health care, and exempting it would be inconsistent with the PRA's broad disclosure policy.

The dissent disagreed with such a distinction and argued that forensic examinations may necessarily include health care information and should be protected with the same sensitivity despite its primary use. Neither the dissent nor the majority chose to comment on the federal HIPAA laws.

Due Process Rights in the Sexually Violent Predator Statute

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The Washington State Supreme Court Ruled That Commitment Based on Sexual Offense Committed as Juvenile Does Not Violate a Defendant's Due Process Rights Under the State's Sexually Violent Predator Statute

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Troy Belcher was civilly committed at the age of 26 as a sexually violent predator. Four years later, the superior court ordered him to be indefinitely committed, basing its decision on sexually violent crimes he perpetrated as a juvenile, a diagnosis of antisocial personality disorder (ASPD), and a finding that he was at high risk to reoffend. Mr. Belcher appealed, arguing that his civil commitment violated due process because a person could be indefinitely confined for an act committed as a juvenile. He also challenged the use of ASPD as the diagnostic basis for his commitment and a court expert's use of an assessment tool. In *In re Det. of Belcher,* 9 P.3d 1179 (Wash. 2017), the Washington State Supreme Court ruled that juvenile offenses can serve as the basis for continued commitment, ASPD constitutes a mental abnormality for purposes of the statute, and actuarial tools (even if not focused on sexual offenses) can be used to assist in assessing the likelihood of reoffense.

Facts of the Case

In 1998, at the age of 13, Troy Belcher followed a 13-year-old girl from a park to the house in which she was babysitting, forced his way inside, and vaginally raped her. He was found guilty of second-degree rape and sentenced to 65 weeks of juvenile rehabilitation. Two years later, while on parole, Mr. Belcher took a 13-year-old girl through the woods, pulled down her pants, pinned her to the ground, and threatened to harm her. He was found guilty of second-degree attempted rape and sentenced to another 256 weeks. In 2004, at the age of 19 and in correctional custody, Mr. Belcher asked a fellow inmate about having his first victim killed. He was charged with solicitation to commit first-degree murder and intimidating a witness; he pleaded guilty to the latter charge and was sentenced to 27 months in prison.

The state of Washington moved to have Mr. Belcher civilly committed as a sexually violent predator (SVP), and he was formally committed in 2011 following a jury trial. In 2015, Mr. Belcher was retried to determine if he still met the criteria of an SVP pursuant to Wash. Rev. Code § 71.09.090 (2012), which states that an SVP is "any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility." State expert psychologist Dr. Brian Judd diagnosed Mr. Belcher with ASPD with high levels of psychopathy along with a provisional paraphilia diagnosis using DSM-5 and the Hare Psychopathy Checklist-Revised (PCL-R). Dr. Judd opined that Mr. Belcher's diagnosis was significant enough to qualify as a "mental abnormality" and that his high level of psychopathy could correlate with future offenses encompassing greater violence. Dr. Judd also utilized the Violence Risk Appraisal Guide-Revised (VRAG-R) to determine that Mr. Belcher's risk of reoffense was in the highest risk group.

The trial court found that Mr. Belcher continued to meet the definition of an SVP. Mr. Belcher appealed, arguing that his civil commitment violated due process by using a sexually violent juvenile crime as the predicate offense, by employing an imprecise psychological instrument to assess his risk of reoffense, and by labeling him with ASPD, which he argued was not a sufficient enough diagnosis to justify the SVP statute. The court of appeals affirmed the

trial court, after which Mr. Belcher petitioned the Washington State Supreme Court for review.

Ruling and Reasoning

The Washington Supreme Court affirmed the trial court, opining that Mr. Belcher continued to meet SVP criteria pursuant to Wash. Rev. Code § 71.09.090 (2012). The court considered three main questions. The first was whether using a sexually violent juvenile crime as the predicate offense in a civil commitment proceeding violated due process as Mr. Belcher argued. The court cited *In re Det. of Anderson,* 8 P.3d 162, 166 (Wash. 2016) to reason that the legislature did not exclude juvenile adjudications under this statute, suggesting that juvenile offenses could be considered to meet the statute's criteria. Citing *State v. McCuistion*, 5 P.3d 1092, 1100 (Wash. 2012), the court stated that due process demands a civilly committed person be "release[d] upon showing that he is no longer mentally ill or dangerous." Because the SVP statute requires a yearly evaluation to determine whether the individual continues to meet the criteria of an SVP, the court reasoned that this provided ample opportunity for release once the SVP is no longer mentally ill or dangerous, thereby providing sufficient process to justify civil commitment.

The second question the court considered was whether a diagnosis of ASPD constitutes a mental abnormality for the purposes of the SVP statute. Mr. Belcher argued that ASPD, regardless of severity, is not enough for indefinite commitment, and that ASPD with high levels of psychopathy is a nonexistent diagnosis and should have been disregarded by the lower courts. The court disagreed, reasoning that psychiatric medicine is an imprecise science subject to differing opinions as to what is considered mental illness. The court believed that it was not simply the diagnosis that rendered someone an SVP, but rather the diagnosis coupled with a history of sexual violence that led to a serious lack of control and an increased risk of reoffense. The court gave strong weight to Dr. Judd's opinions that Mr. Belcher had ASPD with high levels of psychopathy and possible paraphilia, findings that strongly suggested Mr. Belcher had a significantly impaired ability to control his sexually violent behavior and, therefore, would be highly likely to commit future violent crimes. Thus, the reviewing court found that Mr. Belcher's diagnosis, serious lack of control, and likely future dangerousness were an appropriate foundation for civil commitment.

