

NO. 71393-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

BREE-ANN SMITH BRAZILLE,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE PATRICK OISHI

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**BRIEF OF RESPONDENT**

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TABLE OF CONTENTS

	Page
A. <u>ISSUE</u> .....	1
B. <u>FACTS</u> .....	1
C. <u>ARGUMENT</u> .....	4
D. <u>CONCLUSION</u> .....	8

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

Hundtofte v. Encarnacion, \_\_\_ Wn.2d \_\_\_,  
330 P.3d 168 (2014)..... 4

In re Det. of D.F.F., 172 Wn.2d 37,  
256 P.3d 357 (2011)..... 4

Seattle Times Co. v. Ishikawa, 97 Wn.2d 30,  
640 P.2d 716 (1982)..... 2, 4, 5, 6

State v. Chen, 178 Wn.2d 350,  
309 P.3d 410 (2013)..... 4, 6

State v. Delauro, 163 Wn. App. 290,  
258 P.3d 696 (2011)..... 4

Constitutional Provisions

Washington State:

Const. art. I, § 10..... 4

Statutes

Washington State:

RCW 10.77.210 ..... 5, 6

Rules and Regulations

Washington State:

GR 15 ..... 4

A. ISSUE

Did the trial court properly exercise its discretion in refusing to redact a competency report where Brazille's expressed interest was in keeping information in the competency report from a being considered in a hypothetical family law proceeding?

B. FACTS

On April 28, 2013, Ms. Brazille was arrested after an officer saw her leaving the driver's seat of a stolen Honda Prelude in a Safeway parking lot. On May 1, 2013, she was charged with one count of possession of a stolen vehicle. CP 1.

On August 12, 2013, trial counsel and the State agreed that the court should sign an order to evaluate Ms. Brazille's competency to stand trial. RP 3-4. An order was signed. CP 8-13. After a period of observation and evaluation, Western State Hospital (WSH) determined that Ms. Brazille was not competent to stand trial. RP 6. The court ordered that she be committed for 45 days to restore competency. CP 14-17.

Trial counsel moved to seal the report from WSH because, as expressed in a hearing held on September 25, 2013, Ms. Brazille was a mother, she did not have custody of her child, and she feared that

information provided in the WSH report might be used against her in family law proceedings. RP 12-17; CP 18-22. The report discusses Ms. Brazille's description of her personal history, discusses some alcohol use, some drug use, and describes symptoms and behavior suggesting mental health difficulties. CP 81-88. Counsel argued that sealing of the record was important because a family law attorney in a future proceeding might find out about a redacted report and then seek to obtain the full report. RP 17-18. Counsel acknowledged that her argument depended on "a lot of what ifs." RP 18. The State opposed the request because Ms. Brazille had not shown a compelling interest to justify closure. RP 11.

Applying the Ishikawa<sup>1</sup> factors, the trial court, Judge Patrick Oishi presiding, ruled that the interest was "extremely hypothetical" such that the court could not "find that there is a serious, imminent threat to the right that Ms. Brazille has in the privacy of this information and/or her parenting rights." RP 21. The court also ruled that the public's right to open access to the courts outweighed "the hypothetical interest/threat to [Brazille's] interest." Id.; CP 23.

Ms. Brazille remained at WSH until early November. In a report dated November 6, 2013, WSH concluded that Ms. Brazille was fully competent. CP 26-31. Although the report recounted some symptoms of

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<sup>1</sup> Seattle Times Co. v. Ishikawa, 97 Wn.2d 30, 640 P.2d 716 (1982).

psychiatric distress at the beginning of the evaluation period, the remainder of the report was unremarkable, and concluded that Ms. Brazille suffered from no significant psychiatric difficulties. CP 27, 29-30. A hearing was held on November 13, 2013, and, without objection from defense counsel, the Honorable Patrick Oishi found Ms. Brazille competent to stand trial. RP 23-25; CP 24-25.

On December 10, 2013, Ms. Brazille pleaded guilty to an amended information charging a single misdemeanor count of vehicle prowling in the second degree. CP 44-52.

On December 11, 2013, Ms. Brazille moved to seal the November 6<sup>th</sup> report on essentially the same grounds as had been argued in August as to the first report:

there are some child custody issues with the father of their child, and Ms. Brazille does not want the competency evaluation out in the open because there is a concern that this evaluation could be used against her in the child custody issues.

RP 29. She argued that redaction was not sufficient because a family law attorney who became aware of the report would attempt to obtain the contents. RP 29-30. The State objected to sealing because Ms. Brazille's stated basis was not sufficiently unique or compelling to justify closure. RP 30-31. The matter was continued because the judge presiding over the hearing had not yet read the pleadings and report. RP 31.

Ms. Brazille was sentenced on December 13, 2013. RP 33-40; CP 66-68 (Judgment and Sentence).

On December 18, 2013, Judge Oishi heard argument from the parties on the motion to seal the November 6<sup>th</sup> report. RP 43-45. The court also considered a written motion filed by Ms. Brazille. CP 36-43. Judge Oishi adhered to the reasoning of his earlier order, found that the Ishikawa factors did not justify sealing or redaction of the competency reports, and denied Ms. Brazille's motion. RP 45-47.

