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No. 87350-0

IN THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

LOUIS CHAO CHEN,

Appellant.

AMICUS CURIAE BRIEF OF
ALLIED DAILY NEWSPAPERS OF WASHINGTON,
WASHINGTON NEWSPAPER PUBLISHERS ASSOCIATION, AND
WASHINGTON COALITION FOR OPEN GOVERNMENT
IN SUPPORT OF RESPONDENT

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I. INTRODUCTION

A defendant cannot be prosecuted, and must be released or civilly committed, if he is mentally incompetent to stand trial. For that reason, a competency evaluation is important to public safety. It is the basis for highly controversial judicial decisions about whether to treat violent behavior as a criminal offense, meriting punishment, or as a mental illness needing treatment. When a defendant is accused of a heinous crime, public interest in competency decisions is especially strong.

Here, the trial court relied on a Western State Hospital evaluation when ruling that Dr. Louis Chen is competent to stand trial on charges of murdering his domestic partner and 2-year-old son. For now, the doctor is headed to trial, planning an insanity defense. But Dr. Chen's mental state has varied since his arrest in August 2011, from initial incompetence to a later determination of competence. This case illustrates the vital public importance of court-ordered competency evaluations, which are a primary basis for deciding if a criminal trial can proceed.

When a defendant's mental status is at issue, as here, public confidence in the justice system depends on ensuring that competency evaluations are reliable and accurate. If a criminal is misjudged to be incompetent, and is mistakenly released, lives and property are

endangered. On the other hand, if a truly incompetent defendant is wrongly deemed capable of standing trial, he could be punished unjustly for reasons beyond his comprehension.

In denying Dr. Chen's motion to seal his competency evaluation, the trial court correctly recognized the public's strong interest in monitoring how and why he was deemed competent, and the lack of any countervailing reason to keep the evaluation secret. This Court should reject arguments that defendants always have "privacy rights" outweighing the public's interest in monitoring competency determinations. In fact, there is no law or logic creating a right to confidentiality in this context. A man and a child were killed, and it is the public's business to determine how and why, and to prevent it from happening again.

The Legislature has mandated that courts receive competency evaluations. Once received, the evaluations are presumptively open under Article I, Section 10 of the Washington Constitution. This Court should hold that competency evaluations are part of the open administration of justice, absent an exceptional reason for secrecy not present here.

II. IDENTITY AND INTEREST OF AMICI

Allied Daily Newspapers of Washington (Allied) is a trade association representing 25 daily newspapers across the state. The

Washington Newspaper Publishers Association (WNPA) is a trade association representing 120 weekly community newspapers throughout Washington. The Washington Coalition for Open Government is a statewide nonprofit, nonpartisan organization dedicated to promoting and defending the public's right to know about the conduct of public business. These organizations ("Amici") regularly advocate for access to records in order to inform the public about matters of public concern. Their members frequently use court records as sources of newsworthy information.

Amici are interested in this case partly because it will determine whether criminal defendants may evade public scrutiny of their mental status, even after claiming incompetence or insanity. Amici also are concerned that, if Dr. Chen's position prevails, the reasons for competency decisions may be shrouded in secrecy at the expense of public safety and confidence in the justice system. In general, amici want to uphold the constitutional guarantee of open courts so that the public may know how the justice system works and have a fully informed debate as to the need for reforms.

III. DISCUSSION

A. RCW 10.77.210 Governs Mental Facilities, Not Courts.

Amici agree with the King County Prosecuting Attorney that RCW 10.77.210 does not – and constitutionally cannot – require courts to seal all competency evaluations. Brief of Resp., pp. 5, 11-13. “Courts have the inherent authority to control their records and proceedings.” Nast v. Michels, 107 Wn.2d 300, 303, 730 P.2d 54 (1986), quoting Cowles Pub. Co. v. Murphy, 96 Wn. 584, 588, 637 P.2d 966 (1981). Amici agree with the prosecutor’s analysis that motions to seal competency evaluations must be analyzed case by case under the five-part Ishikawa¹ test required by Article I, Section 10 of the Washington Constitution, and that RCW 10.77.210 must yield to constitutional protections of the public’s right to know. Allied Daily Newspapers of Wash. v. Eikenberry, 121 Wn.2d 205, 211, 848 P.2d 1258 (1993) (finding a statute unconstitutional because it imposed blanket restrictions on public access without regard to the “individualized determinations” required by Ishikawa). Without repeating the prosecutor’s arguments, this brief offers additional explanation as to why Chap. 10.77 RCW limits only what *evaluation facilities* can do with

