They're not putting that in their database. And I don't have the hard copy of the Washington Seconds to see what the language of the order says, if it went any -- any further than just a one-line recision (*sic*).

However, the timing is fairly convincing to the Court that the Supreme Court specifically looked at this legislation, RCW 71.34, and chose to incorporate it into -- or at least refer to it in MPR 2.5. This court finds that persuasive because it appears to be analogous to what they did with business records under ER 803(a)(6). What they said was, "See RCW 5.45."

I think, therefore, that the Supreme Court – the Supreme Court’s action can be deemed to be an acknowledgment or recognition of the exception to the rules of evidence in RCW 71.34. That harmonizes the statute and the rule which I think under *Gresham* we are required to do.

I understand Mr. Johnson, your argument was very well articulated and very well laid out. I think that this is distinguishable from *Gresham* in that we have subsequent Supreme Court action that specifically cites the 71.34, which did not exist in any rule form in *Gresham*. So I’m going to deny the motion.

RP 27 - 28.

The case then proceeded forward to the substantive merits. The trial court ultimately found by a preponderance of evidence that A.L. had a mental disorder and because of it he presented a substantial risk of physical harm to himself. The court also found that a less restrictive alternative was not appropriate at that time. A.L. was committed for up to 14 days of inpatient treatment.

## **2. SUBSTANTIVE FACTS**

The State alleged that A.L. has a mental disorder, and that because of it, he presented a substantial risk of physical harm to himself.

The State proffered the testimony of Mr. Paul Samuelson, an ARNP (“Advanced Registered Nurse Practitioner”) with a specialty in psychiatric mental health who had worked with A.L at Children’s Hospital. RP 31-33. Mr. Samuelson testified to firsthand observations of A.L as well as entries from A.L’s medical chart from Children’s Hospital. He also relied upon information from A.L’s other providers and family members. RP 33-34. In particular, information was gathered from A.L’s outpatient therapist. RP 49.

Mr. Samuelson testified that A.L. has a working diagnosis of major depressive disorder. RP 35. He also has a rule out of oppositional defiant disorder and an abuse disorder pertaining to marijuana. RP 35. A.L. also suffers from two traumatic brain injuries (“TBI”). RP 35. Mr. Samuelson testified that these impairments have a substantial adverse effect on A.L’s cognitive and volitional functions and cause him to be a substantial risk of physical harm to himself. RP 35. He distinguished why these behaviors were attributable to A.L’s depression rather than his TBIs. RP 50.

While at Children’s Hospital, staff observed and documented A.L. making suicidal statements, banging his head on the wall related to wanting to die, and punching himself in the face. RP 37,

43. The morning of the hearing, A.L. told Mr. Samuelson directly that he felt suicidal. RP 38.

A.L.'s hospital records indicate that on June 28, 2013, he was admitted to St. Joseph's Hospital in Bellingham because he attempted to jump out of a car on his way to a psychiatric evaluation. RP 40. This information was gathered from a combination of talking with A.L. and speaking with St. Joseph's emergency department. RP 40-41. A.L. admitted that he did this hoping the tire wheel would roll over his head and kill him. RP 43. He acknowledged he felt suicidal daily and that on another occasion he took his grandfather's knife and considered slitting his own throat. RP 43. A.L. has a history of other self-harm behavior, including cutting himself. RP 43.

Mr. Samuelson expressed concerns with A.L.'s impulse control, poor insight, poor judgment, and confusion. RP 45. These factors placed him at a high risk of suicide; particularly when his symptoms escalated over the past few months. RP 45, 52.

Mr. Samuelson recommended further inpatient treatment, so A.L. could be started on antidepressants and work toward a practical discharge plan that would keep him safe. RP 47. As it stood, A.L.'s home life was problematic and he would not receive

adequate supervision. RP 43-44, 47. His outpatient provider was not properly equipped to handle him on a less restrictive order and A.L. was not sufficiently stabilized to comply with one. RP 48.

The trial court found that the State had fulfilled each of the elements by a preponderance of evidence and committed A.L. for up to 14 days of additional inpatient treatment at Children's Hospital. RP 59 - 60.

