State of Wisconsin
Court of Appeals
District 4
Appeal No. 2024AP001877-CR

State of Wisconsin,

Plaintiff-Respondent,

v.

L.J.T., Jr.,

Defendant-Appellant.

On appeal from a judgment of the Dane County Circuit Court, The Honorable Nicholas J. McNamara, presiding

Defendant-Appellant's Reply Brief

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Argument

I. This is not an appeal from an order for involuntary medication; rather, the issue is the sufficiency of the evidence to support the circuit court's finding that LJT could be restored to competency within the statutory period.

The state asserts that the issue of involuntary medication is "not ripe." The only explanation given is that, "Medication is mentioned in the report, but there is no analysis under [the statute] . . . Further, involuntary medication was not addressed by the Circuit Court on 7/18/24." [Resp. brief p. 5]

The state's argument is wholly undeveloped, and should therefore be ignored by the court. *See Madely v. RadioShack Corp*., 2007 WI App 244, ¶22 n.8, 306 Wis. 2d 312, 742 N.W.2d 559 (noting that the court of appeals need not consider undeveloped arguments). One firmly settled principle of appellate law is that, "Arguments unsupported by legal authority will not be considered [internal citation omitted], and [the court of appeals] will not abandon [its] neutrality to develop arguments." *Indus. Risk Insurers v. Am. Eng'g Testing, Inc.,* 2009 WI App 62, P25, 318 Wis. 2d 148, 170, 769 N.W.2d 82, 93, 2009 Wisc. App. LEXIS 272, *16-17

To the extent that one might speculate as to the meaning

of this assertion, perhaps it is that in the order for commitment, the judge did not order involuntary medication; and, therefore, LJT cannot appeal on this point. It is true that, in the commitment order, the judge did not authorize involuntary medication, but it is wholly beside the point.

But LJT did not appeal any order for involuntary medication, because there is no such order. Rather, the basis for the appeal is, in effect, a sufficiency of the evidence issue. In committing LJT, the court was required to find that he could be restored to competency within the statutory maximum period. The only testimony on that point by Dr. Fystrom was that, "I do agree to a reasonable degree of professional certainty that he's likely to be restored should he receive treatment for his underlying mental illness." [R:26-13]

During her testimony at the hearing, the doctor did not describe the nature of the "treatment" that would be required to restore LJT to competency. However, she did describe the nature of the treatment in her report. Dr. Fystrom wrote:

> An inpatient hospitalization will ensure that [LJT] receives the psychiatric care he needs to be restored to competency, services he will not avail himself on his own. Once admitted to one of the State mental health hospitals he will work with an interdisciplinary team, including a psychiatrist, *who will make medication recommendations and treatment plans. I do strongly suspect that he will require an Order to Treat (OTT)* with involuntary medications given he has required an OTT in the past to be restored to competency and his poor insight and judgment

> into his mental health symptoms, but I will defer my opinion about his competence to refuse medications/treatment, to allow his psychiatrist to assess [LJT] medication needs.

[R:13-9] Plainly, according to Dr. Fystrom, the only way LJT could be restored to competency is by the use of psychotropic medication, which LJT has always refused. In other words, in order to restore LJT to competency, he must be involuntarily medicated.

In the absence of an order for involuntary medication, there is no basis in the record of the hearing for the court to have concluded the LJT would be restored to competency within the statutory time period.

Conclusion

For these reasons, it is respectfully requested that the court reverse the order of the circuit court finding that LJT properly waived his right to counsel, and vacate the order finding that he is not competent to proceed, and to remand the matter to the circuit court with instructions to conduct a new hearing at which LJT shall be represented by counsel unless the court can find, based upon a proper colloquy, that LJT voluntarily and intelligently waives his right to counsel

In the alternative, if the court of appeals finds that LJT's waiver of counsel was valid, to vacate the order of commitment and remand the matter to the circuit court with instructions to

dismiss the case because, in the absence of involuntary medication, LJT is not likely to be restored to competency within the statutory time period.

Dated at Milwaukee, Wisconsin, this 10th day of December, 2024.

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Certification as to Length and E-Filing

I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b), (bm), and (c) for a brief. The length of this brief is 1007 words.

Dated at Milwaukee, Wisconsin, this 10th day of December, 2024.

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