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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

PHIENGCHAI SISOUVANH,

Appellant.

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SUPREME COURT
STATE OF WASHINGTON
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BRIEF OF AMICI CURIAE
WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
and WASHINGTON DEFENDER ASSOCIATION

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A. IDENTITY AND INTEREST OF AMICI CURIAE

The Washington Association of Criminal Defense Lawyers (“WACDL”) and the Washington Defender Association (“WDA”) submit this amici curiae memorandum to assist the Court in deciding the case of *State of Washington v Phiangchai Sisouvanh.*, No. 85422-0.

WACDL is a nonprofit association devoted to improving the legal defense of persons accused of crimes in the State of Washington. The organization has over 1000 members who devote a significant portion of their practice to criminal defense work. The association frequently submits amicus curiae briefs in the state and federal courts in cases where there are issues of substantial public importance which involve criminal law and constitutional rights of accused persons.

WDA is a nonprofit association of private criminal defense attorneys and public defenders, social workers, investigators and those committed to improving indigent defense. WDA provides training, case assistance, and a legislative voice to those working in public defense.

The members of WACDL and WDA represent people from various cultural and ethnic backgrounds, and want to insure that, when the courts make decisions about any number of key issues in a case, the decisions are

based on reliable information. Particularly in the area of forensic mental health evaluations, such reliability requires that the professionals performing the evaluations are culturally competent and have an understanding of the unique cultural history of the defendant.

B. ISSUES OF CONCERN TO AMICI CURIAE

1. Should a psychologist who is evaluating an individual for any purpose, including for the purpose of determining whether he or she is competent to stand trial, consider the individual's cultural background?

2. Is a conclusion that someone accused of a crime is competent to stand trial sufficient if the psychologist making that assessment is unaware of the defendant's personal history and cultural experiences?

C. STATEMENT OF THE CASE

Amici accepts the statement of facts set out in the Brief of the Appellant and the Brief of the Respondent.

D. ARGUMENT

1. *Introduction*

A bedrock principle of our legal system is that people accused of crimes must have the capacity to understand what is happening to them in the courtroom:

It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial. Thus, Blackstone wrote that one who became "mad" after the commission of an offense should not be arraigned for it "because he is not able to plead to it with that advice and caution that he ought." Similarly, if he became "mad" after pleading, he should not be tried, "for how can he make his defense?" 4 W. Blackstone, Commentaries *24. . . . For our purposes, it suffices to note that the prohibition is fundamental to an adversary system of justice.

Drope v. Missouri, 420 U.S. 162, 171-72, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975). Apart from Due Process concerns, guaranteed by U.S. Const. amend. 14 and Wash. Const. art. 1, § 3, about trying an incompetent person, there are related concerns under the 8th Amendment and Wash. Const. art. 1, § 14, about the cruelties of forcing an incompetent person to endure trial and punishment if he or she truly is oblivious to the significance of the proceedings. See e.g. *Ford v. Wainwright*, 477 U.S. 399, 106 S. Ct. 2595, 91 L. Ed. 2d 335 (1986) (8th Amendment prohibits execution of the insane).

Because many people accused of horrific offenses often suffer from severe mental illnesses, the courts have the ultimate authority to determine which defendants have the capacity to understand the proceedings and which do not. Yet, because judges (and lawyers) do not necessarily have the type of

specialized knowledge and experience to conduct a forensic evaluation in court, the legal system depends upon experts -- psychologists and psychiatrists -- to evaluate accused persons and to provide to the lawyers and the court professional opinions as to the competency of a particular defendant to stand trial.

Where there is a reason to doubt the competency of an accused person, RCW 10.77.060(1)(a) directs the court to appoint "qualified" experts "to examine and report upon the mental condition of the defendant." The statute further gives the experts the authority to be given access to the defendant's mental health records "that relate to the present or past mental, emotional, or physical condition of the defendant." *Id.*

This mandate to provide the experts not just with current information about the defendant, but also with information about the "past mental, emotional, or physical condition" is significant. The legislative directive to look at an accused person's past history is based on the commonsense understanding that the person's current mental state cannot be understood in a vacuum -- without access to information and records from the past.