**C. ARGUMENT**

**1. STANDARD OF REVIEW: ALL DOUBTS AND AMBIGUITIES ARE RESOLVED IN FAVOR OF CONSTITUTIONALITY.**

The constitutionality of a statute is reviewed de novo. *Putman v. Wenatchee Valley Med. Ctr.*, 166 Wn.2d 974, 978 (2009). However, all doubts or ambiguities are resolved in favor of the constitutionality of the statute. *State ex rel. Banker v. Clausen*, 142 Wash. 450, 453 (1927). A statute is presumed constitutional and will not be declared unconstitutional unless it clearly appears to be so. *State ex rel. Morgan v. Kinnear*, 80 Wn.2d 400, 402 (1972). Where a statute is susceptible to several interpretations, some of which may render it unconstitutional, the court without doing violence to the legislative purpose, will adopt a construction which will sustain its constitutionality if at all possible to do so. *Id.* In other

words, a party challenging the constitutionality of a statute bears the burden of proving it unconstitutional beyond a reasonable doubt.<sup>1</sup> *State v. Brayman*, 110 Wn.2d 183, 193 (1988). Moreover, if a court can reasonably conceive of a state of facts to exist which would justify the legislation, those facts will be presumed to exist and the statute will be presumed to have been passed with reference to those facts. *Id.*

As addressed below, the record reflects a legislative history that supports the trial judge's finding that RCW 71.34.740(9) is constitutional and should not be stricken.

**2. THE TRIAL COURT PROPERLY HARMONIZED THE STATUTE AND THE COURT RULE. WITHOUT A CONFLICT, THERE IS NO BASIS TO INVALIDATE RCW 71.34.740(9).**

Appellant's position is that there is an irreconcilable conflict between RCW 71.34.740(9) and ER 101 and therefore the Court must strike RCW 71.34.740(9) as unconstitutional.

In doing so, Appellant avoids the well settled case law, relied upon by the trial judge, requiring that the statute and rule be

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<sup>1</sup> The "beyond a reasonable doubt" standard used when a statute is challenged as unconstitutional refers to the fact that one challenging a statute must, by argument and research, convince the court that there is no reasonable doubt that the statute violates the Constitution. The reason for this high standard is based on our respect for the legislative branch of government as a co-equal branch of government, which, like the court, is sworn to uphold the Constitution. We assume the Legislature considered the constitutionality of its enactments and afford some deference to that judgment. Additionally, the Legislature speaks for the people and we are hesitant to strike a duly enacted statute unless fully convinced, after a searching legal analysis, that the statute violates the Constitution. *Island Co. v. State*, 135 Wn.2d 141, 147 (1998).

harmonized if at all possible before deciding whether one trumps the other. As explained in *Putman v. Wenatchee Valley Med. Ctr.*, 166 Wn.2d 974, 980 (2009):

If a statute appears to conflict with a court rule, the reviewing court will first attempt to harmonize them and give effect to both, but if they cannot be harmonized, the court rule will prevail in procedural matters and the statute will prevail in substantive matters.<sup>2</sup>

However, *City of Spokane v. Spokane Co.*, 158 Wn.2d 661, 679 (2006), clarified “[I]nability to harmonize a court rule with a statute occurs *only* when the statute directly and unavoidably conflicts with the court rule.” (emphasis in original).

Understandably, the Court has an interest in maintaining the separation of power among the three branches of government. But, as explained in *Zylstra v. Piva*, 85 Wn.2d 743, 750 (1975), “Harmonious cooperation among the three branches is fundamental to our system of government. Only if this cooperation breaks down is it necessary for the judiciary to exercise inherent power to sustain its separate integrity.” See also: *Carrick v. Locke*, 125 Wn.2d 129, 135 (1994) (“The validity of [the separation of powers] doctrine

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<sup>2</sup> “Substantive law prescribes norms for societal conduct and punishments for violations thereof. It thus creates, defines, and regulates primary rights. In contrast, practice and procedure pertain to the essentially mechanical operations of the courts by which substantive law, rights, and remedies are effectuated.” *State v. Smith*, 84 Wn.2d 498, 501 (1974).

does not depend on the branches of government being hermetically sealed off from one another. The different branches must remain partially intertwined if for no other reason than to maintain an effective system of check and balances, as well as an effective government"). The separation of powers doctrine is grounded in flexibility and practicality, and rarely will offer a definitive boundary beyond which one branch may not tread. *Id.* The question to be asked is not whether two branches of government engaged in coinciding activities, but rather whether the activity of one branch threatens the independence or integrity or invades the prerogatives of another. *Id.*

Appellant's argument is predicated upon *State v. Gresham*, 173 Wn.2d 405 (2012). Appellant asserts as a blanket statement that there was an "irreconcilable conflict" between RCW 71.34.740(9) and the rules of evidence (ER 101, ER 1101). Therefore, because under *Gresham* the rules of evidence are "procedural," they should apply, resulting in the invalidation of the "substantive" contrary statute, RCW 71.34.740(9).

