

IN THE CIRCUIT COURT OF BROOKE COUNTY, WEST VIRGINIA**STATE OF WEST VIRGINIA,****Plaintiff,**

v.

**CIVIL ACTION NO.: 13-F-24
Honorable Ronald E. Wilson****ROCCO J. ZUCCARO,****Defendant.****MOTION TO AMEND OR OTHERWISE MODIFY COURT'S ORDER**

Comes now the State of West Virginia, by and through the Prosecuting Attorney of Brooke County, West Virginia, Joseph E. Barki, III, pursuant to Rule 47 of the West Virginia Rules of Criminal Procedure and respectfully moves this Honorable Court to amend its Order that the Defendant be committed to an inpatient mental health facility designated by the Department of Health and Human Resources (DHHR) to attain competency to stand trial and for a competency evaluation. In support of this Motion, the State states as follows:

1. Rocco J. Zuccaro ("Zuccaro") had previously been evaluated at the William R. Sharpe, Jr. Hospital ("Sharpe Hospital") and found to be competent. A subsequent evaluation report submitted to the Court by Dr. Bobby Miller, who was retained by the defendant, again reported that the Defendant was not be competent to stand trial.

2. Thereafter, the Defendant was re-evaluated by Dr. Christie Cooper-Lehki who reported that in her opinion the defendant was competent to stand trial, and accordingly a hearing was held for the Court to consider the contradictory expert opinions.

3. Due to the contradictory reports presented to the Court addressing Rocco Zuccaro's competency, the Court, by Order dated February 20, 2015, ordered Zuccaro to Sharpe Hospital for "Restoration of Competency".

4. On March 23, 2015, Zuccaro escaped from Sharpe Hospital and was apprehended on March 26, 2015, and has now also been charged with felony escape charges in Lewis County, WV.

5. By Order dated March 26, 2015, this Court ordered Rocco Zuccaro returned to Sharpe Hospital for inpatient management and competency restoration. In that Order, this Court required Sharpe Hospital to restrain Rocco Zuccaro in leg shackles for the entire period of his commitment. Clearly, and appropriately, this direction acknowledges the court's appropriate concerns regarding the level of security to be maintained with regard to the defendant.

6. However, this order and the level of security necessary for Rocco Zuccaro as a result of his actions place Sharpe Hospital and the DHHR in an untenable position, as every behavioral health client admitted to a State-operated hospital is guaranteed certain rights regarding their care and treatment. Specifically, 42 C.F.R. § 482.18(e)(f)(g) contains the health and safety requirements that a hospital must meet. Additionally, Sharpe Hospital is prohibited by West Virginia 64 CSR 59 "Behavioral Health Client Rights" from holding a patient in leg shackles which is required by this Court's Order. Specifically, CSR § 64-59-10.18 states that metal handcuffs are not considered an acceptable form of restraint for clients and shall not be used for that purpose.

7. As a result of the need for the Defendant to be shackled, and the restrictions placed upon Sharpe Hospital by West Virginia 64 CSR 59 which are incompatible with this Court's prior Order, the State of West Virginia requests that this Court approve the Defendant's placement in a facility approved by the DHHR for competency restoration which can comply with the terms of the Court's prior Order.

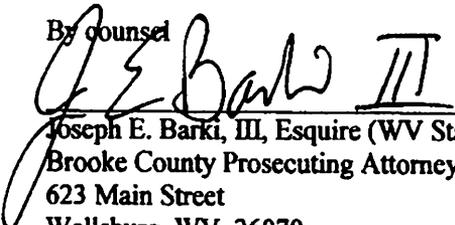
8. Therefore, the State requests that, for the reasons set forth herein, this Court order Zuccaro be admitted to the DHHR's custody and be diverted to Correct Care, LLC, Columbia Regional Care Center, Columbia, South Carolina (Correct Care) for inpatient management and competency restoration in accordance with this Court's March 26, 2015 Order. Correct Care is a psychiatric treatment facility that specializes in providing a secure and structured psychiatric treatment environment. The DHHR has contracted with this facility to provide such services in similar matters, and the DHHR asserts that said facility is capable of providing the security measures that the Court has found necessary, while still being in compliance with treatment protocols and statutes. In addition, Correct Care has been approved by the DHHR as an appropriate facility to complete competency restoration services pursuant to West Virginia code section 27-6A-2(e).

For the foregoing reasons, the State respectfully requests that its Motion be granted and the Court amend or otherwise modify its Order to admit Rocco Zuccaro to the DHHR's custody and allow diversion to Correct Care for inpatient management and competency restoration and any and all other relief this Court deems just and proper.

Respectfully submitted,

STATE OF WEST VIRGINIA,

By counsel


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I, Joseph E. Barki, III, counsel for plaintiff, do hereby certify that I have served a true and accurate copy of the foregoing "**Motion to Amend or Otherwise Modify the Court's Order**" upon counsel of record by faxing the same on this 27th day of March, 2015, as follows:

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