A person's "past mental, emotional, or physical condition," however, is dependent on his or her personal history, which necessarily is based upon

the person's cultural experiences and the effects of those experiences on his or her "past mental, emotional, or physical condition." The legislative directive in RCW 10.77.060(1)(a) to gather information about the accused person's past would make no sense if the experts involved either consciously decided not to look at the person's cultural experiences or were not qualified to assess or understand those experiences when determining competency to stand trial.

As will be explained in this brief, the legislative directive to look to a person's past to understand his or her present mental state not only makes good sense -- it allows the courts to have the most reliable information possible when making the determination that a person is competent to stand trial -- but is in keeping with common practice in many other areas both in the law and other fields. Cultural competency is not an unusual requirement, and is a requirement under RCW 10.77.060, U.S. Const. amends. 8 and 14 and Wash. Const. art. 1, §§ 3 & 14.

2. Cultural Competency is Required for Any Professional to be Effective

The Appellant's argument -- that a determination of competency under RCW 10.77 requires the appointment of an expert who understands the cultural background of the defendant -- is hardly unusual and is not ground-

breaking. The concept of “cultural competency” is one that has a long pedigree in most professions, within or outside of the legal system. Insuring that professionals are “culturally competent” is standard practice for drug and alcohol evaluators,¹ the military,² speech pathologists,³ medical doctors and dentists.⁴ The concept of cultural competency is also now standard for teaching lawyers and legal professionals how to work with diverse populations.⁵

It is a simple concept. When dealing with people who come from cultural backgrounds different than our own, one cannot hope to understand

¹ See M. Orlandi, ed., *Cultural Competence for Evaluators: A Guide for Alcohol and Other Drug Abuse Prevention Practitioners Working with Ethnic/Racial Communities* (U.S. Dept of Health and Human Services, 1992).

² See A. Abbe, L.M. Gulick, & J.L. Herman, *Cross-Cultural Competence in Army Leaders: A Conceptual and Empirical Foundation*, U.S. Army Research Institute for the Behavioral and Social Sciences, Study Report 2008-1 (2007); A. Abbe & S. Halpin, “The Cultural Imperative for Professional Military Education and Leader Development,” Winter 2009-10 *Parameters* 20 (U.S. Army War College, 2010).

³ See American Speech-Language-Hearing Association, *Directory of Speech-Language Pathology Assessment Instruments Introduction* (<http://www.asha.org/SLP/assessment/Assessment-Introduction/>).

⁴ See American Medical Student Association, *Cultural Competency Curricular Guidelines for Medical and/or Dental Schools* (<http://www.amsafoundation.org/pdf/CulturalCompCurriculum.pdf>); A. Formicola, J. Stavisky, & R. Lewy, “Cultural Competency: Dentistry and Medicine Learning from One Another,” 67 *Journal of Dental Education* 869 (August 2003).

⁵ See S. Bryant & J. Peters, “Five Habits of Cross-Cultural Lawyering,” *Illinois Pro Bono* (October 2007) (http://www.illinoisprobono.org/index.cfm?fuseaction=home.dsp_Content&contentID=5995).

them, represent them, evaluate them, or communicate effectively with them without an understanding of one's own culture and that of the other person. The consequences of not understanding cultural variables can be disastrous. In warfare, for instance, military personnel have recognized:

Sociocultural factors affect every level of engagement in irregular warfare, from interpersonal interactions while negotiating with local leaders, military advisers training their counterparts, to group and societal engagements during strategic communication and influence operations. The impact of these factors has been widely recognized at every level of defense leadership, and some of the more frequently cited wartime leadership challenges have an intercultural component.

