

No. SC 84622

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IN THE SUPREME COURT OF MISSOURI

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STATE EX REL. LISA PROCTOR

Relator,

vs.

HONORABLE LARRY BRYSON, JUDGE OF THE CIRCUIT COURT OF  
BOONE COUNTY, MISSOURI, ASSOCIATE DIVISION 5,

Respondent.

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WRIT OF PROHIBITION REGARDING BOONE COUNTY CASE NO:  
02CR164618

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BRIEF FOR RELATOR

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Dated: October 28, 2002

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES. . . . . 4

JURISDICTIONAL STATEMENT. . . . . 6

STATEMENT OF FACTS. . . . . 8

POINTS RELIED ON. . . . . 11

ARGUMENT. . . . . 13

I. Relator is entitled to an order prohibiting Respondent from ordering a psychiatric evaluation because Respondent’s Order is not based on the statutorily required standard of reasonable cause in that Respondent had before him mere allegations of the State regarding the State’s opinion of Relator’s competency upon which to base his findings; neither testimony nor evidence was presented. . . . . 13

A. The statutorily mandated standard is Reasonable Cause. . . . . 13

B. The evidence before Respondent on May 29, 2002. . . . . 14

II. Relator is entitled to an order prohibiting Respondent from ordering a mental evaluation of Relator because Respondent’s order for a mental evaluation included ordering inquiry into Relator’s competence at the time of the alleged event, in that such inquiry is outside the scope of Revised Statutes of Missouri Section 552.020.3. . . . . 19

III. Relator is entitled to an order prohibiting Respondent from ordering a mental evaluation of Relator because Respondent ordered, on May 3, 2002, Relator to undergo an involuntary mental examination, in that it not only violates Relator’s right to privacy, but also violates her Fifth Amendment right against self-incrimination guaranteed by the United States Constitution. Constitution of Missouri, Article I, Section 19. Furthermore, those possible statements could be used in contexts other than guilt, and would be involuntary and without the protection of

*Miranda*. . . . . 22

CONCLUSION. . . . . 25

APPENDIX. . . . . A-1

State’s Information Charging Relator. . . . . A-2

State’s Motion for Psychiatric Examination. . . . . A-3

Respondent’s Order for Mental Evaluation of May 3, 2002. . . . . A-6

Probable Cause Statement. . . . . A-9

**TABLE OF AUTHORITIES**

<b>CASES</b>	<b>PAGE</b>
<i>Bannister v. State</i> , 726 S.W.2d 821 (Mo. App. S.D. 1987) . . . . .	12
<i>Branscombe v. Norris</i> , 47 F.3d 258, 261 (8 <sup>th</sup> Cir. 1994) . . . . .	17
<i>Drope v. Missouri</i> , 420 U.S. 162 (1974) . . . . .	16, 17
<i>Dusky v. United States</i> , 362 U.S. 402 (1960) . . . . .	17
<i>Estelle v. Smith</i> , 451 U.S. 454 (1981) . . . . .	24
<i>Griswold v. Connecticut</i> , 381 U.S. 579 (1965) . . . . .	23, 24
<i>Miranda v. Arizona</i> , 384 U.S. 436 (1966) . . . . .	22, 23, 24
<i>State ex rel K-Mart Corp. v. Holliger</i> , 986 S.W.2d 165 (Mo banc 1999) . . . . .	6
<i>State ex rel Vaughn v. Morgett</i> , 526 S.W. 434 (Mo. App. KCD 1975) . . . . .	6
<i>State v. Clemons</i> , 946 S.W2d 206, 222 (Mo. Banc 1997) . . . . .	14
<i>State v. Ingram</i> , 607 S.W.2d 192 (Supp 1980) . . . . .	18
<i>State v. Moon</i> , 602 S.W.2d 828, 835 (Mo. App. 1980) . . . . .	13, 14
<i>State v. Strubberg</i> , 616 S.W.2d 809 (Mo. banc 1981) . . . . .	23
<i>State v. Tilden</i> , 988 S.W.2d 568, 576 (Mo. App. W.D. 1999) . . . . .	25, 26
<i>State v. Vansandts</i> , 540 S.W.2d 192, 202 (Mo. App. 1976) . . . . .	18
<i>U.S. v. McEachern</i> , 465 F.2d 833, 836 (5 <sup>th</sup> Cir. 1972) . . . . .	25, 26
<i>Woods v. State</i> , 994 S.W.2d 32, 36 (Mo. App. W.D. 1999) . . . . .	13, 14
 <b>CONSTITUTIONAL AND STATUTORY PROVISIONS</b>	
Revised Statutes of Missouri Section 552.020 (2000) . . . . .	
. . . . .	6, 19, 20, 21 22, 23, 24, 26, A-3, A-6

