IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,	)	No. 63906-4-I
Respondent,	)	
v.	)	UNPUBLISHED OPINION
RUSSELL HOHF,	)	
Appellant.	)	FILED: May 2, 2011

Schindler, J. — Russell Hohf appeals his conviction of assault in the first degree with a firearm. Hohf argues the trial court erred by (1) ruling that he was not competent to stand trial because he was unwilling to work with his attorneys, (2) denying his request to proceed pro se, and (3) authorizing Western State Hospital (Western State) to forcibly medicate him if necessary in order to restore competency to stand trial. We reject Hohf's arguments, and affirm.

FACTS

Kyle Perrin and Russell Hohf live near each other in Stanwood. On October 12, 2007, Perrin's brother Gary Locke and his seven-year-old daughter and her eight-year-old friend saw some deer on Hohf's property near his driveway. Locke stopped the truck to let the girls watch the deer. After Hohf came down his driveway "screaming

and ranting and raving" at Locke and the children, they drove away.

Locke told his brother what had happened. Perrin went to talk to Hohf. Perrin parked on the road and got out of his truck. Perrin said that he saw Hohf driving a tractor down his driveway. Hohf stopped the tractor, walked to within five feet of Perrin, and pointed a gun at him. Perrin raised his arms, telling Hohf, "You don't need to shoot." Hohf shot Perrin in the face. As Perrin tried to leave, Hohf continued shooting at him. Bleeding profusely, Perrin drove home and called 911.

Hohf fled but was arrested when he returned home. Hohf initially denied shooting Perrin but later claimed that he acted in self defense.

On November 2, the State charged Hohf with assault in the first degree with a firearm. On November 5, the court appointed a public defender to represent Hohf. Approximately three weeks later, Hohf fired the public defender and hired a private attorney. Hohf claimed that the public defender was "trying to get information out of [him] to help the prosecution. . . . He did not work with me whatsoever."

Approximately a month and a half later, Hohf filed a motion to discharge his attorney. At a hearing on January 17, 2008, Hohf and the attorney told the court they were unable to work together. The court gave Hohf additional time to retain another attorney. At a hearing on January 24, Hohf told the court that he wanted to represent himself.

Following a colloquy, the court allowed Hohf to proceed pro se. Hohf then filed a motion to continue the trial.

The State filed a motion to reconsider the decision to allow Hohf to represent

himself. The State argued that Hohf's waiver of the right to counsel was equivocal. The State also filed a motion requesting the court to order a competency evaluation of Hohf at Western State. In support, the prosecuting attorney submitted a declaration based on her observations and information provided by Hohf's neighbors.

At a hearing on February 7, Hohf told the court that he wanted an attorney to represent him but asked the court to appoint an attorney from outside Snohomish County. Hohf insisted that he needed an attorney from another county because he believed there was a conspiracy between the Snohomish County public defenders and prosecutors. The court appointed public defense attorney Kelli Armstrong-Smith to represent Hohf. Armstrong-Smith worked primarily in Skagit County.[1] The court continued the State's motion for a competency evaluation.

At the hearing on February 14, Hohf stated that he wanted to represent himself pro se. Hohf claimed Armstrong-Smith was part of the Snohomish conspiracy because she had an office in Mill Creek. Armstrong-Smith confirmed she was "from Skagit County." Armstrong-Smith said that she had an office in Mill Creek and an office in Mount Vernon but that she spent the majority of her time at the Mount Vernon office. The court declined to consider Hohf's request to represent himself pro se.