A. Abbe & S. Halpin, *supra* at 20.

Similarly, one hardly needs to be a defense lawyer defending someone accused of aggravated murder to understand that cross-cultural factors are important to treating someone's medical and dental problems:

An understanding of the concepts that need to be included in cross-cultural issues and the training of future practitioners was set out in 1978 by Kleinman et al. [Footnote omitted] These authors recognized that traditional biomedical solutions could no longer solve major health care problems such as patient dissatisfaction and inequity of access to care. Drawing a distinction between a diagnosis of a specific disease by a physician and how the patient perceives of his or her illness, Kleinman et al. pointed out that only through a keen appreciation of culture could treatment lead to a satisfactory outcome. Integrating the social sciences and anthropology into the clinical medical sciences and into the

education of students would result in practitioners with an explicit understanding of the impact of social and cultural factors on the patient's illness.

A. Formicola et al, *supra* at 872.

If cross-cultural factors "influence the presentation of symptoms," in relatively more science-based and objective medical and dental fields, *id.*, there is every reason to suspect that such factors would be present in the mental health field. In fact, one would think that cultural factors would be more important when dealing with a person's psychological/psychiatric condition than when dealing with his or her teeth.

3. *The Importance of Cultural Competency is Firmly Rooted in the Mental Health Field*

The idea that a mental health professional should be familiar with the cultural background and experiences of the person he or she is evaluating or treating was not an invention of the defense expert, Dr. Richard Adler, in Ms. Sisouvanh's case. Even the Eastern State Hospital psychologist who evaluated Ms. Sisouvanh for competency, Dr. Randall Strandquist, agreed that a person's religion and culture were important considerations. *See* RP (3/12/10) 92-95, 108-09, 161.

Dr. Strandquist's concession is based on years of research and work in the mental health field. As Ms. Sisouvanh's brief explains, these concepts

are found both in the Diagnostic and Statistical Manual of Mental Disorders IV-TR (2000) (DSM IV) and 2002 Ethics Code of the American Psychological Association. *Brief of Appellant* at 28-30. At least since the 1950s, psychologists understood the importance of culture in the mental health context. See E. Boesch, "Problems and Methods in Cross-Cultural Research," *Expert Meeting on Cross-Cultural Research in Child Psychology, UNESCO Expert Meeting Cross-Cultural Research Child Psychology, Bangkok, 26 August to 6 September 1958* (<http://unesdoc.unesco.org/images/0018/001800/180010eb.pdf>).

By the 1990s, it could be said:

Cultural competence is one of the most discussed concepts among scholars and practitioners interested in ethnic minority issues. Indeed, numerous groups at local and national levels have been examining the concept in trying to establish guidelines and standards for the provision of mental health services to ethnic minority populations, especially with the advent of managed care. Why is there such interest and enthusiasm? I believe that there is a growing realization that competent therapists and counselors must be cross-culturally competent. Because of the multiethnic nature of U.S. society and because of the increasingly frequent interactions Americans have with people from throughout the world, skills must be developed to effectively work with people from different cultures. . . .

....

And, whereas assimilation and pluralism are ideologies or philosophies of life, cultural competency is skill-based -- skills that should be in the repertoire of all practicing psychologists.

S. Sue, "In Search of Cultural Competence in Psychotherapy and Counseling," 53 *American Psychologist* 440 (April 1998).⁶

In the forensic arena, "[c]ultural competency is critical in criminal forensic evaluations," and an understanding how cultural sensitivity in test selection and interview techniques impacts the results. M. Perlin & V. McClain, "'Where Souls are Forgotten': Cultural Competencies, Forensic Evaluations, and International Human Rights," 15 *Psychology, Public Policy and Law* 257 (2009). See also S. Holdman & C. Seeds, "Cultural Competency in Capital Mitigation," 36 *Hofstra Law Review* 883, 890-94 (2008) (surveying literature in mental health field regarding cultural competency).

⁶ See also W. Tseng, D. Matthews, & T. Elwyn, *Cultural Competence in Forensic Mental Health: A Guide for Psychiatrists, Psychologists and Attorneys* at 25 (2004) ("Mental health workers now realize that 'clinical competence' in psychiatric work requires some measure of 'cultural competence,' in order to provide assessment or care for people of diverse ethnic and cultural backgrounds. The importance of cultural competence applies to all aspects of psychiatric work, whether in inpatient or outpatient care, consultation liaison, or emergency service or whether related to child and adolescent, geriatric, or forensic psychiatry.").

