

NO. 68068-4-I

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

STATE OF WASHINGTON,

Respondent,

v.

PARISH T.,
(a minor child)

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

APPELLANT'S OPENING BRIEF

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A. SUMMARY OF ARGUMENT

Parish T. was found incompetent to stand trial on unrelated charges in 2009. In the instant case, arising out of an incident in 2010, the juvenile court found reason to doubt Parish's competence and ordered a competency evaluation. Relying on an inapposite case, the court applied the burden of proof to Parish instead of the State at the subsequent hearing to determine Parish's competence to stand trial. After improperly placing the burden, the court found Parish competent. The court failed to follow the proper procedures and Parish was denied due process.

B. ASSIGNMENT OF ERROR

The trial court deprived Parish of the due process of the law in violation of the Fourteenth Amendment and article I, section 3 when it placed on him the burden of proving his incompetency to stand trial.

C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

The right not to be tried while incompetent is fundamental. Due process is violated if procedures adequate to protect this right are not observed. In Washington, the State bears the burden of demonstrating competence by a preponderance of the evidence. Where the trial court placed the burden on Parish to establish his own competence after a

court-ordered evaluation, did the trial court deny Parish due process of the law?

D. STATEMENT OF THE CASE

In December 2010, Parish boarded a bus traveling south from downtown Seattle. 10/25/11RP 183-84. The bus was almost full but he found a space near Jaimie Pineda. 10/25/11RP 77-78, 86, 169, 185. Pineda was watching a movie on an iPod Touch. 10/25/11RP 185. Parish thought the device “was cool.” 10/25/11RP 81-82, 185. Acting on a whim, when the bus came to a stop requested by a passenger, Parish testified he “walked up to [Pineda], and I snatched it from his hand and I put it in my pocket and I walked down the aisle and I walked out the door.” 10/25/11RP 185, 189. No one stopped Parish or said anything to him. 10/25/11RP 116-18, 185.

The bus driver called the police, who contacted Parish at his group foster home. 10/25/11RP 19, 27, 100, 102, 146-47, 153, 170. He admitted he had taken the iPod and turned the device over to the police. 10/25/11RP 60-62, 157-58, 194.

E. ARGUMENT

The trial court denied Parish due process when it placed on him the burden of proving his incompetence.

1. The trial court placed the burden on Parish to establish his incompetence.

In 2009, Parish was found incompetent to stand trial and unrelated charges were dismissed on that basis. CP 16. A year later, Parish was charged with the instant offense. CP 1, 16. The court found reason to doubt Parish's competency and ordered he be evaluated for competency to stand trial. CP 6-8.

Psychologists from Western State Hospital evaluated Parish as an adult, without applying evaluation tools standardized for juveniles, and opined he had the capacity to understand the charges against him and communicate with counsel. 3/24/11RP 49-50, 58, 61-62, 85-86. At the hearing, the evaluator did not dispute the 2009 finding of incompetence; he testified Parish had been prescribed antipsychotic medications and antidepressants over the prior two years; and admitted he evaluated Parish during only "a fairly narrow window . . . [of] 14 days." 3/24/11RP 75-79.

The court initially believed the State bore the burden of proving Parish's competence subsequent to his evaluation. 3/24/11RP 87. The

State, however, argued that respondent bears the burden and the issue was argued. 3/24/11RP 87-88. The court reversed itself and found the respondent bears the burden of proving his own incompetence to stand trial. 3/24/11RP 102-05. Applying that burden, the court found Parish did not prove his continued incompetence by a preponderance of the evidence. CP 13.

2. Washington places the burden on the State to prove a respondent or criminal defendant competent by a preponderance of the evidence.

An accused person has the fundamental right not to be tried while incompetent. *Cooper v. Oklahoma*, 517 U.S. 348, 354, 116 S. Ct. 1373, 134 L. Ed. 2d 498 (1996); *Drope v. Missouri*, 420 U.S. 162, 171-72, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975) (accused person's competency to stand trial is "fundamental to an adversary system of justice"); *State v. Wicklund*, 96 Wn.2d 798, 800, 638 P.2d 1241 (1982); U.S. Const. amend. XIV; Const. art. I, § 3. A person is competent to stand trial only when he has "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and to assist in his defense with "a rational as well as factual understanding of the proceedings against him." *Dusky v. United States*, 362 U.S. 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960) (internal quotations omitted); *accord*

RCW 10.77.010(15) (“‘Incompetency’ means a person lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.”).