On March 14, Armstrong-Smith filed a motion to withdraw as counsel. Armstrong-Smith stated Hohf continued to believe that she was part of a Snohomish County conspiracy against him. Armstrong-Smith's declaration provides, in pertinent

[1] Over 80 percent of Armstrong-Smith's criminal work was in Skagit County.

part:

> Mr. Hohf has personality issues that have come between the attorney-client relationship. As evidenced by his desire to have out of County representation, he believes that there is a conspiracy against him rooted in the Snohomish County government system. He simply cannot get over his belief that I am part of this conspiracy. Every time I have tried to focus on the case it dissolves into allegations against me and we get no where [sic] in the progress of the case.
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> . . . I believe that at this point Mr. Hohf will treat any attorney he is appointed in the way he has treated me. I am not sure if this is a personal/mental health issue or an avoidance issue. Although he claims to want to get the case resolved, his actions do not support this. He had been given police reports from his prior counsel when he was allowed to represent himself. On our last court date it was understood that I would be making copies of those reports with Mr. Hohf keeping the originals. It was over 2 weeks later that Mr. Hohf finally left a voicemail message at my office refusing to cooperate and wanted me to get a new set of discovery from the Prosecutor. The Prosecutor made and sent those copies within 2 days of my request. The next day I called to arrange a meeting with Mr. Hohf but that is when he began to solely focus on his complaint that I was not a real Skagit County lawyer.

The court denied the attorney's motion to withdraw and entered an order requiring Hohf to obtain a competency evaluation at Western State.

On April 17, Western State psychiatrist Dr. Roman Gleyzer submitted his evaluation to the court. Dr. Gleyzer concluded that Hohf was not competent to stand trial. Dr. Gleyzer diagnosed Hohf with "Delusional Disorder, Persecutory Type" and "Paranoid Personality Disorder." Dr. Gleyzer states that although Hohf clearly understood the legal proceedings, Hohf's paranoid delusions impaired his ability to work with an attorney. The report states, in pertinent part:

> Mr. Hohf demonstrated excellent understanding of his current legal situation, potential penalties and court procedures. He was well versed in relevant legal terminology and was able to discuss potential legal strategies. At the same time his overall judgment was significantly impaired by paranoid delusional preoccupation and his fixed paranoid

> beliefs interfered with his ability to communicate relevantly with his attorney and to perceive his situation realistically.

On May 8, the court granted the defense attorney's request for an independent competency evaluation. In his report dated July 27, 2008, defense expert Dr. Kenneth Muscatel, PhD, addressed Hohf's mental state at the time of the assault and his competency to stand trial. Dr. Muscatel states that Hohf exhibited both a delusional disorder and a paranoid personality disorder but that he "fully understood the nature and risks of his current legal predicament." Dr. Muscatel described Hohf as having "a perseverative quality to his thinking and his interactions with both this examiner and his attorney, frequently calling and sending letters to communicate his feelings and concerns." Dr. Muscatel concluded that Hohf's paranoia affected his judgment and "reasoning skills" but he was competent at the time of his examination in June.[2]

In August, Armstrong-Smith and the State agreed that Dr. Gleyzer should conduct another evaluation of Hohf. Dr. Gleyzer submitted a second report on September 16. Dr. Gleyzer confirmed his prior diagnosis. The report states that the

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[2] The report states, in pertinent part:

> The result of this evaluation indicates Mr. Hohf is paranoid and has limited judgment and reasoning skills, demonstrated by his idiosyncratic and unrealistic beliefs, and his lack of insight about his own behavior and his very poor social reasoning, but despite these problems he was competent at the time of my examination. He clearly understood all factual aspects of his case and could easily describe the roles, risks and expectations of the court proceedings.
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> His judgment is impaired, and likely will ebb and flow over time, but at the time I saw him he demonstrated adequate judgment, trust and communication skills to permit an adequate, vigorous defense with his attorney. He understood the advantages and risks of a plea bargain, and was intent to take his case to trial to assert self defense. He did show some appreciation of the difficulty he faced prevailing at trial, including his concerns about being able to get a fair trial in Snohomish County. However, his paranoia and guardedness didn't prevent him, at the time of my examination, from being able to communicate, confer and work with his attorney.