Thus, certain disorders that are relatively rare in most Western societies, such as dissociation or possession,⁷ are “still prevalent in the East and other parts of the world.” W. Tseng, D. Matthews, & T. Elwyn, *supra* at 120. In various regions of Asia, there are different types of dissociation or possession disorders that are tied closely to particular religious and spiritual beliefs. *Id.* at 121-22. For example, in Malaysia, there is the *latah* phenomenon, either of the ordinary or malignant kind. “The person suffering from malignant *latah* will lose complete control of his or her behavior during the episode and will be considered by laypersons as not responsible for any unlawful actions he or she undertakes.” *Id.* at 121. It makes complete sense that a psychologist would want to know this cultural background when examining such a person.

In Ms. Sisouvanh’s case, Dr. Strandquist gave Ms. Sisouvanh a series of standardized tests, tests such as the Wechsler Adult Intelligence Scale, the Personality Assessment Inventory, the Negative Impression Management test, the Miller Forensic Assessment of Systems and the Rorschach. RP (3/12/10)

⁷ “Disassociation refers to mental conditions in which a person is in an altered state of consciousness and possibly behavior, as if in a dream or twilight state. In possession disorder a person behaves and talks as if possessed by another person or spiritual being,” D. Matthews, & T. Elwyn, *Cultural Competence in Forensic Mental Health: A Guide for Psychiatrists, Psychologists and Attorneys* at 120. Notably, Dr. Adler in this case diagnosed Ms. Sisouvanh with a dissociative disorder. RP (3/24/10) 168.

12-20. Although he made no attempt to administer tests that had been normed to Ms. Sisouvanh's population, Dr. Strandquist admitted the importance of making sure that standardized tests were normed on the same population that the person being tested came from. RP (3/12/10) 95-96, 101-104.

Dr. Strandquist's admission that it is inappropriate to administer standardized tests to populations for which there has been no validation is supported by scientific consensus. Standardized tests are not appropriate unless there is appropriate normative data for the subject's ethnic and cultural group:

However, numerous investigators have described shortcomings of the Rorschach for the assessment of American minority groups and for non-Americans. [Citations omitted] An important shortcoming is the lack of appropriate normative data for many ethnic groups, for example, Black adults, Hispanic American adults and children, and Native American adults and children. As observed by Gray-Little (1995), "In the use of inkblots with ethnic minorities, the assessor must be aware that there are few empirical data to provide a guide"[citation omitted].

Rorschach interpreters may overpathologize the Rorschach responses of minority participants who take the test [citation omitted], especially if a client's responses are interpreted within a Eurocentric framework, rather than within the participant's own cultural context. Problems may also arise because of examiner effects when the examiner and the client are from different cultural groups, although this

problem has received little attention from Rorschach researchers. Especially problematic are cases in which the examiner or interpreter comes from a different linguistic group than the participant.

H. Garb, J. Wood, M. Nezworski, W. Grove, & W. Stejskal, "Toward a Resolution of the Rorschach Controversy," 13 *Psychological Assessment* 433, 436 (2001). See also Tseng, D. Matthews, & T. Elwyn, *Cultural Competence in Forensic Mental Health: A Guide for Psychiatrists, Psychologists and Attorneys* at 73-101 (surveying cross-cultural issues related to standardized psychological tests). One of the main personality testing tools, the MMPI-2, norms "are based on the data obtained from the American population, without validation on populations of other ethnic or cultural groups. The judgment of 'typical' is based on the conclusion of 'atypical' responses without taking culture into account." *Id.* at 65.