Revised Statutes of Missouri Section 552.030 (2000). . . . .8, A-6

Revised Statutes of Missouri Section 475.010 (2000) . . . . . 15, 16

Fifth Amendment, Constitution of the United States. . . . .22, 24

Fourteenth Amendment, Constitution of the United States. . . . . 22

**SUPREME COURT RULES**

Rule 74.01. . . . . 6

Rule 84.22. . . . . 6

Rule 84.23. . . . . 6

**OTHER SOURCES**

Huxley, Aldous. *Brave New World*. Harper and Brothers. New York, 1946. . . 24

Orwell, George. *Nineteen Eighty-four, a novel*. Harcourt Brace. New York, 1949.  
. . . . .24

## JURISDICTIONAL STATEMENT

Missouri Supreme Court Rule 84.22 states that "no original remedial writ shall be issued by an appellate court in any case wherein adequate relief can be afforded by appeal." Because there is no final judgment in this case, there can be no appeal. There is no "judgment" or "decree", merely the order to the Missouri Department of Mental Health to conduct an examination. This lack of finality as defined by Missouri Supreme Court Rule 74.01 leaves no appeal, only the extraordinary remedy of this Writ from this Court.

Furthermore, Rule 83.23 speaks to this Court's ability to issue original writs. This Rule specifically provides: "Original writs... may be issued by this Court en banc, or by any judge in vacation." Mo.R.Civ.Pro. 84.23. This Rule gives this Court the power and the jurisdiction to hear this case.

Respondent, in his Suggestions in Opposition, has cited *State ex rel. K-Mart Corp. v. Holliger* for the proposition that when the exercise of power is wholly discretionary, no remedial writ lies. 986 S.W.2d 165 (Mo. banc 1999). Relator concedes that when the issue is wholly within the realm of a trial court's discretion, an appellate court should not interfere. However, the exercise of power in this case is not wholly discretionary, it is limited by statute. RSMo Section 552.020 clearly lays out the reasonable cause standard to guide the trial court in its decision on whether to order mental evaluations. Respondent's reliance on *State ex rel. Vaughn v. Morgett*, is similarly misplaced. 526 S.W.2d 434. (Mo. App. KCD 1975). This case addresses the jurisdiction of the trial court to order a

mental evaluation at the associate court level. Relator concedes that Respondent has the power to do so, IF AND ONLY IF, RSMo Section 552.020's requirement of reasonable cause is complied with. The case at bar is not wholly discretionary, and as such, is subject to review by appellate courts.

On June 4, 2002, a Petition for a Writ of Prohibition was filed by Relator with the Court of Appeals for the Western District of Missouri. On June 5, a Preliminary Writ of Prohibition was issued, ordering Respondent to cease all activity on the case and ordering Respondent to file an answer by June 17. On June 17, an answer was filed. On June 19, a Reply to Respondent's Answer and Suggestions in Opposition was filed. On June 28, the Court of Appeals for the Western District ordered the Relator's Petition for Writ of Prohibition to be denied. On July 16, 2002 Relator filed her Petition for Writ of Prohibition with this Court. On August 27, 2002, the Preliminary Writ was issued and on September 25, 2002, Respondent filed his Answer with attached Suggestions in Opposition. The Supreme Court of Missouri is the court of last resort and the only court with the power to provide the relief sought by this Petition.

## STATEMENT OF FACTS

In this action, Relator is charged with the Class A Misdemeanor of Harassment. Specifically, Respondent is charged with, for the purpose of frightening Ed Baker, communicating by telephone to Ed Baker a threat to commit a felony, assault, by threat to physically harm him. *See* State's Information at A-2. On April 23, 2002, Assistant Prosecutor Deborah Daniels moved Respondent, the Honorable Larry Bryson, to order a psychiatric evaluation of Relator pursuant to Revised Statutes of Missouri, (hereinafter RSMo) Sections 552.020 and 552.030. The State's Motion for Psychiatric Examination of Defendant is attached and incorporated as fully set forth herein. *See* A-3. The grounds listed in the State's Motion include facts such as: The Public Administrator of Boone County had been appointed as Relator's Conservator, and "in the pending criminal case, law enforcement described defendant as being very agitated, in a nervous state, quick speech, very loud, and verbally abusive." State's Motion for Psychiatric Examination. *See* A-3. No other grounds are contained in the State's Motion. On May 3, 2002, Respondent, in camera, entered an Order requiring the State's requested psychiatric exam. A copy of the Respondent's Judgment is attached and incorporated as if fully set forth herein. *See* A-6. Said Order includes an ordered finding of "An opinion as to whether, at the time of the alleged criminal conduct the accused, as a result of mental disease or defect, did not know or appreciate the nature, quality or wrongfulness of his conduct or as a result of mental disease or defect was incapable of conforming his conduct to the requirements of law."

Respondent's Order. *See* A-4. Relator has not at any time pled guilty by reason of mental disease or defect. Further, Respondent has never had any personal interaction with Relator. Where a judge normally inquires as to an accused's receipt of the charging document and status of counsel, Respondent did not in this case. Relator's arraignment was held in a different division, with a different judge. Respondent has never spoken a word to Relator without Counsel's presence.