Nonetheless, Dr. Muscatel notes that because Armstrong-Smith expressed ongoing concerns to Dr. Muscatel about Hohf's "current status, two months later, and if she indicates that his mental state has deteriorated since early June, . . . another evaluation might prove necessary."

court should determine whether Hohf has the ability to "work meaningfully with his defense counsel."[3]

Hohf sent numerous letters to the court concerning his conspiratorial beliefs. However, in a letter to the court dated October 8, Hohf stated that he wanted to represent himself. In response, Armstrong-Smith filed a declaration asking to withdraw because Hohf's conspiratorial beliefs interfered with his ability to work with her.

At a hearing on October 14, the court ruled that before considering whether Hohf could represent himself, the court had to decide whether Hohf was competent to stand trial, and scheduled an evidentiary hearing on Hohf's competence to stand trial. The court denied Armstrong-Smith's motion to withdraw and appointed co-counsel. The court stated that it was taking the "extraordinary step of appointing another attorney" to make sure the problems Hohf was having with Armstrong-Smith and previous counsel were not due to a "personality conflict."

Charles Gus Markwell was appointed as co-counsel to represent Hohf. As with Armstrong-Smith, Hohf believed Markwell was part of a conspiracy against him. In letters to the court labeled "Motion to Dismissal of Attorney;" "Found Incompetent, Unable to Dismiss Counsel;" and "Motion to Move for Mistrial;" Hohf asks the court to fire Armstrong-Smith and Markwell.

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[3] The report states, in pertinent part:

> In summary, I have no concerns about the defendant's understanding of relevant legal concepts and the criminal justice system in general as they continue to be exceptional. Of continuous concern is his ability to set his delusional beliefs aside and to concentrate on working with his defense counsel on his legal case.
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> . . . .
>
> The final decision about the defendant's capacity to proceed should be made in court based on the defendant's actual ability to work meaningfully with his defense counsel and to participate in legal proceedings as he formally intended to do.

Before the hearing on competency, the State submitted a legal memorandum addressing the procedural history of the case, the reports from Dr. Gleyzer and Dr. Muscatel, and the legal standards to consider in determining whether Hohf was competent to stand trial. In the brief, the State also requests the court to address the question of forced medication.

At the competency hearing on November 12, Dr. Gleyzer and Dr. Muscatel testified. Both experts agreed that Hohf suffered from paranoid personality disorder.[4] Dr. Gleyzer and Dr. Muscatel also agreed that Hohf understood the legal proceedings against him but that Hohf's disorder interfered with his ability to work with his attorneys.

Dr. Gleyzer testified that a persecutory type of delusional disorder is "a suspicious posture that attributes malevolent, harmful, malicious acts to people around you." According to Dr. Gleyzer, Hohf has "proven over time difficulty to establish trusting relationship [sic] and to work with his attorneys," and unable to work with his attorneys due to his paranoia.

As to the question of forced medication, Dr. Gleyzer testified that medication is the "first line of treatment for all psychotic disorders," and that medication would be substantially likely to restore Hohf's competency. In reaching that conclusion, Dr. Gleyzer relied in part on a 2007 study where the majority of individuals treated involuntarily for delusional disorder returned to competency. Dr. Gleyzer told the court that he would only use newer antipsychotic medications that "are significantly better

[4] Dr. Gleyzer testified that a paranoid personality disorder:

> [P]ertains to certain personality features or characterological traits that influence individual's relationships and adjustment to many life situations. This personality disorder is characterized generally by suspicious, guarded, apprehensive outlook in life. Individuals with this condition are preoccupied with doubts about loyalty of people around them.

tolerated and more benign in terms of side effects [than older antipsychotic medications]."

Dr. Muscatel testified equivocally about Hohf's competency, and tried to draw a distinction between his ability to work with counsel because of irritability as opposed to his mental disorder. However, Dr. Muscatel agreed that medication would be helpful in treating Hohf and restoring competency.

The court ruled that Hohf was incompetent to stand trial. In addition to the expert testimony, the court noted what it had observed:

> I would note also that . . . in terms of the pleadings provided by Mr. Hohf that I saw over the course of time, what I would observe as a deterioration in the nature of those pleadings, that they became less and less coherent and less and less showing an ability to work with counsel and showing an increasing apparent paranoia about counsel.