¹ Under the five-part test first outlined in Seattle Times v. Ishikawa, 97 Wn.2d 30, 36-39, 640 P.2d 716 (1982), the court must find a “serious and imminent threat” to an important right requiring secrecy, weigh the public’s competing interest in openness, and restrict access as little as possible.

the evaluation reports, and not what happens once the reports become court records.²

1. RCW 10.77.210 expressly applies to involuntary treatment providers.

The statute at issue, RCW 10.77.210, starts by saying that any person involuntarily detained under Chap. 10.77 RCW has “the right to adequate care and individualized treatment.” Next, it says that the “person who has custody of the patient or is in charge of treatment” shall keep records of the patient’s “care and treatment” as well as “reports of periodic examinations of the patient that have been filed with the secretary.” RCW 10.77.210(1).

After stating that involuntary patients have the right to receive treatment, and that treatment facilities must maintain treatment records, RCW 77.10.210(1) then states in relevant part:

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

² Under RCW 10.77.050, “No incompetent person shall be tried, convicted or sentenced for the commission of an offense so long as such incapacity continues.” When a defendant’s competency is in doubt, the court “shall appoint” an expert to evaluate and describe “the current mental status of the defendant” and provide “an opinion as to competency.” RCW 10.77.060(1)(a) and (3).

professional persons who, upon proper showing, demonstrates a need for access to such records.

Dr. Chen relies on the latter language in arguing that courts must seal all competency evaluations so as to limit access to the specified persons. This argument is inconsistent with rules of statutory construction.

When the meaning of statutory language is plain on its face, courts must give effect to that plain meaning as an expression of what the Legislature intended. Zink v. City of Mesa, 162 Wash.App. 688, 709, 256 P.3d 384 (2011), reconsideration denied, review denied 173 Wash.2d 1010, 268 P.3d 943; Ockerman v. King County Dep't of Dev. & Env't'l Servs., 102 Wn. App. 212, 216, 6 P.3d 1214 (2000). If a statute is open to more than one reading, courts may look beyond its words to determine legislative intent. Perez-Farias v. Global Horizons, Inc., 175 Wn.2d 518, 527, 286 P.3d 46 (2012). Generally, this Court interprets statutes "so that all language is given effect, with no portion rendered meaningless or superfluous." Id. at 526.

Dr. Chen focuses on the limited list of persons who are entitled to receive involuntary patients' records under RCW 10.77.210(1). But the statute does not say that, once the records are made available to the listed persons, they cannot be distributed further. Id. It certainly does not purport to tell courts that they must seal competency evaluations, which

would be unconstitutional. Allied Daily Newspapers, 121 Wn.2d at 211.

In fact, RCW 10.77.210 does not mention competency evaluations at all.

Reading the “records....shall be made available” sentence together with the preceding sentence, which says that “the person who has custody of the patient” is responsible for maintaining patient care records, the logical inference is that RCW 10.77.210(1) as a whole applies only to the facility that has custody of patients while their competency is evaluated. This is consistent with the Court of Appeals interpretation of RCW 10.77.210 in State v. DeLauro, 163 Wn.App. 290, 258 P.3d 696 (Div. 1 2011). In that case, the Court of Appeals held that the trial court erred by denying the state’s motion to make a defendant’s competency evaluation part of the court file, when the trial court had relied on the evaluation in making a decision. Id. at 297. The Court of Appeals said:

The evaluating facility may make available any report made pursuant to chapter 10.77 RCW only to specific persons identified in RCW 10.77.210. A report considered by the court in determining competency will therefore be available for public review only if the court maintains it in the court file.

Id. (italics added). Thus, DeLauro correctly interprets RCW 10.77.210 as controlling records distribution by the “evaluating facility,” and not as a restriction on the courts which may receive evaluation records for their own purposes.

2. RCW 10.77.065(1)(a)(i) would be rendered meaningless if distribution of competency evaluations was controlled by RCW 10.77.210.

Amici's interpretation comports with the rule to construe statutes as a whole so as not to render any portions meaningless or superfluous. Perez-Farias, 175 Wn.2d at 526. The Legislature could not have intended for RCW 10.77.210 to preclude public access to competency evaluations because a separate provision of Chap. 10.77 RCW requires individual evaluators to submit competency evaluations directly to the courts. Under RCW 10.77.065(1)(a)(i), once a court appoints an expert to evaluate a defendant's competency, "The expert conducting the evaluation *shall provide his or her report and recommendation to the court* in which the criminal proceeding is pending." (Italics added). Thus, the Legislature plainly intended for competency evaluations to be court records, which are presumptively open to the public under Article I, Section 10.³ And it treated competency evaluations differently than patient care records which are distributed to courts "only upon request." RCW 10.77.210(1).