To be sure, there may not be much data regarding the specific population that Ms. Sisouvanh comes from (Laotian refugees, born in a Thai refugee camp, who then migrated to the United States). Yet, an evaluator must be culturally competent to interpret the test data in light of cultural factors. See Tseng, D. Matthews, & T. Elwyn, *Cultural Competence in Forensic Mental Health: A Guide for Psychiatrists, Psychologists and Attorneys* at 75 ("Even if the data are obtained in a manner that minimizes

confounding influences of culture, bias may creep in during the interpretation stage. That is, examiners must take care to be sure that the data are interpreted in a culturally meaningful and relevant way.”). In fact, in Ms. Sisouvanh’s case, defense experts who also administered standardized testing to Ms. Sisouvanh, including the Rorschach test, were sensitive to issues related to her cultural background, and the defense team included a Laotian psychologist. RP (3/24/10) 173, 175-77, 194-95, 213-18; RP (4/8/10) 307-08.

The importance of cultural issues is magnified by Dr. Strandquist’s conclusion that, based upon testing and observation, Ms. Sisouvanh was malingering. RP (3/12/10) 19-25, 30-34. Yet, standardized assessments of malingering are based on the same norms as other standardized tests. Tseng, D. Matthews, & T. Elwyn, *Cultural Competence in Forensic Mental Health: A Guide for Psychiatrists, Psychologists and Attorneys* at 60-65 (surveying cultural considerations of assessment of malingering). If standardized tests for detecting malingering are normed only on populations of North Americans of European ancestry, it makes sense that these tests would be of limited utility when evaluating someone who does not come from that pool.

In Ms. Sisouvanh’s case, Dr. Strandquist also suspected malingering because of Ms. Sisouvanh’s demeanor during his examination:

I did some further researching into malingering. Phil Resnick, who is a well-respected forensic psychiatrist and has written a lot about malingering, said that the most frequently faked symptom is auditory hallucinations. That hallucinations are not associated with the delusions. That there's a sudden onset of delusional beliefs, and the behavior is likely to -- unlikely to conform to delusions.

They are likely to have contradictions in their own account of their illness. Likely to take control of the interview or attempt to intimidate. Repeat questions or answer them slowly. And that you should suspect malingering delusions when there's an abrupt onset, an eagerness to call attention to the delusions, that their conduct is not consistent with the delusions, and the bizarre content -- there's bizarre content without disordered thoughts.

And in my review of all of my data, I found evidence for most of those characteristics as outlined by -- by Dr. Resnick.

RP (3/12/10) 34-35.

Yet, it is precisely the role of culture that impacts a patient's demeanor, which then can contribute to the false conclusion that a patient is malingering. For instance, loud complaining may be acceptable in some cultures, but an evaluator not attuned to cultural differences perceives such behavior as evidence of malingering. Tseng, D. Matthews, & T. Elwyn, *Cultural Competence in Forensic Mental Health: A Guide for Psychiatrists, Psychologists and Attorneys* at 62. Similarly, although one indication of malingering may be inconsistent self-reporting (and a disparity between

reported symptoms and observed symptomatology), “an examinee who is not well equipped with the proper language skills to communicate and elaborate symptoms may have inconsistencies that might be detected and incorrectly attributed to malingering by the examiner.” *Id.* at 63.

To come to an accurate conclusion as to whether someone is truly malingering, in order to protect the constitutional rights of the accused and to insure that society is protected by prosecution only of those who understand the proceedings, courts require reports from experts who have an understanding of the accused person’s cultural background who can base his or her report on information about the person’s “past mental, emotional, or physical condition.” RCW 10.77.060(1)(a). Only with this type of awareness of the accused person’s background and experiences can the expert relay to the court the information the court needs to make a reliable conclusion.

4. *Cultural Competency is Assumed to be the Norm in Other Areas of the Legal System*

The consensus as to the importance of cultural competency has been recognized in various other legal settings, apart from a determination as to whether someone is competent to stand trial.