After finding Hohf incompetent to stand trial, the court then considered whether forced medication to restore competency was appropriate. The court concluded that based on the testimony, Hohf should be forcibly medicated if necessary. The court entered findings of fact, conclusions of law, and an order returning Hohf to Western State. The court order states, in pertinent part:

> The defendant's condition is treatable with psychotropic medication. There is a substantial likelihood that medication will render the defendant competent . . . . Medication is necessary to further the State's interests. There is no other treatment available for the defendant's condition other than medication. While there are other therapies that may be used in conjunction with medication, they will not restore his competency without the use of medication. Therefore, there are no less intrusive means available for treating the defendant. . . . Psychotropic medication is medically appropriate for the defendant's mental illness and is in his best interest to receive treatment. . . . Western State Hospital will closely monitor the defendant for side effects from the medication and will adjust or change his medication as necessary.

The order also specifies the type of medication and dosage the physicians were permitted to use, and required the treating physician to report back to the court. After receiving treatment at Western State, the doctors concluded Hohf was competent to stand trial.

At a hearing on February 26, the court found Hohf competent to stand trial. At the request of the State, the court ordered Hohf to continue receiving medication in order to maintain competency. On March 10, Hohf requested that he receive the medications administered at Western State, rather than receiving the oral medications at the jail. Hohf told the court that he did not suffer any significant side effects from the shots he received at Western State. The court granted Hohf's request. At a hearing on March 27, Markwell told the court that after Hohf began regularly receiving medication, he and Hohf developed a "very good working relationship."

The trial began on July 6. The State called a number of witnesses, including Perrin, Locke, the deputies who responded to the 911 call, and the detectives who investigated the crime and interviewed Hohf.

Hohf testified that he acted in self defense. Hohf said that Perrin jumped out from behind a wall on his property, startling Hohf. Hohf testified that because he felt threatened, he pointed his gun at Perrin. Hohf said that as Perrin advanced on him, he kept backing up. Hohf said that he shot Perrin because he believed he had no choice.

The jury convicted Hohf of assault in the first degree with a firearm. The court imposed a standard range sentence. Hohf appeals.

ANALYSIS

Hohf argues that (1) the court erred in finding that he was not competent to stand trial because he was unwilling to work with his attorneys, (2) the court improperly refused to consider his request to represent himself, and (3) the court violated his due process rights in determining whether to order forced medication.

Competency

Due process prohibits a court from convicting a person who is not competent to stand trial. See Drope v. Missouri, 420 U.S. 162, 171, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975). No incompetent person can be tried as long as the incapacity continues. RCW 10.77.050; State v. Wicklund, 96 Wn.2d 798, 800, 638 P.2d 1241 (1982). "Incompetency" means a person lacks the capacity to understand the nature of the proceedings or to assist in his defense "as a result of mental disease or defect." RCW 10.77.010(15).

A defendant is competent to stand trial if he has the capacity to understand the nature of the charges against him and can assist in his defense. State v. Ortiz, 119 Wn.2d 294, 300, 831 P.2d 1060 (1992). In determining whether a defendant is competent to stand trial, the court must consider (1) whether the accused is capable of properly understanding the nature of the proceedings against him and (2) whether he is capable of rationally assisting his legal counsel in the defense of his cause. RCW 10.77.010(15); State v. Hicks, 41 Wn. App. 303, 306, 704 P.2d 1206 (1985).

The trial court's competency decision is entitled to great deference. State v. Dodd, 70 Wn.2d 513, 519-20, 424 P.2d 302 (1967). The determination that an

accused is not competent to stand trial will not be reversed absent a manifest abuse of discretion. Hicks, 41 Wn. App. at 306. The trial court may consider many factors when determining competency, such as "the defendant's appearance, demeanor, conduct, personal and family history, past behavior, medical and psychiatric reports and the statements of counsel." Dodd, 70 Wn.2d at 514.