On May 7, 2002, Counsel for Relator moved Respondent for a hearing on the State's motion. Said hearing was set on May 29, 2002. At said hearing, Respondent heard arguments that lasted no more than five minutes regarding the motion. Counsel for Relator indicated that she did not feel there was difficulty communicating with Relator regarding the proceedings, and that she felt Relator understood the nature and purpose of the criminal proceedings instituted against her. Counsel for the State argued that a psychiatric evaluation was necessary to determine whether criminal proceedings should continue, and that based on the law enforcement observations and the fact that Relator had been appointed a conservator to help handle her finances, Relator needed a psychiatric evaluation. No request to take judicial notice of any file was proffered, no direct testimony was offered, no inquiry was made of Relator. No evidence, except the hearsay statements of law enforcement officers as retold by the State in her Motion, was offered. Less than five minutes after arguments were heard, Respondent ordered Relator to undergo a psychiatric evaluation pursuant to RSMo Section 552.020.

Relator filed a Petition for a Writ of Prohibition in the Court of Appeals for the Western District on June 4, 2002. On the same date, Relator and Counsel appeared before Respondent, and after being informed of the Petition, ordered Counsel for Relator to arrange the psychiatric evaluation within ten (10) days herself, despite the normal procedure of a clerk arranging such an examination.

**POINTS RELIED ON**

- I. Relator is entitled to an order prohibiting Respondent from ordering a mental evaluation of Relator because Respondent's Order is not based on the statutorily required standard of reasonable cause in that Respondent had before him mere allegations of the State regarding the State's opinion of Relator's competency upon which to base his findings; neither testimony nor evidence were presented.**

*Branscombe v. Norris*, 47 F.3d 258, 261 (8<sup>th</sup> Cir. 1994)

*Drope v. Missouri*, 420 U.S. 162 (1975)

*Dusky v. United States*, 362 U.S. 402 (1960)

*State v. Clemons*, 946 S.W.2d 206, 222 (Mo banc 1997)

*State v. Ingram*, 607 S.W.2d 438 (Supp.1980)

*State v. Moon*, 602 S.W.2d 828, 835 (Mo.App.1980)

*State v. Vansandts*, 540 S.W.2d 192 (Mo.App.1976)

*Woods v. State*, 994 S.W.2d 32, 38 (Mo.App.W.D.1999)

RSMo Section 552.020

- II. Relator is entitled to an order prohibiting Respondent from ordering a mental evaluation of Relator because Respondent's order for a mental evaluation included ordering inquiry into Relator's competence at the time of the alleged event, in that**

such inquiry is outside the scope of Revised Statutes of Missouri  
Section 552.020.3.

RSMo Section 552.020

**III. Relator is entitled to an order prohibiting Respondent from ordering a mental evaluation of Relator because Respondent ordered, on May 3, 2002, Relator to undergo an involuntary mental examination, in that it not only violates Relator's right to privacy, but violates her Fifth Amendment right against self-incrimination guaranteed by the United States Constitution. Furthermore, those possible statements could be used in contexts other than guilt, and would be involuntary and without the protection of *Miranda*.**

*Estelle v. Smith*, 451 U.S. 454 (1981)

*Griswold v. Connecticut*, 381 U.S. 579 (1965)

*Miranda v. Arizona*, 384 U.S. 436 (1966)

Fifth Amendment, United States Constitution

Fourteenth Amendment, United States Constitution

RSMo Section 552.020

*Brave New World*, Huxley, Aldous.

1984. Orwell, George.

## ARGUMENT

**I. Relator is entitled to an order prohibiting Respondent from ordering a mental evaluation of Relator because Respondent's Order is not based on the statutorily required standard of reasonable cause in that Respondent had before him mere allegations of the State regarding the State's opinion of Relator's competency upon which to base his findings; neither testimony nor evidence was presented.**

A. The statutorily mandated standard is Reasonable Cause.

Section 552.020.2 states:

“Whenever a judge has *reasonable cause* to believe that the Defendant lacks mental fitness to proceed, he shall, upon his own motion, or by motion filed by the state, or by or on behalf of the accused, by order of record appoint...psychologists...to examine the accused.” (emphasis added).

Respondent ordered the psychiatric evaluation of Relator without the statutorily mandated standard of Reasonable Cause. The basis of such a determination has been addressed by the Court of Appeals and by this very Court.

The Court of Appeals for the Western District laid out:

“four factors, when considered as a whole, imply possible mental incompetency of defendant: (1) prior commitments to

mental institutions for evaluations; (2) inappropriate behavior and responses on the witness stand; (3) the bizarre circumstances of the criminal activity in the instant case; (4) the nature of the prior offenses causing earlier examination.”

*Woods v. State*, 994 S.W.2d 32, 38, quoting *State v. Moon*, 602 S.W.2d 828, 835 (Mo. App. 1980).

First, there has never been any evidence adduced of any prior commitments to any mental institution for evaluations. Second, there have been no inappropriate behaviors or responses by Relator. Third, perhaps the cutting out of magazine pictures who, in the opinion of law enforcement, “have likeliness of (victim’s) wife” is a bit strange. Probable Cause Statement. *See* A-9. However, there is no evidence that this is anything other than a coincidence. There is no evidence as to why those pictures were cut out. Fourth, there are no prior offenses causing earlier examinations. There has been no evidence of prior examinations. Even if the circumstances of Relator’s alleged conduct are bizarre, that is only one prong of a four factor test. The other three factors are absolutely unproven and therefore cannot be met.

