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NO. 69154-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Appellant,

v.

S.J.C.,

Respondent.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE BARBARA A. MACK

REPLY BRIEF

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ARGUMENTS IN REPLY

Article I, section 10 provides that “[j]ustice in all cases shall be administered openly.” S.J.C. argues that In re Lewis, 51 Wn.2d 193, 316 P.2d 907 (1957), held that this constitutional command does not apply to juvenile courts. Br. of Resp. at 3-5. In other words, according to S.J.C., the provision does not cover a case in juvenile court, even though the provision refers to “all cases” and even though juvenile proceedings are clearly held in a court of record of the State of Washington. That conclusion seems starkly at odds with the last few decades of precedent from the United States Supreme Court and the Washington Supreme Court on the issue of open court proceedings. See Br. of Appellant, at 3-8.

The Washington Supreme Court has repeatedly made clear that the letter and in spirit of the constitutional provision strongly favors openness. Although, in Seattle Times Co. v. Ishikawa, 97 Wn.2d 30, 36, 640 P.2d 716 (1982), the court cited to Lewis for the general proposition that “the right of public access is not absolute,” it does not necessarily follow that the right of public access may be wholly denied in an entire category of cases. Because the decision in Lewis seems inconsistent with—or at least in tension with—the

numerous and more recent decisions, it is important to consider whether Lewis can be reconciled with the more recent decisions.

In considering how to reconcile these disparate approaches, it is important to examine the consequences of each. Under S.J.C.'s argument, the openness of juvenile court proceedings would become simply a matter of legislative policy, meaning the courts would have limited authority to regulate the openness of proceedings or records in juvenile court. Thus, the legislature could mandate full closure of juvenile court proceedings. Such an approach would seem incongruent in light of decisions from the Washington Supreme Court. See Allied Daily Newspapers of Washington v. Eikenberry, 121 Wn.2d 205, 848 P.2d 1258 (1993) (held that the identity of a child witness in a sexual abuse case is presumed public information); State v. Richardson, 177 Wn.2d 351, 302 P.3d 156 (2013) (held that the public has a right of access to offense records describing adult prosecution of a crime committed when the defendant was a juvenile). Thus, it appears that the rule announced in Lewis may not establish the categorical exception to article I, section 10 that S.J.C. argues.

If it is determined that Lewis survives in some form, numerous questions arise. First, does Lewis mean that there is no

presumption of openness as to juvenile records? Does the reasoning of Lewis mean that there need be no individualized weighing of the costs and benefits of closing a proceeding or sealing a record? Does Lewis create a presumption of closure, with the burden placed on the advocate of openness to show a special need to know? What standard would apply to that determination?

S.J.C. also argues that this court need only decide whether the constitution prohibits sealing of a record of a misdemeanor conviction, and that the openness of juvenile "proceedings" is not at issue. Br. of Resp. at 7. But this claim ignores the fact that the Washington Supreme Court has never distinguished between open proceedings and open records. See, e.g., Drieling v. Jain, 151 Wn.2d 900, 93 P.3d 861 (2004). If S.J.C. is correct that juvenile proceedings are not subject to article I, section 10, then the constitutional command for openness does not apply to either proceedings or records in juvenile court. Such a holding would mean that access to juvenile proceedings and records becomes a matter of legislative grace, and the courts will have ceded to the legislature the power to define the scope of public access to court records. See, e.g., Laws of 2014, Ch. 175 (SSHB 1651) (creating

an “administrative sealing process” under which most juvenile records will be sealed).

Accepting S.J.C.’s argument raises other questions. For instance, is a record in juvenile court a “court record” under the broad definition provided in GR 31? Does GR 15 apply to juvenile records? May proceedings and records be *completely* and *permanently* sealed, or must a closure be narrowly tailored to avoid a specified interest? Do court rules control over a contrary indication from the legislature?

These difficult questions are easier to answer if article I, section 10, is interpreted to include juvenile proceedings and records. As argued in the State’s opening brief, such an approach would preserve the usual presumption of access to court records. At the same time, it could be recognized that juvenile proceedings and records have historically been treated as both open to public inspection, and not. This disparate historical treatment may justify some measure of greater flexibility to deprive the public of its right to open proceedings or records in this sensitive area, but it would not follow that all such proceedings or records are beyond constitutional control.

The movement to close juvenile records is tied to the notion that the juvenile systems are rehabilitative, and should not stigmatize children. It would seem more consistent with principles of openness and transparency to presume openness but allow and encourage greater legislative control over the abuse of information gathered through the juvenile justice processes.

In the end, however, because the question presented seems to present a conflict between language from Lewis and a line of more recent Washington Supreme Court decisions, it might be most prudent to transfer this case to the Washington Supreme Court under RAP 4.4.

DATED this 9th day of June, 2014.

Respectfully submitted,

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the attorneys for the respondent, Gregory Link at greg@washapp.org , containing a copy of the Reply Brief, in STATE V.S.J.C., Cause No. 69154-6-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

W Brame
Name
Done in Seattle, Washington

6/9/14
Date 6/9/14