The State does not dispute that court rules prevail in procedural matters and statutes prevail in substantive matters. However, before any inquiry is made as to whether a statute or rule

should be stricken, it is essential that there must be an *irreconcilable* conflict, proven beyond a reasonable doubt by the moving party, and to which no facts exist that could harmonize the rule and statute, consistent with the case law cited above.

As the trial judge properly explained in her ruling, there is no such irreconcilable conflict. The statute and the rule can be harmonized and there is no authority to invalidate a well settled statute.

The Legislative history confirms that the intent of the Legislature and the Judiciary was for RCW 71.34.740(9) to apply. The Legislature passed the original version of the statute at issue in 1985. RP 27-28. This version of the statute contained the provision that "Rules of evidence shall not apply in 14 day commitment hearings" for minors. *Id.* Then, in 1986, after this statute (with specific provision in tow) was passed, the Judiciary rescinded the then-existing version of MPR 2.5 and substituted a new MPR 2.5, which simply states, "*rescinded, see RCW 71.34.*" *Id.*

As the trial judge reasoned, this situation is analogous to interplay between the Judiciary and Legislature concerning

business records.<sup>3</sup> *Id.* In both situations, the Judiciary, by referencing the applicable statute, demonstrates explicit intent to defer such authority to the Legislature's statute. *Id.* As such, there is harmony; not an irreconcilable conflict such that either the rule or the statute should be disrupted. *Id.* And for this reason, this case was distinguishable from *Gresham*. *Id.* In *Gresham*, the opposite situation was true – first the evidentiary rule was in place, and then the Legislature passed a statute, explicitly attempting to negate the existing evidence rule with no evidence that the Judiciary intended to defer such authority to the Legislature. *Gresham*, 173 Wn.2d at 427.

Additionally, there is a showing in other mental health related matters of the Judiciary relaxing the rules of evidence in other situations. In particular, ER 101 states: "These rules govern proceedings in the courts of the state of Washington to the extent and with the exceptions stated in Rule 1101." Similar to the evidentiary exemption provided in RCW 71.34.740(9), ER 1101 also negates the rules of evidence for certain adult mental health proceedings. The rule provides in relevant part:

#### APPLICABILITY OF THE RULES

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<sup>3</sup> ER 803(a)(6) simply states, "Reserved. See RCW 5.45." An example, as with this case, of a procedural rule by the Judiciary deferring to the Legislature's statute.

(a) Courts Generally. Except as otherwise provided in section (c), these rules apply to all actions and proceedings in the courts of the state of Washington. The terms "judge" and "court" in these rules refer to any judge of any court to which these rules apply or any other officer who is authorized by law to hold any hearing to which these rules apply.

(c) When Rules Need Not Be Applied. **The rules** (other than with respect to privileges, the rape shield statute and ER 412) **need not be applied in the following situations:**

(3) Miscellaneous Proceedings. Proceedings for extradition or rendition; detainer proceedings under RCW 9.100; preliminary determinations in criminal cases; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; proceedings with respect to release on bail or otherwise; contempt proceedings in which the court may act summarily; habeas corpus proceedings; small claims court; supplemental proceedings under RCW 6.32; coroners' inquests; preliminary determinations in juvenile court; juvenile court hearings on declining jurisdiction; disposition, review, and permanency planning hearings in juvenile court; dispositional determinations related to treatment for alcoholism, intoxication, or drug addiction under RCW 70.96A; **and dispositional determinations under the Civil Commitment Act, RCW 71.05.** (Emphasis added).