For instance, as Ms. Sisouvanh’s brief recounts, the issue of culturally appropriate mitigation (including evaluations by proper experts) is

standard in capital litigation. *See Brief of Appellant* at 31-32 n.10, *citing Wiggins v. Smith*, 539 U.S. 510, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003) & *Sripongs v. Calderon*, 35 F.3d 1308 (9th Cir. 1994). Such sensitivity to the role of culture requires detailed investigation of a defendant's background and experiences, often in other countries. *See, e.g., Mak v. Blodgett*, 970 F.2d 614, 617 & n.5 (9th Cir. 1992) (recounting importance of hiring an expert to discuss "serious assimilation problems experienced by many Chinese who are moved during adolescence from Hong Kong to North America, and certain values in the Chinese culture of Hong Kong which could help to explain petitioner's involvement in criminal activities here.").

Culture is important even to explain why a defendant's family had not noticed mental illness, a key issue for mitigation in capital cases:

In addition to directly impacting the interpretation or cause of mental illness, culture may erect barriers to acknowledging mental impairment. Defense teams must pay attention to ethnic background and how it may prevent a family from acknowledging or revealing a profound disability. How a disability could exist without being recognized is an issue that must be addressed in every mental health case because only in the small minority of cases do families receive adequate mental health treatment. The desire and ability to seek and follow mental health treatment are culturally bound. Studies show under what circumstances distinct cultural groups will seek and will not seek assistance, and much of that is because the mental health system is designed for the majority rather than for effective outreach in communities. [Footnote omitted] Therefore, "[a] careful

sociocultural history provides essential clinical data with which to contextualize how a patient presents with an illness.”
[Footnote omitted]

The failure of family to recognize or understand a client’s behavior may have repercussions that exacerbate the illness, leading to future ostracism, maybe even punishment, and the failure to provide needed medical services. The same may play a role at school in unidentified learning disabilities; thus, doing poorly in school may be misinterpreted as lack of interest. Some families may disregard physician advice and ignore majority cultural advice, sometimes masking multiple generations of mental health problems, mental retardation, or mental illnesses.

S. Holdman & C. Seeds, “Cultural Competency in Capital Mitigation,” 36 *Hofstra Law Review* at 916.

Outside the criminal law context, in the area of immigration law, as Ms. Sisouvanh has also noted, *Brief of Appellant* at 31-32 n.10, federal courts have repeatedly chastised immigration judges for findings that refugees lacked credibility which were based on poor interviewing techniques that lacked cultural awareness. See *Fiadjoe v. Attorney General*, 411 F.3d 135, 155 (3d Cir. 2005) (“As the INS Guidelines stated, ‘poor interview techniques/cross-cultural skills may cause faulty negative credibility findings’. They most certainly did so in this case.”); D. Forman, “Improving Asylum -Seeker Credibility Determinations: Introducing Appropriate Dispute Resolution Techniques into the Process,” 16 *Cardozo Journal of*

International and Comparative Law 207, 218-28 (2008) (recounting problems in immigration cases with credibility determinations and federal court criticism of immigration judges).

In *Fiadjoe*, the Third Circuit was concerned about making decisions about immigration status based upon demeanor and inconsistent statements, when there are many reasons, including trauma and culture, why someone might have the demeanor he or she exhibits when speaking to the authorities. *See, e.g. Fiadjoe*, 411 F.3d at 154 (citing to INS guidelines which state: “[i]t bears reiteration that the foregoing considerations of demeanor can be the products of trauma or culture, not credibility. Poor interview techniques/cross-cultural skills may cause faulty negative credibility findings.”). The same considerations apply here. Because of his lack of knowledge of Ms. Sisouvanh’s past, Dr. Strandquist was not “qualified” to evaluate for competency a Laotian refugee, born in a camp in Thailand, brought to the United States where apparently she was severely physically abused, and who then is charged with aggravated murder.