C. ARGUMENT

Article I, section 10 provides that justice in all cases shall be administered openly. The open administration of justice requires that court records be available for public inspection. GR 15. Competency reports are court records and are presumed to be open. State v. Chen, 178 Wn.2d 350, 357, 309 P.3d 410 (2013); State v. Delauro, 163 Wn. App. 290, 258 P.3d 696 (2011); GR 31. Exceptions to this "vital constitutional safeguard" are appropriate in only the most unusual of circumstances. In re Det. of D.F.F., 172 Wn.2d 37, 41, 256 P.3d 357 (2011). The party moving to seal court records has the burden of proving the need for sealing. Hundtofte v. Encarnacion, \_\_\_ Wn.2d \_\_\_, 330 P.3d 168, 172 (2014).

GR 15 provides that a court record may be sealed for a “compelling reason.” A defendant who seeks sealing to protect an important interest other than the right to a fair trial must show a “serious and imminent threat” to that interest. Seattle Times Co. v. Ishikawa, 97 Wn.2d at 37.

Brazille identified an “interest” in shielding information about her mental health from a decision-maker in a possible child custody proceeding. She asserted that she “believed” there was an “active” family law case, but that a “final hearing happened in January 2013” and that she wanted to fight custody. Supp. CP \_\_\_\_ (Sub No. 57B).<sup>2</sup> However, the assertion that there was an “active” family law case pending is contradicted by the assertion that there was a “final hearing” twelve months in the past. No evidence was supplied to show that a court proceeding was pending, or that Brazille had a basis to challenge the family law court’s final determination on custody. Thus, Brazille’s purported interest was not “serious and imminent.” Ishikawa, at 37.

Moreover, Brazille did not explain why she would have a cognizable right to keep secret from a judge or commissioner information about her drug use, alcohol use, or mental illness, especially where the theoretical issue facing the family court would be whether her child’s best

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<sup>2</sup> This document is attached as Appendix A but has been redacted to protect identifying information regarding the child. GR 22(b)(6).

interests would be served by increasing contact between Brazille and the child. If a decision-maker is entitled to that information, it would seem strange to say that Brazille had a right to hide the information. Thus, as the trial court observed, Brazille's asserted "interest" would not justify sealing an otherwise public record.

Brazille argues that sealing was proper under RCW 10.77.210.

Br. of App. at 8-9. The statute provides:

...all records and reports made pursuant to this chapter, shall be made available only upon request, to the committed person, to his or her attorney, to his or her personal physician, to the supervising community corrections officer, to the prosecuting attorney, to the court, to the protection and advocacy agency, or other expert or professional persons who, upon proper showing, demonstrates a need for access to such records.

RCW 10.77.210(1). The Washington Supreme Court has already held that this provision does not overcome the presumption of openness, and that closure should occur only if deemed appropriate after balancing the Ishikawa factors. Chen, 178 Wn.2d at 355-56. The trial court ruled that the Ishikawa factors favored openness, so RCW 10.77.210 cannot change that determination.

Brazille also argues that the report should be sealed because her the underlying criminal charge did not raise mental health issues. Br. of App. at 10. She is mistaken. A person's state of mind is relevant in many

criminal prosecutions, as it was in this one where the defendant was accused of knowingly possessing a stolen car. Further, the public has a right to know what factors influenced the course of a given prosecution, and whether or how prosecutors consider mental health concerns in negotiating and resolving cases, generally. And, of course, Ms. Brazille's mental status was relevant to the trial court's competency determination, and potentially relevant to any member of the public who wants to understand how (generally) the superior court handles defendants with mental health issues. For these reasons, it is immaterial that a mental defense was not interposed as to the underlying charge.

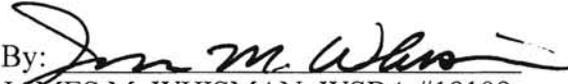
D. CONCLUSION

For the foregoing reasons, this court should affirm the trial court's order denying Brazille's motions to seal two WSH competency reports. The court's ruling was an appropriate exercise of discretion. In fact, it likely would have been an abuse of discretion to seal the WSH reports under these facts.

DATED this 20<sup>th</sup> day of August, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By:   
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Senior Deputy Prosecuting Attorney  
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Office WSBA #91002

# **APPENDIX A**

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**FILED**  
KING COUNTY WASHINGTON  
DEC 10 2013  
SUPERIOR COURT CLERK  
BY MOLLY SIMON  
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR  
THE COUNTY OF KING

STATE OF WASHINGTON,	)	
Plaintiff,	)	NO. 13-1-02508-2 KNT
	)	
vs.	)	DECLARATION OF BREE ANN
	)	BRAZILLE
BREE ANN BRAZILLE,	)	
Defendant.	)	

I, Bree Ann Brazille, declare as follows:

1. I am currently charged with Possession of Stolen Vehicle in King County Superior Court. It is my understanding that competency was raised in my case. I have been told that there is a competency report dated 11/6/13. I want this competency report sealed.
2. I am concerned about child custody issues. I have a son [REDACTED] He is [REDACTED] with a DOB [REDACTED]. I believe that there is an active family law case. Robert Nunez is the father. He has custody of our son. The final hearing happened last January 2013. I want to fight custody.
3. I believe that this competency report could be used against me in the child custody case. The competency report contains my health records. I do not want them open in the public.

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

12/10/13  
date and place  
Kent, WA

X Bree Brazille  
Bree Ann Brazille

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Oliver Davis, the attorney for the appellant, at Oliver@washapp.org, containing a copy of the BRIEF OF RESPONDENT, in State v. Bree Ann-Smith Brazille, Cause No. 71393-1, 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.

Dated this 25<sup>th</sup> day of August, 2014.

U Brame

Name:

Done in Seattle, Washington

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