Because of RCW 10.77.065(1)(a)(i), it is simply unnecessary for courts to obtain competency evaluations from evaluation facilities under RCW 10.77.210(1). In sum, RCW 10.77.210 merely limits what

³ DeLauro, 163 Wn.App. at 291.

evaluation facilities do with their patient records. Courts obtain competency evaluations directly from court-appointed experts, rather than from the evaluation facilities governed by RCW 10.77.210(1), and courts are not statutorily restrained from making the competency reports public.

B. A Criminal Defendant has No Privacy Rights Justifying Sealing of a Competency Evaluation.

“This court has clearly and consistently held that the open administration of justice is a vital constitutional safeguard and, although not without exception, such an exception is appropriate only under the most unusual circumstances.” In re Detention of D.F.F., 172 Wn.2d 37, 41, 256 P.3d 357 (2011). Public access is zealously guarded because:

The open administration of justice assures the structural fairness of the proceedings, affirms their legitimacy, and promotes confidence in the judiciary.

Id. at 40. The controversy surrounding competency determinations, highlighted in 1997 when retired firefighter Stan Stevenson was killed by a mentally ill man who had been deemed incompetent and released just 11 days earlier, makes public scrutiny vital.⁴

Article I, Section 10’s guarantee of open justice is enforced through the following 5-part test: 1) the sealing proponent must show a compelling interest in secrecy, based on the accused’s right to a fair trial or

⁴ The Stevenson tragedy was discussed in House Bill Report 2SSB 6214, concerning 1998 amendments to Chap. 10.77 RCW.

a “serious and imminent threat” to another right; 2) anyone present during a closure motion must have an opportunity to object; 3) the closure must be the least restrictive method of protecting the threatened interest; 4) the court must weigh the competing interests of the public and the sealing proponent; and 5) any sealing must be no broader in application or duration than necessary to serve its purpose. *Id.* at 42. The alleged “right” at stake here, according to Dr. Chen, is not the right to a fair trial, but “a defendant’s rights to privacy.” App. Op. Brief, p. 17.

Dr. Chen argues that competency evaluations reference “personal information contained in confidential medical and mental health records,” such as “symptoms of mental illness” and “diagnostic findings,” and therefore should be protected as “private.” *Id.* But a criminal proceeding is brought on behalf of the people of Washington to enforce laws protecting public safety. A defendant’s interest in avoiding embarrassment ordinarily would not outweigh the public’s strong interest in seeing that criminal laws are enforced fairly and effectively, especially when the defendant faces the most serious possible charge – first-degree aggravated murder. If Dr. Chen is acquitted based on insanity, his competency evaluation will continue to have public importance, because it

can be considered in granting or denying release from civil commitment under RCW 10.77.200(2) and (3).

Wrongly or not, Dr. Chen has been accused of heinous crimes which are a matter of grave public interest. Moreover, from the outset of this case, Dr. Chen has placed his own mental status at issue. He claimed to be suffering from psychosis when urging the prosecutor not to seek the death penalty. App. Op. Brief, p. 2; Brief of Resp., p. 2. Also, his own psychiatrist reported he was not competent to stand trial. *Id.* And Dr. Chen initially agreed that the state should evaluate his competency. Brief of Resp., p. 2. Although he later claimed to have restored competency, and tried to avoid a court-ordered evaluation at Western State Hospital, he has notified the state that he will claim insanity or diminished capacity as a defense at trial. Brief of Resp., pp. 3-4. Against this backdrop, the public could not possibly monitor the fairness and appropriateness of the judicial proceedings without seeing results of the court-appointed competency evaluation.

In fact, *there is no privacy right* related to competency evaluations. RCW 10.77.020, entitled “rights of persons under this chapter,” lists the rights bestowed upon people in Dr. Chen’s position. These include the right to assistance of counsel, the right to have an attorney present during

any examination by a court-appointed expert, and the right to examination by an independent expert. RCW 10.77.020. The delineated rights of defendants of doubtful competency do *not* include privacy. If the Legislature had intended for competency evaluations to be treated confidentially, RCW 10.77.020 would have said so.