B. The evidence before Respondent on May 29, 2002.

“A mere allegation that a defendant’s mental capacity is at issue does not make it so. Facts supporting the allegation are necessary to show the seriousness of the allegation and its relevancy to the issue before the trial court.” *State v. Clemons*, 946 S.W.2d 206, 222. (Mo. banc 1997). In *Clemons*, this Court made

the statement that there must be something besides “mere allegations” to give a trial court reasonable cause to believe the accused does not understand the proceedings. In this case, the only evidence before Respondent was the Assistant Prosecutor’s arguments, and the probable cause statement. The Assistant Prosecutor alleged in her Motion that Relator has a Conservator. *See* A-3. However, no judicial notice of any file was requested or taken and that fact has no bearing on whether there is reasonable cause to believe Relator does not understand the severity of the proceedings against her. *In toto*, Respondent has relied on the double hearsay of the probable cause statement and the argument of the State upon which to base his Order. Relator contends this is not reasonable cause, as required by the statute.

The State put forth the argument at hearing that Relator has a conservator. That is true. A conservator is appointed to “have care and custody of the estate of a minor or disabled person.” RSMo Section 475.010(2). “Disabled” is defined in the same statute as: “Unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such and extent that the person lacks the ability to manage his *financial* resources.” *Id* at (4)(a)(emphasis added). There is a significant distinction between a “disabled” person who requires help with finances, and an “incapacitated” person, who requires a guardian. An “incapacitated person” is defined as:

“one who is unable, by reason of any physical or mental condition to receive and evaluate information or to

communicate decisions to such an extent that he lacks the capacity to meet essential requirements for food, clothing, shelter, safety or other care such that serious physical injury, illness, or disease is likely to occur.”

*Id* at (9). Relator needs assistance in making financial decisions. It does not mean that she lacks the capacity to understand the criminal proceedings against her. In fact, the lack of a guardian being appointed speaks louder. The Probate Court had the opportunity, at the conservatorship hearing, to order Relator to have a guardian. It did not. Relator contends that the determination of to what extent Relator understands the world around her has already been made and she has been found competent enough to attend to her needs. If Relator had a guardian, this would be an entirely different situation.

The State also argued that Relator, at her arrest, was “very agitated, in a nervous state, quick speech, very loud, verbally abusive...”. State’s Motion for Psychiatric Evaluation. *See* A-3. That restatement not only does not meet the four factors of competency determination, but also describes a vast majority of criminal defendants at arrest, and indeed, many people who are not under arrest. If this is the standard for a court to order a mental evaluation, then there will be more evaluations ordered than mental health experts could ever find the time to evaluate. But for the grace of that proposed standard go any of us.

The United States Supreme Court case of *Drope v. Missouri* is generally cited for the proposition that a trial court must, *sua sponte*, order a mental

evaluation if it has reasonable cause to believe the Defendant does not understand the proceedings. *Drope v. Missouri*, 420 U.S. 162. Respondent, in his Suggestions in Opposition, also cites the Eight Circuit case of *Branscombe v. Norris* for the same proposition. 47 F.3d 258, 261 (8<sup>th</sup> Cir. 1994). Missouri has indeed, adopted a liberal interpretation of Section 552.020 and its requirements. However, *every* interpretation begins with the standard of Reasonable Cause.

According to *Drope*,

“the test of competence to stand trial is one which seeks to ascertain whether a criminal defendant ‘has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding – and whether he has a rational as well as factual understanding of the proceedings against him.’”

*Id* at 172, quoting *Dusky v. United States*, 362 U.S. at 402. Counsel for Relator assured Respondent that she and Relator had meaningful communication and that Relator understands the proceedings. Relator has the ability to communicate with her Counsel, yet Respondent never asked about the level of communication between Relator and her Counsel. Despite to opportunity, Respondent has never questioned Relator about her understanding of the proceedings, and has never taken any other opportunity to inquire of anyone else with knowledge about Relator’s understanding of the situation.

This is not to say that there is a requirement of a full, formal, adversarial proceeding to allow Respondent to determine if there was reasonable cause to

believe that Relator did not understand the proceedings. Under Missouri law as written, there is no requirement of such a hearing before an examination.

However, mere hearsay allegations contained in a probable cause statement and argument as to the meaning of that hearsay by an Assistant Prosecutor does not produce the reasonable cause necessary to order a court-ordered mental health evaluation. Respondent had no reasonable cause to base his decision to order a Psychiatric Evaluation of Relator. Not only are *Wood's* four factors in determining competency not met, and in addition to the failure to meet the standard in *Drope*, the statutory requirement of Reasonable cause is not met. "It is not sufficient that a trial judge may 'feel' that a defendant needs psychiatric help; this standing alone is not an expression of a bona fide doubt necessitating a competency hearing." *State v. Vansandts*, 540 S.W.2d 192. (Mo. App. 1976).

