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NO. 56171-5-1

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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IN RE THE DETENTION OF ANDRE B. YOUNG,

STATE OF WASHINGTON,

Respondent,

v.

ANDRE B. YOUNG,

Appellant.

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

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APPELLANT'S REPLY BRIEF

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A. ARGUMENT.

THE COURT ABUSED ITS AUTHORITY BY IMPOSING CONTEMPT SANCTIONS AND REFUSING TO PROCEED WITH TRIAL BASED ON MR. YOUNG'S REFUSAL TO SUBMIT TO AN ADDITIONAL STATE MENTAL EXAMINATION AND DEPOSITION.

1. The court rules governing procedures in civil proceedings dictate the court's power to hold a party in contempt. CR 37 grants a court authority to issue sanctions for discovery violations. It expressly denies the court power to hold a party in contempt for failing to submit to a mental examination. CR 37(b)(2)(D).

The State incorrectly analyzes and misrepresents the connection between a court rule and a statute, and baselessly surmises that the trial court may infer unlimited power, unregulated by court rule, when conducting a civil commitment proceeding under the sexually violent predator ("SVP") statute.

Generally speaking, the civil rules have wide-ranging application in SVP proceedings, as they are the rules upon which the trials are governed. They dictate discovery, permit summary judgment, and govern post-trial motions. In re Detention of Petersen, 145 Wn.2d 789, 801, 42 P.3d 952 (2002); In re Detention of Mathers, 100 Wn.App. 336, 998 P.2d 336 (2000); (In re Detention of Ward, 125 Wn.App. 374, 379, 104 P.3d 751 (2005).

An express inconsistency with a civil rule is required for the court to disregard the civil rule. CR 81(a).

Statutes do not trump court rules. State v. Smith, 84 Wn.2d 498, 501, 527 P.2d 674 (1974) (court rule governs bail determination even if conflict with statute). The judiciary has inherent powers to create procedural rules for the administration of justice, a power that embraces the gathering and obtaining of evidence. State v. Templeton, 148 Wn.2d 193, 213, 59 P.3d 632 (2002); State v. Fields, 85 Wn.2d 126, 127, 129-30, 530 P.2d 284 (1975) (court rule governs search warrants even if rule conflicts with statute, because rule is procedural); see RCW 2.04.190 (according supreme court power to generally regulate taking and obtaining of evidence in all proceedings of any nature); Wash. Const. art. 4, section 1.<sup>1</sup>

Although a court rule governs over an inconsistent procedural statute, courts try to avoid finding inconsistencies where possible. State v. Blilie, 132 Wn.2d 484, 491, 939 P.2d 691 (1997).  
An examination of the issue in the case at bar demonstrates the

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<sup>1</sup> "The judicial power of the state shall be vested in a supreme court, superior courts, justices of the peace, and such inferior courts as the legislature may provide." Art. 4, section 1.

court rule does not conflict with the relevant statute governing pre-trial discovery and thus, the court rule governs the procedures involved.

First, the scope of discovery and sanctions imposed for violating discovery orders are plainly procedural matters related to the process of taking and obtaining evidence and not substantive rights defining norms of societal behavior which the legislature traditionally defines. Templeton, 148 Wn.2d at 213 (discussing difference between procedural and substantive rules in arena of court's rule-making authority). Courts have traditionally exercised power over issues of discovery. See e.g., Chambers v. NASCO, 510 U.S. 32, 41, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991) (courts have long exercised power over parties participation in its procedural trial rules).

RCW 71.09.090(3) grants the State the right to obtain a mental examination by an expert of its choosing before a new trial for a person who has previously been committed under the SVP proceedings. This right stands in contrast to the procedural rules governing the initial SVP commitment trial, in which the State may not choose its own expert but must instead rely upon the experts accredited by the Department of Social and Health Services who

perform the initial evaluation. RCW 71.09.040(3); In re the Detention of Williams, 147 Wn.2d 476, 488, 55 P.3d 597 (2002).

RCW 71.09.090(3) makes no mention of the procedural requirements of the examination. Unlike RCW 71.09.040, it does not specify that DSHS should promulgate rules upon which the examination may be conducted. The absence of other procedural rules demonstrates the procedural rules set forth in the court rules govern the discovery in this type of trial.

CR 37 specifically addresses the discovery issue in the case at bar, and thus it governs the appropriate sanction.<sup>2</sup> Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 340, 858 P.2d 1045 (1993). Even if the inherent power of the court permitted sanctions, “[t]he inherent power of the court should not be resorted to where rules adequately address the problem.” Id. As explained in Appellant’s Opening Brief, numerous other sanctions available to the court, like the restriction on evidence or instructions to the jury, would adequately address the State’s

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<sup>2</sup> Cr 37(b)(2)(D) provides that the court may issue sanctions for failure to comply with discovery, and, “In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to physical or mental examination . . .” (emphasis added).

inability to obtain a recent mental examination when the State had over 15 years of daily monitoring of Mr. Young's behavior.

Because CR 37 specifically addresses the type of conduct involved in the case at bar, and since it was promulgated as part of the court's power to create procedural rules governing trials, it must be obeyed as the rule for failing to comply with the court's ordered mental examination.

2. The court abused its discretion by issuing an unduly harsh sanction for a discovery violation. While a court has power to fashion refusals to comply with discovery orders, its powers "must be exercised with restraint and discretion." Chambers, 510 U.S. at 44. The sanction imposed should be an appropriate one based on the conduct involved. Id.

In the case at bar, Mr. Young did not decline the mental examination or other State interrogation due to bad faith or mean-spiritedness as an end of itself. Instead, Mr. Young voiced his frustration with the way he perceived his words would be twisted to serve the State's interest in indefinitely confining him for a term that is likely to be the rest of his life. He did not want to aid the State in continuing his confinement by giving further ammunition, since the State has had him in its custody for over 15 years in the SVP

treatment facility and has ample resources available to document its grounds for continuing its commitment. The court did not find Mr. Young acted out of disrespect for the court or the process. In light of the availability of numerous appropriate sanctions for the State's inability to discover new information from Mr. Young's mouth as a basis for continuing to civilly confine him, the court abused its discretion by failing to set an appropriate sanction.

B. CONCLUSION.

For the foregoing reasons and those presented in Appellant's Opening Brief, Andre Young asks this Court to reverse his convictions and sentence.

DATED this 14<sup>th</sup> day of March 2006.

Respectfully submitted,

  
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