The State has demonstrated a way to harmonize RCW 71.34 and the evidence rules such that neither should be disturbed. A.L. cannot prove beyond a reasonable doubt to the contrary and offers no substantive facts to do so. The existing Involuntary

Treatment Act ("ITA") case law is clear that "it is essential to keep in mind the need to satisfy the intent of the statute while avoiding absurd results." *In re: Swanson*, 115 Wn.2d 21, 28 (1990). To rule in favor of the Appellant would cause an absurd result. Washington law is well settled that the plain meaning of a statute is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scene as a whole. *State v. Gonzalez*, 168 Wn.2d 256, 263 (2010). If the statute is unambiguous after a review of the plain meaning, the court's inquiry is at an end. *Id.*

The trial court properly ruled on this issue by upholding RCW 71.34 and this Court should reach the same result.

**3. THERE IS NO BASIS TO CHALLENGE DENIAL OF A.L.'S DUE PROCESS RIGHTS.**

A.L.'s entire argument on this point is predicated on RCW 71.34.740(9) being found unconstitutional. If this Court finds the statute constitutional, then clearly no right of A.L.'s was violated.

Beyond that, the only additional point the State will address is that the balance of Appellant's argument discusses that adult hearings are bound by the rules of evidence.

In many instances under the law, adults and juveniles are treated differently. See, e.g., *State v. Johnson*, 118 Wn. App. 259 (Div. 1, 2003) (Discussing the differences in adults and juvenile sentencing statutes); *State v. Schaaf*, 109 Wn.2d 1 (1987) (“Juveniles form neither a suspect nor semi-suspect class for equal protection purposes,” as discussed related to differences between adult and juvenile statutes); *York v. Wahkiakum School Dist. No. 200*, 163 Wn.2d 297, 330 (2008) (J. Johnson’s concurrence) (“Minors are treated differently under many other Washington laws, e.g., contract laws, labor laws, and voting laws. Clearly, the rights of minors are not coextensive with those of adults”). RCW 71.34 et. seq. (governing ITA cases for minors) contains many additional sections not present in RCW 71.05 et. seq. (governing ITA cases for adults). The role of the parents in RCW 71.34 is just one such example.

Appellant insists A.L. suffered a great amount of perceived detriment due to his commitment and required stay in the hospital. He proffers the general statement that A.L.’s privacy interests outweigh the government’s interest in providing him treatment. However, he offers no facts to support this. The hospital is not jail.

A.L. is not being punished. He was receiving treatment while the hospital attempted to prevent him from taking his own life.<sup>4</sup>

RCW 71.34.740 sets forth a multitude of procedural safeguards afforded to any juvenile who appears before the court for a determination of additional inpatient treatment. Other portions of RCW 71.34 et seq. set forth additional procedural safeguards for not only the 14 day commitment, but the entire process from the moment the juvenile is originally detained. See: *In re: V.B.*, 104 Wn. App. 953, 964 (Div. 2, 2001) (Analyzing procedural safeguards in the adult ITA statute context, RCW 71.05 et. seq. and holding that when ultimately balancing all the factors, the existing procedural safeguards provide adequate protection against erroneous deprivation). The State believes that when RCW 71.34 is compared to RCW 71.05, the procedural safeguards in place to protect juveniles actually exceed those afforded to adults.

**4. A.L.'S MEDICAL RECORDS WERE RELIABLE AND PROPERLY ADMITTED AND RELIED UPON BY THE TRIAL JUDGE.**

**a. The Trial Court Properly Admitted A.L.'s Medical Records As Inherently Reliable Business Records.**

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<sup>4</sup> "It is the purpose of this chapter to assure that minors in need of mental health care and treatment receive an appropriate continuum of culturally relevant care and treatment, including prevention and early intervention, self-directed care, parent-directed care, and involuntary treatment..." RCW 71.34.010.

The trial court properly admitted the information from A.L.'s medical chart, as testified to by Mr. Samuelson, under the business records exception to hearsay. The pertinent statute, RCW 5.45.020, states:

A record of an act, condition or event, shall in so far as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

RCW 5.45.020 contemplates that business records are presumptively reliable if made in the regular course of business and there was no apparent motive to falsify. *State v. Ziegler*, 114 Wn.2d 53, 538 (1990); *State v. Rutherford*, 66 Wn.2d 851, 853 (1965).