Contrary to the premise of Hohf's argument, in determining whether he was competent, the trial court did not rely on Hohf's unwillingness to assist his attorneys. While the testimony showed that Hohf understood the legal proceedings, it also showed that Hohf was not capable of assisting his attorneys. The testimony of Dr. Gleyzer and Dr. Muscatel establishes that Hohf's paranoid delusions significantly impaired his ability to rationally assist his attorneys. The court also relied on Hohf's demeanor, his conduct, and the numerous letters he sent to the court. As the court noted—"[T]he record as illuminated in [Mr. Hohf's writings] is that Mr. Hohf, essentially, cannot help himself at this point in time."[5]

Hohf's reliance on Hicks is misplaced. Hicks is distinguishable. In Hicks, after treatment at Western State the defendant's competency was restored. Following an evidentiary hearing, the trial court found Hicks competent to stand trial. On appeal, we held that the trial court did not abuse its discretion in giving more weight to the staff psychologist at Western State than to one of the defense attorneys who only met with Hicks for 45 minutes and testified that he was incompetent. Hicks, 41 Wn. App. at 307-08.

[5] Additionally, we reject Hohf's argument that the court failed to investigate the serious breakdown between him and his attorneys. The record shows that during the hearings, the court engaged in an extensive inquiry about the nature and cause of the rift between Hohf and his attorneys.

Hohf also asserts that the trial court erred by not considering the mandatory

criteria set forth in RCW 10.77.020(1). But the plain language of RCW 10.77.020(1) governs competency to waive counsel, not competency to stand trial. RCW 10.77.020(1) provides:

> At any and all stages of the proceedings pursuant to this chapter, any person subject to the provisions of this chapter shall be entitled to the assistance of counsel, and if the person is indigent the court shall appoint counsel to assist him or her. A person may waive his or her right to counsel; but such waiver shall only be effective if a court makes a specific finding that he or she is or was competent to so waive. In making such findings, the court shall be guided but not limited by the following standards: Whether the person attempting to waive the assistance of counsel, does so understanding:
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> (a) The nature of the charges;
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> (b) The statutory offense included within them;
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> (c) The range of allowable punishments thereunder;
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> (d) Possible defenses to the charges and circumstances in mitigation thereof; and
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> (e) All other facts essential to a broad understanding of the whole matter.

The supreme court in State v. Hahn, 106 Wn.2d 885, 726 P.2d 25 (1986) held that the trial court must make a separate inquiry as to competence to waive counsel and competence to stand trial. Hahn, 106 Wn.2d at 892-93. The court specifically notes that RCW 10.77.020(1) only provides "helpful guidance on the components of an effective waiver of counsel." Hahn, 106 Wn.2d at 893.

In sum, the trial court did abuse its discretion in ruling that Hohf was not competent to stand trial.

Self-Representation

Hohf also argues that the trial court erred in refusing to consider his request to represent himself at trial. At the beginning of the evidentiary hearing on whether he was competent to stand trial, Hohf made a request to proceed pro se.

A criminal defendant has a right to self-representation under the Sixth Amendment to the United States Constitution and the Washington Constitution. U.S. Const. amend. VI; Wash. Const. art. I, § 22; Faretta v. California, 422 U.S. 806, 819, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975).

But a defendant can only waive his right to counsel if he is competent to stand trial and the defendant makes an unequivocal, knowing, intelligent, and voluntary request. Hahn, 106 Wn.2d 885 at 895; State v. Madsen, 168 Wn.2d 496, 504, 229 P.3d 714 (2010). If a defendant is not competent to stand trial, a request to proceed pro se is "equivocal, involuntary, unknowing, or unintelligent." Madsen, 168 Wn.2d at 510. This court reviews the denial of a request to proceed pro se for abuse of discretion. Madsen, 168 Wn.2d at 504.