The third and final question the court considered was whether Dr. Judd's use of the VRAG-R instrument violated due process. Mr. Belcher argued that the VRAG-R is limited and non-specific because it only assesses a subject's risk of committing a future violent act and not specifically a sexually violent one as required by both due process and the SVP statute. Mr. Belcher contended that the tool cannot differentiate him from a typical recidivist and, thus, should be disregarded as actuarial evidence. The reviewing court opined that, as with all expert testimony, the use of an actuarial instrument is subject to the rigors of the Rules of Evidence, citing *In re Det. of Thorell,* P.3d 708 (Wash. 2003), thereby making the tool reasonably admissible. Additionally, because the relevance of this evidence was acknowledged by counsel and not contested at trial, the reviewing court found no reason to consider the evidence irrelevant or inadmissible. There was no suggestion that the trial judge relied exclusively on the VRAG-R findings; testimony from Mr. Belcher's expert witness was also considered by the judge and was found to be less reliable and convincing. The reviewing court, therefore, found that the trial judge properly utilized the VRAG-R in forming an opinion and its use did not violate due process.

Discussion

This case highlights the essence of the SVP statute as is currently written in the state of Washington. According to holdings from the landmark cases *Kansas v. Crane*, 534 U.S. 407 (2002) and *Kansas v. Hendricks*, 521 U.S. 346 (1997), SVP statutes allow for a personality disorder, even a controversial one such as ASPD, to be a justifiable diagnosis for civil commitment, which is an interesting inclusion considering the fields of law and psychiatry have varying opinions as to the appropriate dispositions of antisocial individuals who commit crimes. Generally, a personality disorder is not accepted as a significant mental illness within the legal system; the standard for SVP is a frank exception to this principle.

From these holdings, important questions arise for the field of forensic psychiatry. For one, do we have enough scientific evidence to differentiate antisocial personality disordered individuals who commit violent sex crimes from typical individuals who commit the same offenses? What factors separate these two

demographics in the first place? Can ASPD, a diagnosis that requires failure to conform to lawful behaviors as indicated by repeated arrests according to diagnostic criteria in the DSM-5, be accurately applied to reoffenders in both of the previously mentioned demographics? If so, can any reoffending individual then be civilly committed based on the SVP statute as currently written? The evolution of SVP standards will hinge on how these issues are considered by the legal and psychiatric communities.

Refiling Charges on an Unrestored Defendant

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Defendant Previously Found Incompetent to Stand Trial Can Be Rearrested on a Refiled Felony Charge and a New Competency Hearing Can Be Ordered

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In *Jackson v. Superior Court*, 406 P.3d 782 (Cal. 2017), the California Supreme Court considered whether the state legislature intended for commitment for competency restoration for the maximum period authorized by law to be a categorical bar to further criminal proceedings.

Facts of the Case

Patrick Lowell Jackson was charged with felony sexual misconduct. The trial court found Mr. Jackson incompetent to stand trial, and he was ordered to receive treatment for restoration at a state hospital. Mr. Jackson did not regain competence within California's three-year statutory maximum period for involuntary commitment for a felony charge. He was returned to the trial court, and proceedings for civil conservatorship were initiated. However, Mr. Jackson did not meet criteria for conservatorship and was released from custody.

Three days later, the prosecution obtained a grand jury indictment for the identical charge for the identical alleged conduct, as permitted under Cal. Penal Code § 1387 (2013), and moved to dismiss the original complaint. Mr. Jackson was rearrested. A doubt as to his competence was raised again, and the criminal proceedings were again suspended.

Mr. Jackson did not have a second competency hearing, however, because the defense moved for Mr. Jackson's release, arguing that a defendant could not be confined in connection with refiled charges after already being committed for the maximum period, as per Cal. Penal Code § 1370 (2015) (all subsequent statutory references are to the Cal. Penal Code), for the identical alleged crime in the original complaint. The trial court denied the motion.

Mr. Jackson then filed a writ of mandate petition with the Fourth District Court of Appeal. The district court unanimously affirmed the trial court's decision. Further, the court urged the legislature to examine Cal. Penal Code § 1370 and to advise trial courts statewide on the options when faced with an incompetent defendant who has reached the maximum time for restoration.

Ruling and Reasoning

The California Supreme Court unanimously affirmed the judgment of the district court. In its reasoning, the court first examined the "interaction between § 1387 and 1370" of the California Penal Code (*Jackson*, p 5). The "two-dismissal rule," embodied in § 1387, protects the right to a speedy trial by prohibiting the repeated dismissal and refiling of charges. The court proceeded in its opinion by establishing that Mr. Jackson's felony complaint had been a qualifying dismissal per the two-dismissal rule, citing the associated state senate bill. "Existing law provides for a felony action to be refiled one time . . . . When the case is dismissed, the defendant is re-arrested, re-booked, a new case is filed, and the case processing begins anew" (*Jackson*, p 6, citing Sen. Com. Judiciary (1992)).

Next, the court reviewed Mr. Jackson's contention that his commitment for the maximum period allowed by law blocks further criminal proceedings for the refiled complaint. The court looked at legislative history and determined that the language of § 1387 does not exclude new competency hearings in the context of the renewed case and that the language of § 1370 does not exclude commitment following