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**DISTRICT I**

January 31, 2018

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You are hereby notified that the Court has entered the following opinion and order:

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2016AP2138-CR                      State of Wisconsin v. Terrance J. Edwards (L.C. # 2015CF3416)

Before Brennan, P.J., Brash and Dugan, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Terrance J. Edwards appeals from that portion of an initial order for placement that finds “involuntary administration of psychotropic medication is needed” and allows the Department of Health Services to involuntarily administer medication or treatment to Edwards after he was found not guilty by reason of mental disease or defect (NGI) on two offenses. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for

summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).<sup>1</sup> The order is summarily reversed in part.

On July 25, 2015, Edwards attacked O.M. and B.L. with a baseball bat because he believed the two men had been injecting him with toxins in his sleep. O.M. died as a result of multiple skull fractures; B.L. suffered a broken collar bone and a laceration to the head that required four staples. Edwards was charged with one count of first-degree intentional homicide with a dangerous weapon and one count of attempted first-degree intentional homicide with a dangerous weapon, and initially entered pleas of not guilty and NGI.

Edwards later entered no-contest pleas for the guilt phase of his case, then proceeded to a court trial on the responsibility phase. *See State v. Magett*, 2014 WI 67, ¶33, 355 Wis. 2d 617, 850 N.W.2d 42 (describing bifurcated trial process); *see also* WIS. STAT. § 971.165(1)(a). Both examining psychologists—one retained by Edwards and one retained by the State—concluded that Edwards has some form of schizophrenia and that he was unable to conform his conduct to the requirements of the law and appreciate the wrongfulness of his conduct. *See* WIS. STAT. § 971.15(1). Edwards’ psychologist testified that the standard treatment for Edwards’ mental illness is antipsychotic agents, that it was unlikely Edwards would voluntarily take medication, and that Edwards had no insight into his mental illness. The State’s psychologist testified that Edwards was not competent to refuse medication and that Edwards had refused medication from a different mental health care provider.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

Based on the experts' testimony, the circuit court first found Edwards not guilty by reason of mental disease or defect on both the homicide and attempted homicide charges. It ordered Edwards committed to the Department of Health Services for life because of the homicide charge, with a concurrent forty-year commitment for the attempted homicide. The circuit court determined that Edwards was more appropriately placed in institutional care than on conditional release and entered an initial placement order for institutional care.

The circuit court also found that Edwards "is not competent to refuse medications. He does not have the ability to express or appreciate the advantages and disadvantages of medication. He lacks insight into his mental illness[.]" Accordingly, the initial placement order also authorizes the Department "to administer psychotropic medication or treatment to the defendant[.]"

On appeal Edwards does not challenge the commitment order, nor does he challenge his institutional placement. Rather, he contends there is insufficient evidence supporting the order for involuntary medication. The State concedes the record does not support that portion of the order.

"[W]hen a defendant is found not guilty by reason of a mental disease or mental defect of a felony ... the court shall commit the person to the department of health services" for a period not to exceed the maximum term of confinement for a conviction of that felony. *See* WIS. STAT. § 971.17(1)(b). "If the state proves by clear and convincing evidence that the person is not competent to refuse medication or treatment for the person's mental condition ... the court shall issue, as part of the commitment order, an order that the person is not competent to refuse medication or treatment[.]" WIS. STAT. § 971.17(3)(b).

The defendant is not competent to refuse medication or treatment if, because of mental illness, ... *and after the advantages and disadvantages of and alternatives to accepting the particular medication or treatment have been explained to the defendant*, one of the following is true:

(a) The defendant is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives.

(b) The defendant is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness ... in order to make an informed choice as to whether to accept or refuse medication or treatment.

WIS. STAT. § 971.16(3) (emphasis added). The circuit court concluded that Edwards was incapable of expressing the necessary understanding under para. (3)(a).

Forced medication implicates constitutional concerns, including due process and equal protection. See, e.g., *Cruzan v. Missouri Dep't of Health*, 497 U.S. 261, 278 (1990); *Outagamie Cty. v. Melanie L.*, 2013 WI 67, ¶¶42-43, 349 Wis. 2d 148, 833 N.W.2d 607; *K.S. v. Winnebago Cty.*, 147 Wis. 2d 575, 577, 433 N.W.2d 291 (Ct. App. 1988). “A person subject to a ... possible involuntary medication order is entitled to receive from one or more medical professionals a reasonable explanation of proposed medication.” *Melanie L.*, 349 Wis. 2d 148, ¶67. Thus, “before an individual is found incapable of *understanding* treatment information, that information must first be *provided* to the individual.” *K.S.*, 147 Wis. 2d at 577-78.<sup>2</sup>

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<sup>2</sup> *K.S. v. Winnebago Cty.*, 147 Wis. 2d 575, 433 N.W.2d 291 (Ct. App. 1988), and *Outagamie Cty. v. Melanie L.*, 2013 WI 67, 349 Wis. 2d 148, 833 N.W.2d 607, both involve involuntary mental commitments under WIS. STAT. ch. 51. However, the standard for involuntary medication in ch. 51, see WIS. STAT. § 51.61(1)(g)4.a.-b., is virtually identical to that in WIS. STAT. § 971.16(3)(a)-(b); the only difference is that § 51.61 refers to an “individual” while § 971.16 refers to a “defendant.”

What is missing from the circuit court's findings is a determination that "the advantages and disadvantages of and alternatives to accepting the particular medication or treatment" were explained to Edwards. Indeed, our supreme court has cautioned that medical and other professionals "should document the timing and frequency of their explanations so that, if necessary, they have documentary evidence to help establish this element in court." *See Melanie L.*, 349 Wis. 2d 148, ¶67.

While the circuit court may have implicitly concluded that Edwards had been given appropriate treatment information without so articulating, there is no evidence of any kind in the record to support any finding that Edwards had been so counseled, notwithstanding the State's psychologist's testimony of his ultimate conclusion that Edwards was incompetent to refuse medication. The State's failure to demonstrate that "the advantages and disadvantages of and alternatives to accepting the particular medication or treatment have been explained" to Edwards means that the State has failed to satisfy its burden to show Edwards' incompetency to refuse medication by clear and convincing evidence. *See WIS. STAT. § 971.17(3)(b)*.

We therefore reverse those parts of the placement order that find involuntary administration of psychotropic medications is needed and that authorize the Department of Health Services "to administer psychotropic medication or treatment to the defendant[.]" The portion placing Edwards in institutional care remains intact.

Upon the foregoing, therefore,

IT IS ORDERED that those parts of the April 4, 2016 placement order that find involuntary administration of psychotropic medications is needed and that authorize the

Department of Health Services “to administer psychotropic medication or treatment to the defendant” are summarily reversed.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*