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**IN THE SUPREME COURT OF MISSOURI**

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**No. SC97469**

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**STATE OF MISSOURI ex rel. Anthony Caruthers,**

**Relators, v.**

**HON. WENDY WEXLER-HORN,  
CIRCUIT JUDGE, ST. FRANCOIS CIRCUIT COURT,**

**Respondent.**

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**RELATORS' SUBSTITUTE BRIEF ON PETITION FOR  
WRIT OF PROHIBITION**

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## JURISDICTIONAL STATEMENT

This is an original proceeding in prohibition under this Court’s supervisory powers pursuant to Article V, Section 4.1 of the Missouri Constitution. This Court accepted jurisdiction by entering an order sustaining Respondent’s motion to transfer this case from the Eastern District Missouri Court of Appeals. It is well-established “that this Court accepts the use of an extraordinary writ to correct improper venue decisions of the circuit court before trial and judgment.” *State ex rel. Kansas City S. Ry. Co. v. Nixon*, 282 S.W.3d 363, 365 (Mo. banc 2009). A writ of prohibition prevents an “exercise of extra-jurisdictional power” by barring a court “from taking any further action, except to transfer the case to a proper venue.” *State ex rel. SSM Health Care St. Louis v. Neill*, 78 S.W.3d 140, 142 (Mo. banc 2002) (citations omitted).

## STATEMENT OF FACTS

Relator, Anthony Caruthers, is charged in St. Francois County in cause 16SF-CR01512-01 with murder in the first degree, armed criminal action, burglary in the second degree, tampering in the first degree, tampering with physical evidence, resisting arrest and escape. (Appx. 1-3)<sup>1</sup> On or about April 12, 2018, Counsel for Defendant filed his Second Supplemental Response to the State's Request for Discovery through which the Defense disclosed anticipated expert testimony by Dr. Stacie Bunning. (Appx. 4-5) Upon completion and receipt of written reports, Defense Counsel disclosed them to the State on or about April 20, 2018. (Appx. 6) On or about April 23, 2018, the State filed a Motion requesting a Section 552.020, RSMo.<sup>2</sup> competency evaluation, hereinafter referred to as the "State's 552 Competency Motion." (Appx. 7-8) On or about May 2, 2018, the State withdrew the State's 552 Competency Motion and refiled a second motion for a mental examination of defendant, citing the authority of Section 552.020, RSMo. evaluation, but requesting an evaluation under Section 552.015, RSMo, hereinafter referred to as the "State's 552 Diminished Capacity Motion." (Appx. 9-10) At no time did the defense file a notice or enter a plea that the defendant was not guilty by reason of insanity (NGRI).

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<sup>1</sup> Relator has filed a Appendix and all references thereto are abbreviated as Appx.

<sup>2</sup> All further statutory references are to Missouri Revised Statutes (Cum. Supp. 2014), unless otherwise indicated in the index.

## POINTS RELIED ON

### I.

**Relator is entitled to an order prohibiting Respondent from ordering a mental evaluation of Relator pursuant to Section 552, RSMo. because neither Section 552.020, RSMo. nor Section 552.030, RSMo. provide for a mental evaluation unless competency or NGRI is at issue in that no reasonable cause was shown to trigger a competency evaluation and no notice of NGRI has been given by Relator.**

*State ex rel. Proctor v. Bryson*, 100 S.W.3d 775 (Mo. banc 2003)

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

Section 552.020 RSMo.

Section 552.030 RSMo.

## ARGUMENT

### I.

**Relator is entitled to an order prohibiting Respondent from ordering a mental evaluation of Relator pursuant to Section 552, RSMo. because neither Section 552.020, RSMo. nor Section 552.030, RSMo. provide for a mental evaluation unless competency or NGRI is at issue in that no reasonable cause was shown to trigger a competency evaluation and no notice of NGRI has been given by Relator.**

There are two mechanisms for triggering State mental examinations of a criminal defendant: (1) a competency evaluation and/or (2) a lack of responsibility due to mental disease or defect evaluation. Sections 552.020, and 552.030, RSMo. Here, Respondent side-stepped the mandates of Sections 552.020 and 552.030 when she ordered a mental examination of Relator for diminished capacity under Section 552.015, RSMo.

Section 552.020.2, RSMo. clearly mandates, “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.”

“[F]our 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* at 38 (quoting *State v. Moon*, 602 S.W.2d 828, 835 (Mo. App. 1980)).