The trial court correctly determined that competency to stand trial was a threshold determination that had to be addressed before considering Hohf's request to represent himself. Madsen, 168 Wn.2d at 510; see In re Det. of J.S., 138 Wn. App. 882, 895, 159 P.3d 435 (2007) (holding that a trial court must first determine if the person is competent and then determine whether the person is waiving counsel knowingly, voluntarily, and intelligently). Here, because the trial court concluded that Hohf was not competent to stand trial, the court did not abuse its discretion in thereafter not considering his request to represent himself.[6]

Forced Medication

Hohf contends the trial court violated his due process rights by requiring him to

[6] The record shows that after his competency was restored with medication, Hohf did not renew his request to represent himself.

forcibly take medication to restore his competency to stand trial. Hohf argues that in deciding whether to order forced medication, the trial court erred in using a preponderance of the evidence standard rather than a clear, cogent, and convincing standard. Alternatively, Hohf argues substantial evidence does not support the findings that forced medication were necessary or substantially likely to render him competent to stand trial.

An individual has a liberty interest in avoiding the unwanted administration of antipsychotic drugs. Washington v. Harper, 494 U.S. 210, 221-22, 110 S. Ct. 1028, 108 L. Ed. 2d 178 (1990). The involuntary injection of drugs represents an interference with the right to privacy and the right to a fair trial. Riggins v. Nevada, 504 U.S. 127, 134, 112 S. Ct. 1810, 118 L. Ed. 2d 479 (1992); State v. Adams, 77 Wn. App. 50, 55-56, 888 P.2d 1207 (1995). Nonetheless, the court has the authority to order the involuntary administration of antipsychotic drugs to restore competency. Sell v. United States, 539 U.S. 166, 180-81, 123 S. Ct. 2174, 156 L. Ed. 2d 197 (2003). In order to justify forced medication, the State has the burden of proving by "clear, cogent, and convincing evidence" each of the factors set forth in Sell. State v. Hernandez-Ramirez, 129 Wn. App. 504, 510-11, 119 P.3d 880 (2005); see also United States v. Ruiz-Gaxiola, 623 F.3d 684, 692 (9th Cir. 2010) (noting "every circuit to address the issue has concluded that the government must bear the burden of proving the relevant facts by clear and convincing evidence").

The record does not support Hohf's argument that the court used a preponderance of the evidence standard in determining whether to order forced

medication.

Prior to the competency hearing on November 12, the State submitted a brief setting forth the different legal standards for competency and ordering forced medication. The brief addresses the Sell factors and the need to specify the medication according to a recent Ninth Circuit court case.[7]

At the beginning of the hearing, the court expressly noted the difference between the legal standards to determine competency to stand trial and whether to order forced medication to restore competency. The court explained that although the expert testimony would address both competency and forced medication, the issues would be considered separately.

> I might note that, obviously, the issues regarding competency and then if incompetency is found, whether medication should [be] ordered, I recognize that those are separate issues, and depending on how I ultimately rule on one, we may not get to the second issue. But having said that, they are separate and will be addressed by the Court, ultimately, separately.

At the conclusion of the hearing, the State argued that the evidence established Hohf was not competent to stand trial and forced medication was warranted under the Sell factors. Hohf's attorney emphasized the difference in the analysis between determining competency and whether to order forced medication, and noted the court should "be very cautious about the medication issue."

The record shows that the court used a preponderance of the evidence standard in finding that Hohf was not competent to stand trial but the court did not use a

[7] In United States v. Hernandez-Vasquez, 513 F.3d 908, 916-17 (9th Cir. 2008), the United States Court of Appeals for the Ninth Circuit held that a court order authorizing forced medication must specify (1) the medication or range of medication that the treating physicians are permitted to use, (2) the maximum dosage that may be administered, and (3) the duration of time that involuntary treatment may continue before the treating physicians are required to report back to the court.

preponderance of the evidence standard in deciding whether to order forced medication. In considering the separate question of whether to order forced medication, the court expressly notes there is a higher standard.

> And I know, for instance, on the whole issue of forced medication, that is something that runs against the grain of our whole society, that that type of action is extremely invasive, and the courts have been very slow to authorize such action except in special kinds of circumstances.