Due process requires the trial court to comply with the procedures established by the Legislature in Chapter 10.77 RCW. *State v. Heddrick*, 166 Wn.2d 898, 904 & n.3, 215 P.3d 201 (2009). These procedures “are mandatory and not merely directory.” *Id.* at 904 (quoting *In re Pers. Restraint of Fleming*, 142 Wn.2d 853, 863, 16 P.3d 610 (2001)). RCW 10.77 applies to juvenile competency determinations as well as adults. *State v. E.C.*, 83 Wn. App. 523, 528, 922 P.2d 152 (1996). Though the United States Supreme Court has established a threshold (no greater burden than a preponderance may be placed on the accused), it accords states great deference as to which party bears the burden of proving competency. *Medina v. California*, 505 U.S. 437, 445-46, 449, 112 S. Ct. 2572, 120 L. Ed. 2d 353 (1992); *Cooper*, 517 U.S. 369. “[B]ecause the States have considerable expertise in matters of criminal procedure and the criminal process is grounded in centuries of common-law tradition it is appropriate to exercise substantial deference to legislative judgment in this area.”

Medina, 505 U.S. at 445-46 (citing *Patterson v. New York*, 432 U.S. 197, 202, 97 S. Ct. 2319, 53 L. Ed. 2d 281 (1977)).

In this state, RCW 10.77 places the burden on the State to prove a defendant competent to stand trial after the court has found reason to doubt his competency. In *Wicklund*, our Supreme Court plainly stated the burden of establishing competency under RCW 10.77.060 is placed on the State. 96 Wn.2d at 805 (“The need for [complying with the procedures of RCW 10.77 by requiring two] expert opinions is even greater here, since the burden of establishing Mr. Wicklund’s competency was placed on the State.”). The burden has been similarly applied to the State under RCW 10.77.086 regarding restoration of competency. *State v. Hurst*, 158 Wn. App. 803, 805, 244 P.3d 954 (2010), *aff’d on other grounds by* 173 Wn.2d 597, 269 P.3d 1023 (2012). The State also bears the burden under RCW 10.77.090. *Born v. Thompson*, 154 Wn.2d 749, 753-54 & n.6, 117 P.3d 1098 (2005) (agreeing with State’s concession that it bears the burden of proof under RCW 10.77.090 and applying burden to State); *see also id.* at 775 (Owens, J. dissenting) (assessing burden of proof to State).

3. By placing the burden on Parish, the trial court violated his right to due process, requiring reversal.

Despite RCW 10.77.084 and the cases interpreting it, the trial court placed the burden on Parish to prove his incompetence.¹ The trial court reasoned, first, that it is arguably an open question which party bears the burden and, second, it was bound by *State v. Harris*, 114 Wn.2d 419, 789 P.2d 60 (1990). 3/24/11RP 103-04 (also noting burden is “threshold question”). While the statute does not explicitly ascribe the burden of proof, *Wicklund*, *Hurst*, and *Born* make clear that it is placed on the State. Moreover, Parish is aware of no case that places the burden on the defendant. *Harris* is inapposite because the Court did not interpret RCW 10.77, rather the issue before the Court was competency to be put to death. 114 Wn.2d at 426. Though the Court likened the definition of competency for purposes of execution to that required to withstand trial, the Court did not evaluate the procedures for determining competency under RCW 10.77. *See id.* at 427-29. In fact, the Court explicitly reasoned “The procedures set forth

¹ The court referenced RCW 10.77.086. However, because the court had not yet determined Parish was incompetent or ordered an initial treatment or commitment period, the applicable subsection was .084. RCW 10.77.084 applies once there is reason to doubt the defendant’s competence and an evaluation ordered under RCW 10.77.060. *See State v. Hurst*, 173 Wn.2d 597, 603-04, 269 P.3d 1023 (2012).

in RCW 10.77 were not designed to apply following conviction.” *Id.* at 437 (also finding that power to stay execution is “independent of any statutory authority”); *accord id.* at 433-36 (discussing procedures for evaluating competency of “condemned prisoner” without reference to RCW 10.77 and by analyzing circumstances peculiar to that stage of proceedings).

Because RCW 10.77.084 places the burden on the State, the trial court’s failure to comply with that procedure deprived Parish of due process. *Heddrick*, 166 Wn.2d at 904, n.3.

An error that relieves the State of the burden of proof is structural and not subject to harmless error analysis. *State v. Grenning*, 169 Wn.2d 47, 60 n. 11, 234 P.3d 169 (2010). The error is structural because it “taints the entire proceeding.” *State v. Levy*, 156 Wn.2d 709, 725, 132 P.3d 1076 (2006). By improperly placing the burden on Parish instead of the State, the juvenile court committed structural error, requiring reversal of the adjudication.

F. CONCLUSION

The juvenile court failed to comply with procedures for determining competency to stand trial. This violated Parish’s

constitutional right to due process and requires reversal of his
adjudication.

DATED this 31st day of May, 2012.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Zink', written over a horizontal line.

Marla E. Zink – WSBA 39042
Washington Appellate Project
Attorney for Appellant

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 68068-4-I
v.)	
)	
PARISH E. T.,)	
)	
Juvenile Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 31ST DAY OF MAY, 2012, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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[X] PARISH E. T.	(X)	U.S. MAIL
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375 SW 11 TH ST	()	_____
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SIGNED IN SEATTLE, WASHINGTON THIS 31ST DAY OF MAY, 2012.

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