Further,

"Where there was no evidence or indication that defendant in prosecution for murder was psychotic, and no showing that defendant was incompetent, and it appeared that defendant rationally consulted and advised with his counsel and that he was aware of and understood the proceedings against him, psychiatric examination of defendant to determine fitness was not warranted."

*State v. Ingram*, (Supp 1980), 607 S.W.2d 438. In the instant case, there has been no indication that Relator is psychotic, no indication that she is incompetent, and

no offering to the Court that Relator has had anything but meaningful communication. By whatever legal standard cited, Relator's behavior does not rise to a level of incompetency, and Respondent had no basis to find reasonable cause to believe that Relator was unable to understand the proceedings against her.

**II. Relator is entitled to an order prohibiting Respondent from ordering a mental evaluation of Relator because Respondent's order for a mental evaluation included ordering inquiry into Relator's competence at the time of the alleged event, in that such inquiry is outside the scope of Revised Statutes of Missouri Section 552.020.3.**

The State has requested and Respondent has ordered that Relator "be examined as to whether, at the time of the alleged criminal conduct, the accused, as a result of mental disease or defect, did not know or appreciate the nature, quality or wrongfulness of his conduct or as a result of mental disease or defect was incapable of conforming his conduct to the requirements of law." Respondent's order at F. *See* A-6. Section 552.020.3 specifically addresses what a mental examiner must report upon in an ordered psychiatric evaluation. Those five subsections are:

"(1) Detailed findings; (2) An opinion as to whether the accused has a mental disease or defect; (3) An opinion based upon a reasonable degree of medical or psychological certainty as to whether the accused, as a result of mental

disease or defect, lacks the capacity to understand the proceedings against him or to assist in his own defense; (4) A recommendation as to whether the accused should be held in custody in a suitable hospital facility for treatment pending determination, by the court, or mental fitness to proceed and (5) A recommendation as to whether the accused, if found by the court to be mentally fit to proceed, should be detained in such hospital facility pending further proceedings.”

RSMo Section 552.020.3. Nothing in this section allows a court-ordered mental health expert to inquire into or report upon the understandings of the Relator at the time of the alleged events.

There are two types of psychiatric evaluation that can be ordered by a court. The first is pursuant to Section 552.020.3, and covers the five (5) determinations listed above. The second is an evaluation pursuant to Section 552.020.4, which requires a pleading of lack of responsibility due to mental disease or defect.

Specifically:

*“If the accused has pleaded lack of responsibility due to mental disease or defect or has given the written notice... the court shall order the report of the examination to include...an opinion as to whether at the time of the alleged criminal conduct, the accused, as a result of mental disease or defect, did not know or*

appreciate the nature, quality, or wrongfulness of his conduct...”

RSMo Section 552.020.4 (emphasis added). The *IF* clause of subsection four requires that portion relating to the accused state of mind at the time of the alleged criminal event to be addressed ONLY IF lack of responsibility due to mental disease or defect is alleged or pleaded. That is not the case here. Relator has not pleaded lack of responsibility due to mental disease or defect. Yet, Respondent’s order includes the directive for a mental health expert to inquire as to Relator’s state of mind at the time of the alleged criminal event.

The first rule of statutory construction, namely the plain language doctrine, states that when there is doubt, statutory language should first be interpreted using the plain language and meanings of the words. The plain meaning of the qualifier, *if*, in subsection four, predicates the inquiry into Relator’s state of mind at the time of the alleged criminal event upon the pleading of lack of responsibility due to mental disease or defect. If one, then the other. The problem here is that the first requirement of the plea is not present. Therefore, the rest cannot be ordered and the order in this case is outside the scope of the statute.

Further, if subsection three were read to include the inquiry into Relator’s state of mind at the time of the alleged criminal event, it would render subsection four superfluous, thereby violating another rule of statutory construction.

Respondent wishes this Court to condone his disregard for the legislature’s commands and established rules of statutory construction used by this and other

Courts to give statutory language meaning. If Respondent's interpretation of this law is permitted, it would allow for legislative change by the courts, subvert the commands of the legislature and violate traditional guidance in the realm of statutory construction.

**III. Relator is entitled to an order prohibiting Respondent from ordering a mental evaluation of Relator because Respondent ordered, on May 3, 2002, Relator to undergo an involuntary mental examination, in that it not only violates Relator's right to privacy, but violates her Fifth Amendment right against self-incrimination guaranteed by the United States Constitution. Furthermore, those possible statements could be used for sentencing or impeachment, would be involuntary and without the protection of *Miranda*.**

Respondent has ordered Relator to submit to a psychiatric evaluation despite her right to remain silent under the Fifth Amendment to the Constitution of the United States, as applied by the Fourteenth Amendment and under the Revised Statutes of Missouri. In this case, the State moved Respondent to order a psychiatric evaluation under Section 552.020. Relator does not contest State's ability to request that. Relator contends that, despite RSMo Section 552.020.14, statements made by Relator could be used against her, without affording her the protection of *Miranda*. Section 552.020.14 clearly states that:

“No statement made by the accused in the course of any examination or treatment pursuant to this section and no

information received by any examiner or other person in the course thereof, . . . shall be admitted in evidence against the accused on the issue of guilt in any criminal proceeding...”