Further, the court expressly addresses each of the Sell factors in ruling on "the totally separate issue regarding medication." In authorizing the use of forced medication if necessary, the trial court also states, "The Court is convinced, with all due respect to Mr. Hohf, that this is in his best interests and it is clearly at this point in time the right thing to do."

In the alternative, Hohf claims substantial evidence does not support the court's findings as to two of the Sell factors. Under Sell, the State must show (1) important governmental interests are at stake, (2) administration of medication is substantially likely to render the defendant competent to stand trial and substantially unlikely to have side effects that may undermine the fairness of the trial, (3) involuntary medication is necessary to further the State's interests, and (4) administration of the medication is medically appropriate. Sell, 539 U.S. at 180-81.

Hohf contends that substantial evidence does not support the findings as to the second and third Sell factors.[8] In reviewing a forced medication order, we determine whether substantial evidence supports the trial court's findings and, in turn, whether the findings support the conclusions of law. Hernandez-Ramirez, 129 Wn. App. at 511.

[8] Hohf does not assign error to the findings on the first and fourth Sell factors.

Hohf argues substantial evidence does not support the finding that the administration of medication is substantially likely to render the defendant competent to stand trial and is necessary to further the State's interests. Finding of fact 2.6 states:

> The defendant's condition is treatable with psychotropic medication. There is a substantial likelihood that medication will render the defendant competent. Dr. Gleyzer testified regarding a retrospective study in North Carolina in which 77% of the people studied were restored to competency through the use of psychotropic medication. Medication, whether forcible or voluntary, will significantly further the State's interests in bringing this case to trial.[9]

The testimony of Dr. Gleyzer and Dr. Muscatel supports the finding that Hohf's delusional disorder can be successfully treated with antipsychotic medication. Dr. Gleyzer testified that requiring Hohf to take antipsychotic medication would restore his competency to stand trial. Dr. Gleyzer also indicated that he would use newer medications to reduce any side effects.[10] Dr. Muscatel testified that medication would help a person diagnosed with delusional disorder "for sure," and that even people diagnosed with paranoid personality disorder have a "good likelihood" of responding to medication. And below, Hohf's attorney also conceded that "medication would be very helpful" and "a significant number of people were able to turn around, to be found competent again, to assist their attorneys."

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[9] Several courts "have recognized the weakness of evidence that antipsychotic medication is successful in treating Delusional Disorder." Ruiz-Gaxiola, 623 F.3d at 701, n.11; see also United States v. Bush, 585 F.3d 806, 817 (4th Cir. 2009) (reversing and remanding, in part because "all experts agreed that there is a dearth of medical evidence about the success of medicating persons suffering from Delusional Disorder, Persecutory Type"); United States v. Ghane, 392 F.3d 317, 319 (8th Cir. 2004) ("[d]elusional disorder resists treatment by both psychotherapy and antipsychotic medication" (emphasis omitted)). But here, there was no challenge to the study Dr. Gleyzer cited in support of his testimony on using antipsychotic medication. In fact, the defense expert testified that the study was "a pretty good study given how difficult it is to collect the information."

[10] Hohf claims substantial evidence did not establish the medication was unlikely to have side effects that may undermine the fairness of the trial. Sell, 539 U.S. at 181. While the court did not expressly address whether forced medication was substantially unlikely to have side effects, the undisputed evidence showed that side effects would be minimal.

United States v. Gomes, 387 F.3d 157 (2nd Cir. 2004) is analogous. In Gomes, the experts testified that the defendant had a delusional disorder and antipsychotic medication should be used in order to render him competent to stand trial. Gomes, 387 F.3d at 159. The State's expert testified that the defendant would be treated with "atypical" drugs to reduce delusions and limit potential side effects. Gomes, 387 F.3d at 162. The defendant argued that he was competent, and medicating him would interfere with his ability to present a defense of a judicial and prosecutorial conspiracy. Gomes, 387 F.3d at 162. The defense presented no testimony as to the efficacy of alternative treatment, or that use of the medication would be detrimental to the defendant's health. Gomes, 387 F.3d at 162-63.

