

68068-4

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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 REPLY BRIEF

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A. INTRODUCTION TO REPLY

Parish T.'s constitutional right to due process was violated when the trial court improperly ascribed him the burden of proving his incompetence to stand trial after an initial showing that there was reason to doubt his competency and an evaluation had been ordered. The State's responsive arguments are unavailing, as set forth in further detail below.

B. ARGUMENT IN REPLY

The trial court erred when it placed the burden on Parish to prove his incompetence, violating his constitutional due process rights.

1. In accordance with United States Supreme Court authority, the Legislature and the Washington Supreme Court place the burden on the State to establish a respondent's competency, after a reason to doubt competency has been proffered.

In *Medina v. California*, the United States Supreme Court held the states are afforded great deference to set which party bears the burden of proving competency to stand trial. *Medina v. California*, 505 U.S. 437, 445-46, 449, 112 S. Ct. 2572, 120 L. Ed. 2d 353 (1992) (also holding states may place on the accused no greater burden than a preponderance). Throughout Chapter 10.77 RCW, the Washington Legislature ascribes the State the burden of establishing an accused's competence once a reason to doubt his competence has been proffered.

For example, the burden is applied to the State under RCW 10.77.086, which applies when determining whether competency has been restored. *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 bore the burden under former RCW 10.77.090, which related to civil commitment for restoration of competency. *Born v. Thompson*, 154 Wn.2d 749, 753-54 & n.6, 117 P.3d 1098 (2005); *see also id.* at 775 (Owens, J. dissenting) (assessing burden of proof to State).

In light of *Medina* and these proscribed burdens throughout Chapter 10.77 RCW, it is unsurprising that the Washington Supreme Court approved of placing the burden on the State to establish an accused's competence pursuant to the initial evaluation procedures of RCW 10.77.060. In *State v. Wicklund*, the Court of Appeals certified questions to the Supreme Court regarding the application of Chapter 10.77 RCW where a court of limited jurisdiction is asked to determine whether a defendant is competent to stand trial. *State v. Wicklund*, 96 Wn.2d 798, 638 P.2d 1241 (1982). Prior to trial, Mr. Wicklund asserted his incompetence to stand trial and the court placed the burden on the State to establish the accused's competence. *Id.* at 799-800. The State sought an evaluation pursuant to RCW 10.77.060, but the

district court found it lacked jurisdiction. *Id.* at 800. In holding that the evaluation procedures set forth in RCW 10.77.060 applied to courts of limited jurisdiction, the Supreme Court confirmed that it was the State who bore the burden of establishing a defendant's competence once the court had found reason to doubt it. *Id.* at 805.

The procedural stage in *Wicklund* was identical to that at issue here. On the accused's motion, the court found reason to doubt competency to stand trial triggering a need for an evaluation. The next issue facing the court was whether the evaluation, or other evidence, established the accused's incompetence to stand trial. In *Wicklund*, the burden was put on the State. There is no basis for ascribing the burden here to Parish where it was ascribed to the State in *Wicklund*. Under *Wicklund*, the statutory provisions and this State's cases interpreting them, the trial court improperly determined that Parish bore the burden of establishing his incompetence under RCW 10.77.084 once the court had found reason to doubt his competence and ordered an evaluation pursuant to RCW 10.77.060.

2. The State's argument that the party moving for an incompetency finding should bear the burden fails to account for situations where the court moves for an evaluation, is contrary to *Wicklund*, and is illogical for additional reasons.

For the first time on appeal, the State argues that the burden of establishing competency or incompetency under RCW 10.77.084 should be ascribed to “whichever party asks a court to find a defendant incompetent to stand trial.” Resp. Br. at 7. This argument is illogical on several grounds.

First, the State's position fails to account for assessment of the burden when the court itself moves for an evaluation under RCW 10.77.060. The statute specifically provides that any party or the court may seek an evaluation of an accused's competence. RCW 10.77.060(1)(a). Under the test set forth by the State, the court would bear the burden of establishing an accused's incompetence under RCW 10.77.084. Such a result is plainly unreasonable.

Additionally, the State's argument is contrary to *Wicklund*. As discussed, in that case the defendant moved for a finding of incompetence. *Wicklund*, 96 Wn.2d at 799-800. Though the defendant requested the finding of incompetence, the trial court ascribed the State the burden of demonstrating the defendant's competence. *Id.* The

Washington Supreme Court did not dispute that application of the burden. *Id.* at 805.

Also, the bearer of the burden is not doled out according to petitioner-respondent status in any other section of Chapter 10.77 RCW. *See King Cty v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 560, 14 P.3d 133 (2000) (statutory “provisions must be considered in relation to each other, and harmonized to ensure proper construction”).

Adhering to the State’s proposed allocation would likely lead to absurd results where parties seek to force another party, the opposing side, or the court to move for a finding of incompetence in order to avoid bearing the burden. Such circumstances would not further the fundamental interest in ensuring no incompetent person is brought to trial. *E.g., Wicklund*, 96 Wn.2d at 800. This Court should reject the State’s illogical position.