E. CONCLUSION

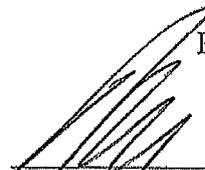
The Legislature would certainly not expect a court to appoint a Chinese psychiatrist, with professional and personal experiences only in rural China, to evaluate an Norwegian immigrant to the U.S. for competency. It

necessarily follows that the Legislature would not want Dr. Strandquist to evaluate a Laotian refugee like Ms. Sisouvanh where Dr. Strandquist himself admitted a lack of knowledge and understanding of Ms. Sisouvanh's cultural background. While the Chinese psychiatrist may have wonderful skills and be a talented evaluator, he or she would not be "qualified" when evaluating the Norwegian immigrant. Similarly, Dr. Strandquist, either who had no professional qualifications to evaluate Ms. Sisouvanh or who consciously failed to seek out information about her past and cultural background to assist him in conducting the evaluation, was not "qualified" under RCW 10.77.060(1)(a).

For the foregoing reasons, WACDL and WDA urge this Court to reverse the conviction of Ms. Sisouvanh and remand the matter for a new trial.

DATED this 9 day of April 2012.

Respectfully submitted,



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Relevant Statutory Provisions and Rules

RCW 10.77.060 provides in part:

(1)(a) Whenever a defendant has pleaded not guilty by reason of insanity, or there is reason to doubt his or her competency, the court on its own motion or on the motion of any party shall either appoint or request the secretary to designate at least two qualified experts or professional persons, one of whom shall be approved by the prosecuting attorney, to examine and report upon the mental condition of the defendant. The signed order of the court shall serve as authority for the experts to be given access to all records held by any mental health, medical, educational, or correctional facility that relate to the present or past mental, emotional, or physical condition of the defendant. At least one of the experts or professional persons appointed shall be a developmental disabilities professional if the court is advised by any party that the defendant may be developmentally disabled. Upon agreement of the parties, the court may designate one expert or professional person to conduct the examination and report on the mental condition of the defendant. For purposes of the examination, the court may order the defendant committed to a hospital or other suitably secure public or private mental health facility for a period of time necessary to complete the examination, but not to exceed fifteen days from the time of admission to the facility. If the defendant is being held in jail or other detention facility, upon agreement of the parties, the court may direct that the examination be conducted at the jail or other detention facility

U.S. Const. amend. 8 provides:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted

U.S. Const. amend. 14, § 1 provides in part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Wash. Const. art. 1, § 3 provides:

No person shall be deprived of life, liberty, or property, without due process of law.

Wash. Const. art. 1, § 14 provides:

Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted.

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,
v.
PHIENGCHAI SISOUVANH,
Appellant.

No. 85422-0
CERTIFICATE OF SERVICE

I, Alexandra Fast, certify and declare as follows:

On the 9th day of April 2012, I deposited in the United States Mail, with proper first-class postage attached, a copy of the attached "BRIEF OF AMICI CURIAE" in an envelope addressed to:

Andy Miller
Benton County Prosecuting Attorney
7122 W. Okanogan Place, Bldg. A
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I further arranged for delivery of the aforesaid brief for next day delivery (by 4/10/12) via Federal Express to Andy Miller, Benton County Prosecutor, and for delivery by ABC Legal Messenger by the close of business on April 10, 2012, to Michael Iaria and Eric Nielsen.

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

4/9/2012-SEATTLE, WA
DATE AND PLACE

Alex Fast
ALEXANDRA FAST

OFFICE RECEPTIONIST, CLERK

To: Neil Fox
Cc: mpi@iaria-law.com; 'Sheryl McCloud'; 'Ann Benson'; 'Travis Stearns';
andy.miller@co.benton.wa.us; nielsene@nwattorney.net
Subject: RE: State v. Sisouvanh, No. 85422-0, Brief of Amici Curaie WACDL and WDA

Rec. 4-9-12

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Neil Fox [<mailto:nf@neilfoxlaw.com>]
Sent: Monday, April 09, 2012 9:40 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: mpi@iaria-law.com; 'Sheryl McCloud'; 'Ann Benson'; 'Travis Stearns'; andy.miller@co.benton.wa.us; nielsene@nwattorney.net
Subject: RE: State v. Sisouvanh, No. 85422-0, Brief of Amici Curaie WACDL and WDA

Please find attached and accept for filing the Brief of Amici Curiae WACDL and WDA in State v. Sisouvanh, No. 85422-0. A certificate of service is attached to the brief.

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