In *State ex rel. Proctor v. Bryson*, 100 S.W.3d 775, 778 (Mo. banc 2003), this Court made a preliminary writ of prohibition absolute where the trial court had erred in ordering a mental examination of under 552. In *Proctor*, the defendant was charged with harassment. *Id.* 776. “As part of the proceedings involving the harassment charge, the prosecutor brought up a psychiatric examination . . . absent any assertion by [Proctor] that she would assert mental disease or defect as a defense.” *Id.* “As support for the motion, the State asserted that when arrested, [Proctor] was very agitated, in a nervous state, and was very loud and verbally abusive.” *Id.* Subsequently, “the trial court entered an order requiring [Proctor] to undergo the State's requested psychiatric examination” under Section 552.030, RSMo. *Id.* At a brief rehearing on the issue, “[t]he State argued that an examination was necessary to determine whether the proceedings should continue. *Id.* During the rehearing, the State presented statements of the arresting officers and engaged in discussion of the appointment of a financial conservator; no further



evidence was presented on the issue of [Proctor]’s mental health.” *Id.* Thereafter, “the trial court ordered [Proctor] to undergo a psychiatric evaluation pursuant to section 552.020.” *Id.*

In forbidding the evaluation, this Court reasoned that the trial court may not order an evaluation under Section 552.020 where the court makes no assertion, and has no reasonable cause to believe, that the defendant is currently unable to stand trial. *Id.* at 778. This Court further highlighted that “[n]either section 552.020.2 nor 552.020.4 allows the court, or the State, to assert a defense of mental disease or defect on behalf of the defendant. *Id.* Consequently, if the defendant does not on her own accord assert the mental disease or defect defense, the court has no authority to require her to submit to an examination relating to her mental state at the time of the alleged crime. *Id.* Likewise, there are two circumstances in which the court could order the exam and because neither existed, the trial court had abused its discretion. *Id.* at 777.

Here, first, there was no evidence adduced by the State.<sup>3</sup> Furthermore, there were no issues regarding Relator’s competency to proceed raised. Thus, the State is left unable to secure a mental evaluation for competency.

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<sup>3</sup> No record was made on May 2, 2018, because when Defense Counsel appeared in Court to object to the State’s 552 Competency Motion, the State withdrew its motion. Later that same day, Defense Counsel learned that the State was attempting to have Respondent sign the State’s 552 Diminished Capacity Motion in Defense Counsel’s absence. Over Defense Counsel’s objection to hearing the State’s motion over the telephone and without a record, arguments were made and the trial court granted the State’s 552 Diminished Capacity Motion.

Additionally, Section 552.020.4, RSMo., provides the second way for the Court to compel a mental examination: “*IF* the accused has pleaded mental disease or defect . . .” (emphasis added). 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. *State v. Knapp*, 843 S.W.2d 345, 347 (Mo. banc 1992). 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. In the case where diminished capacity may be presented as a defense, there is no plea of mental disease. Thus, Section 552.020.4 RSMo. is not triggered.

Just as neither circumstance applied in *Proctor*, neither circumstance applies here – not competency and not NGRI. Respondent exceeded her authority and abused her discretion in creating a third, diminished capacity circumstance for which neither the legislature nor this Court recognizes. In order for this Court to find against Relator, it would have to find that when this Court said Section 552.020 allows for a psychiatric evaluation to be conducted under two circumstances, it meant three or maybe more.

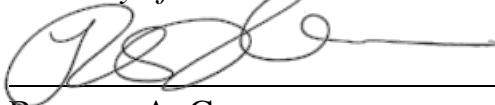
## CONCLUSION

Wherefore, as Respondent exceeded her authority, Relator is entitled to an order prohibiting the trial court from ordering a 552 mental evaluation.

Respectfully submitted,

### **MARLER SCHRUM LAW**

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 25<sup>TH</sup> day of February, 2019, upon Shaun Mackelprang, Missouri Attorney General's Office, at shaun.mackelprang@ago.mo.gov via the Court's Electronic Notification system and upon Respondent at wendy.horn@courts.mo.gov.

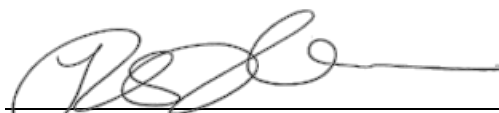


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RAMONA A. GAU

## CERTIFICATE OF COMPLIANCE

Pursuant to Missouri Supreme Court Rule 84.06(c), I hereby certify that this brief includes the information required by Rule 55.03 and that it complies with the page limitations of Special Rule 360. This brief was prepared with Microsoft Word, uses Times New Roman 14 point font, and does not exceed the word and page limits for a brief with this court. The word-processing software identified that this brief contains 1,862 words, and 12 pages including the cover page, signature block, and certificates of service and compliance. In addition, I hereby certify that this document has been scanned for viruses and is in searchable PDF form.



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RAMONA A. GAU