3. The State’s focus on the presumption of competence is unpersuasive.

In arguing that the juvenile court appropriately ascribed Parish the burden of proving his incompetence, the State relies heavily on the legal presumption of competence. *E.g., Resp. Br.* at 7. The State argues that, because the law presumes an accused is competent, the

movant must be assigned the burden of overcoming that presumption. But the State's argument ignores that a trial court evaluating competency under RCW 10.77.084 has already made the determination that the presumption of competency does not apply to this accused. To order an evaluation pursuant to RCW 10.77.060, the court must find "there is reason to doubt his or her competency." RCW 10.77.060. Thus, the presumption of competence does not dictate to whom the burden of demonstrating competency or incompetency is assessed because RCW 10.77.060 and -.084 ensure that the court must make that determination only after it has already found a reason to doubt the presumption of competence.

The cases relied on by the State do not counsel otherwise. In *In re Rhome*, 172 Wn.2d 654, 663, 260 P.3d 874 (2011), the Court evaluated the waiver standards for an insanity plea and the right to counsel. *See* Resp. Br. at 7 (citing *Rhome*, 172 Wn.2d 654). In discussing its prior *Hahn* decision on the same topic, the Court noted that a "competency [to stand trial] determination reflects that the defense did not meet its burden of overcoming the general presumption of competency to stand trial." 172 Wn.2d at 663 n.2 (citing *State v. Hahn*, 106 Wn.2d 885, 726 P.2d 25 (1986)). First, this excerpt of a

footnote is dicta. Second, it is unclear whether the Court intended to convey that the defense did not demonstrate a “reason to doubt his or her competency” pursuant to RCW 10.77.060 or that the presumption was not overcome under RCW 10.77.084. This *Rhome* decision thus provides no support for the State’s position.

The State goes on to cite to several cases discussing the presumption of competency. Resp. Br. at 7-9. However, none of the cases address the circumstances presented here, where the court has already overcome the presumption in finding reason to doubt an accused’s competence. *See* RCW 10.77.060(1)(a). The cases also do not discuss the bearer of the burden, which is squarely at issue here.

Moreover, the State’s reliance on *State v. Allen*, which holds “a confession by a mentally ill defendant should be admissible with the defendant at liberty to introduce evidence of any circumstances that might affect its voluntariness or its probative value[,]” is also inapposite. *See* Resp. Br. at 7 (citing *State v. Allen*, 67 Wn.2d 238, 242, 406 P.2d 950 (1965)). As the State recognizes, the *Allen* case is of little persuasive value as it relates to the admissibility of a confession, not competency to stand trial. *See id.* (using “see also” for citation). Further, as previously discussed, when determining competency under

RCW 10.77.084, the court has already found there is reason to doubt the accused's competence. Thus the presumption has already been disrupted.

Finally, as discussed in Parish's opening brief, *State v. Harris* does not control with whom the burden is placed under RCW 10.77.084. *See* Resp. Br. at 7 (citing *State v. Harris*, 114 Wn.2d 419, 789 P.2d 60 (1990)). In *Harris* the Court did not interpret RCW 10.77. Instead, as the State recognizes, the issue was competency to be put to death. 114 Wn.2d at 426. In fact, the Court noted the potency of the distinction, stating "The procedures set forth in RCW 10.77 were not designed to apply following conviction." *Id.* at 437. Though the *Harris* Court likened the definition of competency for purposes of execution to that required to withstand trial, the Court did not evaluate the thrust of the issue here, the procedures required to determine competency under RCW 10.77. *See id.* at 427-29.

4. Reversal of the adjudication is the appropriate remedy.

In his opening brief, Parish argued reversal is required because the improper assessment of the burden of proof constitutes a structural error. An error that relieves the State of the burden of proof is structural and not subject to harmless error analysis. *State v. Grenning*,

(1966); *Dusky v. United States*, 362 U.S. 402, 403, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960). On this record, no “meaningful hearing” could be had on remand. *See* Resp. Br. at 14 (arguing a retrospective competency determination may be had where meaningful hearing is still possible and citing cases); *Renfro*, 825 F.2d at 767 (noting no meaningful hearing can be had where record is sparse and remanding to trial court to decide whether retrospective determination can be made); *United States v. Johns*, 728 F.2d 953, 957-58 (7th Cir. 1984) (same). The Court should decline to remand for a retrospective determination or, in the alternative, allow the juvenile court to determine whether it can decide the issue retrospectively under the appropriate standard.

C. CONCLUSION

For the reasons set forth above and in Parish’s opening brief, the Court should reverse the adjudication because the juvenile court violated Parish’s constitutional right to due process by failing to comply with the procedures for determining competency to stand trial.

DATED this 6th day of September, 2012.

Respectfully submitted,



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

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

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STATE OF WASHINGTON

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