RSMo Section 552.020.14. This statute specifically limits the statements gathered by an examiner to the issue of guilt. It does not address whether those statements could be used to impeach Relator, if she chose to testify at trial. Relator contends that should the State be allowed to have Relator examined, it could get statements that it could use to impeach Relator. Such impeachment goes to credibility, not to “issue(s) of guilt”, and as such, would be admissible absent *Miranda* protections. Section 552.020.14.

Further, such statements could be used in a sentencing hearing. At such a hearing, the issue of guilt has already been decided, and the protection of the statements made pursuant to a psychiatric evaluation would not apply. Therefore, if forced to give statements in a psychiatric evaluation, it could be used against her, again, without *Miranda* protections.

Respondent cites *State v. Strubberg* for the proposition that statements in a Section 552.020 or 552.030 exam are to be admissible only in a limited capacity. 616 S.W.2d 809 (Mo banc 1981). Relator agrees that her statements could not be used on the issue of guilt, as previously stated. However, the other uses to which the statements could be put are as damaging, if not more, than simply using them in an attempt to get a conviction.

Respondent's Order also violates Relator's right to privacy. As announced by *Griswold*, and followed by its progeny, every citizen has a right to privacy protected by the Constitution. *Griswold v. Connecticut*, 381 U.S. 579 (1965). While there is no precedent for protecting the privacy rights in one's thoughts, it is logical to protect the thoughts in one's head. If Relator's thoughts were allowed to be mined in the way Respondent urges, it would certainly be a *Brave New World*. It leads to Respondent's assumption of Big Brother's powers in Orwell's *1984*. Relator seeks only to keep her thoughts to herself, and seeks the protection of this Court to that end.

In his Suggestions in Opposition, Respondent cited *Estelle v. Smith* for the proposition that Fifth Amendment rights against self-incrimination may be implicated by a psychiatric examination. *Estelle v. Smith*, 451 U.S. 454 (1981). Relator contends that this quote proves her very point. Any statement contained in a psychiatric examination would not be protected by the physician-patient privilege, and thus could be admissible in court, subject to the limitations in Section 552.020.14. However, as already stated, there are "back doors" through which the State could introduce such statements. Respondent's Order implicitly condones this type of "back door" approach of inveigling statements from a Defendant.

The harm Relator would suffer by being forced to undergo Respondent's ordered psychiatric evaluation is immeasurable. Such an examination destroys her right to remain silent under the Fifth Amendment and *Miranda*. Any statements

Relator might make in the course of said examination can be admitted into evidence against her, if not on the issue of guilt, then on the issue of credibility and sentencing. The State seeks to gather evidence against Relator by using Relator's own statements, without complying with the most basic tenets of criminal procedure. This abuse of the criminal process must be prohibited.

### **CONCLUSION**

Respondent, by ordering this involuntary psychiatric evaluation, has abrogated Relator's right to remain silent, and forced an invasion into her private thoughts without even the mere showing of reasonable cause to believe she is not competent. These basic rights, guaranteed by the Bill of Rights, continue to be recognized as protecting the liberty of all free citizens. Compelling her by Order of the Court to divulge her innermost thoughts is repugnant to the very freedoms we all take for granted. The Missouri State Legislature established standards that predicate the inquiry into an accused's state of mind at the time of the alleged criminal event upon a plea of lack of responsibility due to mental disease or defect. The plain language of the statute supports a delineation between the two types of mental evaluation. Allowing Respondent to blur that line would make new law, and that is simply not the province of the Courts. Further, Respondent had no Reasonable Cause upon which to base his Order. Regardless of what legal standard for competency is used, none of Relator's actions rise to the level of questioning her ability to understand the proceedings and assist in her defense. Whether it is the *Woods* four factor test, or *Drope*'s test of ability to consult,

Relator's actions do not raise the question of incompetency. As the Court of Appeals for the Western District said: "Trial courts are not 'automatons' that must grant motions for mental competency examinations merely because they are filed". *State v. Tilden*, 988 S.W.2d 568, 576 (Mo. App. W.D. 1999), quoting *United States v. McEachern*, 465 F.2d 833, 836 (5<sup>th</sup> Cir. 1972). Respondent did not have the Reasonable Cause mandated by Section 552.020.2, and thus, his Order forcing Relator to undergo a psychiatric evaluation must be prohibited.

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## APPENDICES

(34060) HARASSMENT, 565.090, 558.011 and 560.016, RSMo.

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

STATE OF MISSOURI )

vs. )

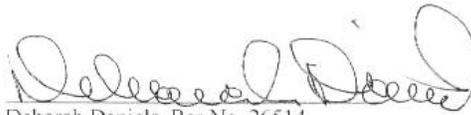
LISA C. PROCTOR )  
DOB: 02/08/65 )  
SSN : 497-70-9066 )

06 Feb 02  
CASE NO. 02164618M

INFORMATION

The Prosecuting Attorney of the County of Boone, State of Missouri, charges that the defendant, Lisa C. Proctor, in violation of Section 565.090, RSMo, committed the class A misdemeanor of harassment, punishable upon conviction under Sections 558.011 and 560.016, RSMo, in that on or about the 11<sup>th</sup> day of January, 2002, in the County of Boone, State of Missouri, the defendant, for the purpose of frightening Ed Baker communicated by telephone to Ed Baker a threat to commit a felony, assault, by threat to physically harm him.