Notably, RCW 10.77.020(4) says, “In a competency evaluation conducted under this chapter, the defendant may refuse to answer any question if he or she believes his or her answers may tend to incriminate him or her.” This provision contemplates that competency evaluations *will be used as evidence* in court. This negates any notion that the Legislature intended to keep them private.

Nor is there constitutional or other authority supporting a bright-line rule to keep competency evaluations secret. On the contrary, when a murder defendant places his mental health at issue, he waives the psychiatrist-patient privilege that might otherwise apply during incarceration. In re Personal Restraint of Rice, 118 Wn.2d 876, 894, 828 P.2d 1086 (1992) (finding no violation of privilege when prosecutors obtained jail mental health records without the defendant’s permission, and when defendant presented himself as extremely disturbed, paranoid and schizoid). Once a defendant places his mental condition at issue, such

as by pursuing an insanity defense, assertion of privilege would deprive the state and jury of important evidence. State v. Hamlet, 133 Wn.2d 314, 321, 944 P.2d 1026 (1997), citing State v. Brewton, 49 Wn.App. 589, 591-92, 744 P.2d 646 (1987). A criminal defendant does not have a due process right to the confidential assistance of a psychiatrist. Hamlet at 322, citing Granviel v. Lynaugh, 881 F.2d 185, 191-92 (5th Cir. 1989).

In sum, there is no support for a bright-line rule that competency evaluations should be sealed in all cases, nor is there any unusual circumstance warranting the sealing of Dr. Chen's evaluation. There is no privacy right in this context, and even if there was, it would be outweighed by the strong public interest in ensuring that Dr. Chen's competency evaluation is a sound basis for the trial court's decisions.

C. The Public Records Act Does Not Control Sealing.

This Court has held that the Public Records Act (PRA), Chap. 42.56 RCW, does not apply to court case files. Nast, 107 Wn.2d at 304. Rather, the public has a common law right of access to court records, Id. at 303, and a constitutional right to open court records under Article I, Section 10. DeLauro, 163 Wn.App. at 294-95; Allied Daily Newspapers, 121 Wn.2d at 211. Accordingly, when a party moves to seal records that have become part of the Court's decision-making process, such as the

competency evaluation in this case, it is the constitutional Ishikawa test which applies. Dreiling v. Jain, 151 Wn.2d 900, 909-10, 93 P.3d 861 (2004).

It is not true, as Dr. Chen asserts, that a court may not disclose a record simply because an agency is enjoined from releasing it under the PRA. Dr. Chen requested the injunction under RCW 42.56.540 in response to a public records request by Q13 Fox television. CP 137, 163. Unlike the trial court, the King County prosecutor is an agency subject to the PRA. RCW 42.56.010(1); Nast, 107 Wn.2d at 304. And while amici strongly disagree with the trial court's granting of the injunction – an issue not before this Court in this appeal – the point is that RCW 42.56.540 imposes a distinctly different test than applies to court records under Article 1, Section 10. Compare D.F.F., 172 Wn.2d at 42 (describing the 5-part Ishikawa test) and Bainbridge Island Police Guild v. City of Puyallup, 172 Wn.2d 398, 420, 259 P.3d 190 (2011) (an injunction under RCW 42.56.540 may be issued if disclosure “would clearly not be in the public interest and would substantially and irreparably damage any person, or...vital government functions,” *and* if a specific public records exemption applies). A key distinction is that, while the Legislature can decide which agency records are exempt from disclosure under the PRA, it

cannot tell the courts which court records must be shielded from public view. Allied Daily Newspapers, 121 Wn.2d at 211. Statutory exemptions are therefore not controlling. Id.

It is worth noting that the PRA requester – Q13 TV – was not made a party and did not participate in the hearing on Dr. Chen’s motion for an injunction. CP 182. Thus, the party which was best equipped to address the public interest prong of the RCW 42.56.540 test - the news organization which wanted to inform the public about the competency evaluation - had no direct voice in the proceedings. Moreover, the trial court did not make any findings about the public interest in granting the injunction. CP 203. Because of these shortcomings, and because the PRA does not control decisions about sealing records filed in court, it would be erroneous to rely on a PRA injunction as a reason to seal a court record.

IV. CONCLUSION

For the foregoing reasons, the Court should affirm the sealing denial.

Dated this 15th day of April, 2013.

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Good afternoon,

Please find attached for filing and service a Motion for Leave to File Amicus Brief, and brief of Allied Daily Newspapers of Washington, Wash. Newspaper Publishers Association and Washington Coalition for Open Government, in State of Washington v. Louis Chen, Case No. 87350-0.

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