It is clear that A.L.'s medical records fall under the business records exception. As explained in *State v. Alexander*, 64 Wn. App. 147, 156 (Div. 1, 1992), "medical records are admissible under the business records exception as long as they are properly identified and otherwise relevant." See also: *State v. Sellers*, 39 Wn. App. 799, 806 (Div. 2, 1985) ("A practicing physician's records, made in the regular course of business, properly identified and otherwise relevant, constitute competent evidence of a condition therein

recorded”); *State v. Garrett*, 76 Wn. App. 719 (Div. 1, 1995) (Medical record properly admitted by trial court); *State v. Ziegler*, 114 Wn.2d 533 (1990) (Lab report from outside lab properly admitted as part of patient’s medical file).

The statute does not require that the record be made by the person performing the lab test, but only that it was made in the regular course of business under circumstances which the court finds make it trustworthy.<sup>5</sup> *State v. Sellers*, 39 Wn. App. 799, 806 (Div. 2, 1985). See also: *State v. Garrett*, 76 Wn. App. 719, 723 (Div. 1, 1995) (Doctor familiar with emergency room medical reports and routinely relied upon them in treating patients. Social work and physician interviews were routine part of the physical examination and those reports were part of common medical file).

The purpose of RCW 5.45.020 is to assure evidence is reliable and the trial court is accorded considerable deference in making this determination. *Garrett*, 76 Wn. App. at 725. In fact, the trial judge’s decision to admit or exclude business records is given

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<sup>5</sup> As applied to hospital records, compliance with [the business records exception] obviates the necessity, expense, inconvenience, and sometimes impossibility of calling as witnesses the attendants, nurses, physicians, X ray technicians, laboratory and other hospital employees who collaborated to make the hospital record of the patient. It is not necessary to examine the person who actually created the record so long as it is produced by one who has the custody of the record as a regular part of his work or has supervision of its creation. *Ziegler*, 114 Wn.2d at 538.

great weight and will not be reversed absent unless a manifest abuse of discretion. *Ziegler*, 114 Wn.2d at 538.

The State laid the proper business records foundation for Mr. Samuelson to establish that A.L.'s Children's Hospital medical chart was a business record. RP 38-39. The trial judge overruled defense's objection to the contrary. RP 39. The trial judge also ruled that the statements within A.L.'s records were obtained for the purposes of medical diagnosis and treatment. RP 42.

Appellant contends that Mr. Samuelson was unaware of how A.L.'s medical chart was created and therefore is an unfit records custodian.<sup>6</sup> Mr. Samuelson clearly described how the information was gathered from all sources, internal and external, and how it became a part of A.L.'s medical chart. *Id.* Mr. Samuelson testified this was common practice for the hospital and that it was definitively used for the purposes of medical diagnosis and treatment for A.L. *Id.* The trial judge agreed and admitted the entirety of the evidence in A.L.'s medical chart.

**b. The Court Properly Ruled That The Statements Were Admissible Under ER 803(a)(4).**

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<sup>6</sup> Reviewing courts broadly interpret the statutory terms "custodian" and "other qualified witness." It is not necessary that the person who actually made the record provide the foundation. Testimony by one who has custody of the record as a regular part of his work or has supervision of its creation will suffice. *State v. Quincy*, 122 Wn. App. 395, 399 (Div. 1, 2004).

The trial court properly admitted the various evidence testified to by Mr. Samuelson under ER 803(a)(4). That evidentiary rule states:

*Statements made for Purposes of Medical Diagnosis or Treatment.* Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis for treatment.

As described in *State v. Lopez*, 95 Wn. App. 842, 849 (Div. 3, 1999), "there is a generally accepted two-part test to aid in deciding whether statements proposed for admission under ER 803(a)(4) are reliable: (1) was the declarant's apparent motive consistent with receiving medical care; and (2) was it reasonable for the physician to rely on the information in diagnosis or treatment." When a trial court admits testimony pursuant to this exception, the appellate court reviews it for an abuse of discretion. *State v. Woods*, 143 Wn.2d 561, 602 (2001). ER 803(a)(4) applies beyond physical injuries and extends to psychological treatment as well. *Id.* The rationale for this hearsay exception is that the court presumes a medical patient has a strong motive to be truthful and accurate, which provides a significant guarantee of trustworthiness. *State v. Perez*, 137 Wn. App. 97, 106 (Div. 3, 2007).