Kevin M. J. Crane, Prosecuting Attorney  
of the County of Boone,  
State of Missouri, by

  
Deborah Daniels, Bar No. 26514  
Assistant Prosecuting Attorney

FOR WARRANT {date}

WITNESSES:

Steve McCormack  
Officer Smith – Columbia Police Department  
Ancisa Lynn Sherrill-Mattox

Respondent's  
Exhibit 1

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

STATE OF MISSOURI

VS.

LISA CHRISTIN PROCTOR

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CASE NO. 02CR164618

MOTION FOR PSYCHIATRIC EXAMINATION OF DEFENDANT

COMES NOW, the State of Missouri, by and through Deborah Daniels, Assistant Prosecuting Attorney, and moves the Court for its Order directing the mental examination of the defendant herein pursuant to Sections 552.030.3, RSMo, and to return a written report pursuant to Section 552.020 and 552.030, RSMo, and in support of this motion states as follows:

1. The defendant is charged with harassment.
2. On August 31, 2001, the Public Administrator was appointed conservator for defendant in case number 01PR164398 in Division III of the Circuit Court of Boone County, Missouri, and in the pending criminal case law enforcement described defendant as being very agitated, in a nervous state, quick speech, very loud and verbally abusive.
3. No mental evaluation pursuant to the above statutes has been conducted.
4. The State requests this Court to order and have the defendant examined by one or more psychiatrists or psychologists, as defined by Section 632.005, RSMo, and further to direct that a written report or reports of such examination be filed with the Clerk of the Court and further Order that the report or reports include:
  - A. Detailed findings;

- B. An opinion as to whether the defendant has a mental disease or defect;
  - C. An opinion based upon a reasonable degree of medical psychological certainty as to whether the accused, as a result of a mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense;
  - D. A recommendation as to whether the accused should be held in custody in a suitable hospital facility for treatment pending determination, by the Court, of mental fitness to proceed;
  - E. A recommendation as to whether the accused, if found by the Court to be mentally fit to proceed, should be detained in such hospital facility pending further proceedings;
  - F. An opinion as to whether at the time of the alleged criminal conduct the accused, as a result of mental disease or defect, did not know or appreciate the nature, quality or wrongfulness of his conduct or as a result of mental disease or defect was incapable of conforming his conduct to the requirements of law.
5. The State further moves this Court to order that the examining doctor be permitted to examine police reports, any witnesses named in the reports, or endorsed witnesses in this case.
6. The State of Missouri further moves this Honorable Court to order that the examination performed be completed and filed with this Honorable Court within sixty days of the Order, unless the Court for good cause orders otherwise, and further order that;
- A. the Defendant appear at the time and location requested by the Director of the Department of Mental Health, or his/her authorized designee, and submit to all examinations necessary for the execution

of this Order and the timely completion of all reports heretofore ordered;

- B. the examination performed shall be completed and filed with this Honorable Court within sixty days of this Order, unless the Court for good cause orders otherwise. The Clerk of the Court shall deliver copies of the reports to Deborah Daniels, Assistant Prosecuting Attorney, County of Boone, Boone County Courthouse, 705 East Walnut, Columbia, Missouri; and Amy O'Keefe, Counsel for Defendant, Public Defender, 601 East Walnut, Columbia, Missouri; and for such further Orders as the Honorable Court deems just and proper.



Deborah Daniels  
Assistant Prosecuting Attorney  
Boone County, Missouri  
MO Bar # 26514

CERTIFICATE OF SERVICE

The undersigned certifies that a complete copy of this instrument was mailed, with sufficient postage attached, to the attorneys of record for each party in this case addressed such at attorneys at their business addressed on the 23rd day of April, 2002

Amy O'Keefe  
Assistant Public Defender  
601 East Walnut  
Columbia, Missouri 65201

AK

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

STATE OF MISSOURI

VS.

LISA CHRISTIN PROCTOR

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CASE NO. 02CR164618

ORDER FOR FIRST MENTAL EXAMINATION

Pursuant to Section 552.020 and 552.030, RSMo, the Honorable Court orders and directs the Director of the Department of Mental Health to have the defendant examined by one or more psychiatrists or psychologists, as defined by Section 632.005, RSMo, and further directs that a written report or reports of such examination be filed with the Clerk of the Court and further orders that the report or reports include:

- A. Detailed findings;
- B. An opinion as to whether the defendant has a mental disease or defect;
- C. An opinion based upon a reasonable degree of medical psychological certainty as to whether the accused, as a result of a mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense;

- D. A recommendation as to whether the accused should be held in custody in a suitable hospital facility for treatment pending determination, by the Court of mental fitness to proceed;
- E. A recommendation as whether the accused, if found by the Court to be mentally fit to proceed, should be detained in such hospital facility pending further proceedings;
- F. An opinion as to whether at the time of the alleged criminal conduct the accused, as a result of mental disease or defect, did not know or appreciate the nature, quality or wrongfulness of his conduct or as a result of mental disease or defect was incapable of conforming his conduct to the requirements of law.