Hohf also contends substantial evidence does not support the court findings as to the third Sell factor that involuntary medication is necessary to further State interests. Sell, 539 U.S. at 181. Finding of fact 2.7 states:

> Medication is necessary to further the State's interests. There is no other treatment available for the defendant's condition other than medication. While there are other therapies that may be used in conjunction with medication, they will not restore his competency without the use of medication. Therefore, there are no less intrusive means available for treating the defendant.

In addressing the third Sell factor, the court must "consider less intrusive means for administering the drugs," such as whether "any alternative, less intrusive treatments are unlikely to achieve substantially the same results." Sell, 539 U.S. at 181.

Substantial evidence supports finding of fact 2.7. Dr. Gleyzer and Dr. Muscatel agreed that medication would be substantially likely to restore competency, and neither expert testified that any less intrusive treatment would be effective. Dr. Gleyzer also

testified that Hohf would be unlikely to take psychiatric medication voluntarily.

In a similar case, Hernandez-Ramirez, a doctor testified that antipsychotic medications were typically used for the defendant's condition, and that less intrusive forms of treatment would not be effective. Hernandez-Ramirez, 129 Wn. App. at 511. And as here, the defense expert psychologist agreed that drugs are commonly used to treat the defendant's diagnosis, and that it was highly likely the defendant would respond favorably. Hernandez-Ramirez, 129 Wn. App. at 511.

On this record, we conclude substantial evidence supports the finding that forced medication was substantially likely to render Hohf competent to stand trial, and involuntary medication was necessary to further the State's interests.

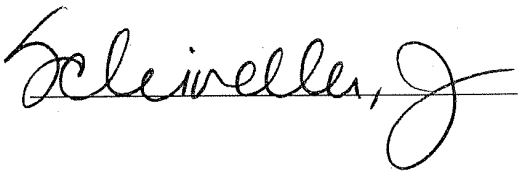
Statement Of Additional Grounds

Hohf asserts that the court erred by failing to assign standby counsel when he represented himself pro se. The record does not show that the trial court abused its discretion in deciding to not appoint standby counsel during the very brief period of time that Hohf represented himself. See State v. Silva, 107 Wn. App. 605, 622-23, 27 P.3d 663 (2001). We also reject Hohf's argument that the trial court erred in not strictly adhering to the rules of evidence at the competency hearing. In re Det. of Campbell, 139 Wn.2d 341, 354-55, 986 P.2d 771 (1999) (holding that a hearing to determine commitment for evaluation is a preliminary determination).

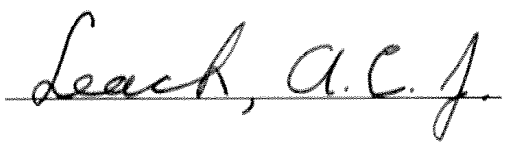
Hohf claims that the State suppressed exculpatory eyewitness evidence, the prosecutor committed misconduct by falsely accusing him of stalking one of his attorneys, and soliciting perjured testimony from the victim. Hohf also claims the trial

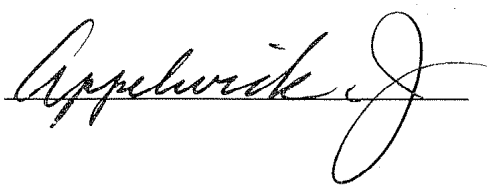
court erred by failing to respond to dispositive motions, failing to urge him to enter a guilty plea after he was competent to stand trial, requiring him to submit to a mental evaluation, and increasing bail. Because these arguments are not supported by credible evidence in the record, we cannot review them. See RAP 10.10(c) (an appellate court will not consider an argument made in a statement of additional grounds for review if it does not inform the court of the nature and occurrence of the alleged errors).[11]

We affirm.



WE CONCUR:





[11] If material facts exist that have not been previously presented and heard, Hohf's recourse is to bring a properly supported personal restraint petition. See RAP 16.4.