A.L. contends that the information in his own medical chart was inconsistent with receiving medical care. Mr. Samuelson testified he relied upon A.L.'s chart notes, the information that A.L. personally provided, and discussions with A.L.'s providers and A.L.'s family members. RP 33. Each source was generally relied upon by Mr. Samuelson as an expert in his field. RP 34. Mr. Samuelson clarified his reasoning:

Any time a patient comes into the hospital a psychiatric evaluation's (*sic*) required. So we need to know why are we hospitalizing a patient, should we be hospitalizing a patient, do they meet the level of care to be in the hospital. That requires them to tell their story and for us to gather information that's pertinent to this hospitalization. So for – on the first moment that he came into the hospital doors, we did that, we did a psychiatric evaluation. And part of that was talking to the emergency department at St. Joseph's as well as talking with him and all those that were present at the interview.

RP 40 – 41.

The information relied upon by Mr. Samuelson was explicitly used for the purposes of medical diagnosis and treatment of A.L. See: *State v. Williams*, 137 Wn. App. 736, 745-47 (Div. 2, 2007) (Rape victim's answers to forensic nurse's questionnaire in the ER admissible under 803(a)(4) because she went to ER for medical and forensic exam, not to gather evidence); *State v. Saunders*, 132

Wn. App. 592, 603 (Div. 1, 2006) (Patient's statements to paramedic and ER doctor held admissible as reliable for purposes of medical treatment, not for future prosecution).

The trial judge agreed with the State, ruling that the evidence was admissible.

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**c. Mr. Samuelson Was Rightfully Permitted To Rely Upon Any And All Information and Records For The Purposes Of Formulating His Expert Opinion.**

Even if A.L.'s medical information is found to be hearsay, Mr. Samuelson is still allowed to rely upon the information he introduced at the hearing for the basis of his opinion. See: ER 702; ER 703; ER 705; *In re: Marshall*, 156 Wn.2d 150 (2005) (Expert testimony can base opinion on hearsay to support opinion). For example, the St. Joseph's records, if any, would presumably fall into this category. See: *State v. Weeks*, 70 Wn.2d 951 (1967) (Arkansas hospital records deemed inadmissible due to authentication issues could still be used by the doctor to formulate expert opinion). Mr. Samuelson testified that all the information he considered was generally relied upon by experts in his field. RP 33 - 34. The trial court found Mr. Samuelson's testimony credible.

**5. THE STATE MET ITS BURDEN OF PROOF ON ALL ELEMENTS. THE COMMITMENT WAS PROPER.**

In reviewing an involuntary commitment order, the Court considers whether substantial evidence supports the findings, and if so, whether the findings in turn support the trial court's conclusions of law and judgment. *In re: LaBelle*, 107 Wn.2d 196, 209 (1986).

In the hearing over 14-day involuntary commitment of a Respondent, the court determines whether it has been established by a preponderance of the evidence that the Respondent, as a result of a mental disorder, presents a likelihood of serious harm. RCW 71.34.740. In this case, the allegation was that A.L. presented "a substantial risk that physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself." RCW 71.34.020(11)(a).

The trial judge found that the evidence was met by a preponderance of the evidence on each of these elements. A.L. was shown to have a mental disorder that caused him to be a substantial risk of physical harm to himself. A.L. was still actively suicidal the day of the hearing. There were multiple instances of self-harm leading up to and while at Children's Hospital. These

behaviors were attributable to A.L.'s mental disorder. A less restrictive order was not appropriate. The trial court found the testimony of the State's witness credible. A.L.'s commitment was proper.

**6. THE ISSUE OF MOOTNESS IS NOT CHALLENGED**

The State declines to challenge mootness in this case. This is a matter of substantial and continuing public interest.

**D. CONCLUSION**

For the foregoing reasons, the State requests that this Court affirm the rulings of the trial court on all grounds.

DATED this 4<sup>th</sup> day of February, 2014.

RESPECTFULLY submitted,

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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 David L. Donnan, the attorney for the appellant, at Washington Appellate Project, 1511 – Third Avenue, Suite 701, Seattle, WA 98101, containing a copy of the BRIEF OF RESPONDENT, in In re the Detention of A.L., State of Washington, Respondent v. A.L. Appellant, Cause No. 70644-6-I, in the Court of Appeals, Division I, for 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.

Dated this 4<sup>th</sup> day of February, 2014

  
Name Marsha Luiz  
Done in Seattle, Washington