It is further ordered that:

- A. the Defendant appear at the time and location requested by the Director of the Department of Mental Health, or his authorized designee, and submit to all examinations necessary for the execution of this Order and the timely completion of all reports heretofore ordered;
- B. the examination performed shall be completed and filed with this Honorable Court within sixty days of this Order, unless the Court for good cause orders otherwise. The Clerk of the Court shall deliver copies of the reports to Deborah Daniels, Assistant Prosecuting Attorney, County of Boone, Boone County Courthouse,



STATE OF MISSOURI )

vs. )

PROCTOR, LISA C )  
DOB: 02/08/1965 )  
SSN: 497-70-9066 )

PROBABLE CAUSE STATEMENT

I, MCCORMACK, STEVEN  
UPON MY OATH, AND UNDER PENALTIES OF PERJURY, state as follows:

1. I have probable cause to believe that PROCTOR, LISA C  
committed the offense(s) of:  
565.090 HARASSMENT

2. The facts supporting this belief are as follows:  
THE LISTED SUBJECT WAS WARNED ON 11-07-2001 TO HAVE NO FURTHER CONTACT WITH THE  
HOLIDAY INN SELECT, OR ANY OF THEIR EMPLOYEES THEREOF. THE SUBJECT HAD  
HARASSED EDWARD BAKER, THE CEO OF THE HOLIDAY INN SELECT, IN THE PAST, AND THE  
INCIDENTS ARE DOCUMENTED ON CASE NUMBERS 2001-015128 AND 2001-013172. THE  
SUBJECT TELEPHONED BAKER AT HIS RESIDENCE ON 1-11-2002, AND LEFT A MESSAGE ON  
HIS VOICE MAIL AT HIS RESIDENCE. THE SUBJECT TOLD ME SHE UNDERSTOOD THE  
CONSEQUENCES OF HARASSING ANY EMPLOYEES OF THE HOLIDAY IN SELECT, PERTAINING TO  
BAKER, AND SHE TOLD ME SHE UNDERSTOOD.

3. For the issuance of a warrant in a misdemeanor case, complete the following  
(a) I believe that the defendant will not appear in court in response to  
a criminal summons because:

(b) I believe that defendant poses  
(1) a danger to a crime victim because  
THE SUBJECT HAS LEFT ITEMS AT THE VICTIMS RESIDENCE IN THE PAST, INCLUDING  
CANDY ITEMS AND MAGAZINE CUT-OUTS OF MODELS THAT HAVE LIKENESSES OF HIS WIFE.  
UPON SPEAKING WITH THE SUBJECT ON 11-07-01, SHE IMMEDIATELY BECAME VERY LOUD  
AND HOSTILE WITH ME, THREATENING TO SPIT IN MY FACE. DUE TO HER ACTIONS, A  
SECOND OFFICER HAD TO BE REQUESTED TO THE SCENE. SHE WAS WARNED TO HAVE NO  
FURTHER CONTACT WITH THE EMPLOYEES OF THE HOLIDAY INN SELECT AND TO STAY OFF OF  
THE PROPERTY. SHE FAILED TO COMPLY WITH THE WARNING BY TELEPHONING THE VICTIMS  
HOME RESIDENCE, AND HE IS CURRENTLY THE CEO OF THE HOLIDAY INN SELECT.

(2) a danger to the community or to any other person because

MCCORMACK, STEVEN  
Date: 02/05/02

  
Signature 1394

(re: CPD Case #2001-015128 )

2-6-02  
LC

Respondent's  
Exhibit 2

**CERTIFICATE OF SERVICE**

The undersigned certified that the above and foregoing was served, by hand this

\_\_\_\_ day of October, 2002 to:

Deborah Daniels  
Assistant Prosecuting Attorney  
County of Boone  
Boone County Courthouse  
Columbia, MO 65201  
ATTORNEY FOR RESPONDENT

Honorable Larry Bryson  
Judge of the Circuit Court of Boone County  
Associate Division  
Boone County Courthouse  
Columbia, MO 65201  
RESPONDENT

---

Amy M. O'Keefe  
ATTORNEY FOR RELATOR

**CERTIFICATE OF COMPLIANCE WITH RULE 84.06(b).**

The undersigned certifies that in accordance with Mo.R.Civ.P. 84.06(c), the foregoing appellate brief complies with the word count limitations contained in Mo.R.Civ.P. 84.06(b). In particular, Relator's brief contains 6,358 words, based upon a word count generated by Microsoft Word XP, the word processing program used by Relator to compile the instant brief. Pursuant to Mo.R.Civ.P. 84.06(g), the attached disk has been scanned for viruses and is virus free.

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Amy M. O'Keefe  
ATTORNEY FOR RELATOR