versarial system they do not understand or appreciate, in violation of due process.

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Redaction of Court-Ordered Competence to Stand Trial Evaluations

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The Vermont Rules for Public Access to Court Records (P.A.C.R.) State That Relevant Portions of Competency Reports Otherwise Accessible by the Public May be Redacted but Require a Specific Finding of "Good Cause" and "Exceptional Circumstances" on a Case-Specific Basis

In the current case, the Vermont Supreme Court combined two Superior Court cases in which the judge made similar rulings. In *State v. Gotavaskas*, 134 A.3d 536 (Vt. 2015), the Vermont Supreme Court reversed decisions by a superior court judge to seal portions of competence-to-stand-trial reports of defendants in two separate criminal cases. The Vermont Supreme Court held that the Vermont Rules for Public Access to Court Records (P.A.C.R., 2015) required a necessary showing of "good cause" and "exceptional circumstances" on a case-by-case basis to redact nonrelevant portions of a forensic report entered into evidence. The cases were reversed and remanded to the superior court so that proper findings could be made on the relevance of information in the competence reports.

Facts of the Case

Anthony Gotavaskas was charged with burglary of an occupied dwelling, providing false information, and operation of a motor vehicle without the owner's consent in 2013. During arraignment, he raised the question of competence to stand trial, and the trial court ordered an evaluation of his competence. He was evaluated by a psychiatrist who opined that he was competent. The state offered the competency evaluation into evidence during a competency hearing, arguing that the entire report should be entered into evidence under Vt. Stat. Ann. tit. 13, § 4816(e) (2015). Mr. Gotavaskas stipulated to the finding of competence but objected to the admission of the entire report into evidence. He offered a redacted report which excluded portions that he felt were not relevant to the opinion. The state argued that the psychiatrist relied on all portions of the report to reach his decision; thus, the entire report should be entered into evidence. The court redacted the competency report to include only information about the psychiatrist's impression of Mr. Gotavaskas and specific findings related to competence. The nonredacted portions of the report were entered into evidence, and the redacted portions were excluded because the court felt they were "less relevant" to the finding of competency.

Approximately six months later, Mr. Gotavaskas was evaluated by the same psychiatrist, who opined Mr. Gotavaskas was not competent to stand trial, and the court so ruled. Both parties stipulated to a finding of incompetency but again disagreed about the portions of the report that should be entered into evidence.

The second case involved Grant Bercik, who was charged with simple assault in September 2013. Several months later, the court granted motions for competency and sanity evaluations. Mr. Bercik was evaluated by a psychiatrist who opined that he was not competent to stand trial. During the competency hearing, the state and the defense both agreed that Mr. Bercik was not competent, but differed regarding whether the competency report would be admitted into evidence. The state argued to have the entire report admitted into evidence, but Mr. Bercik requested that the court temporarily seal the report. Although the report was not entered into evidence, the court made a finding of incompetency based on the conclusions contained in the report and sealed it.

The two defendants moved for the court to redact their competency evaluations to include only portions relevant to competency pursuant to Vt. Stat. Ann. tit. 13, §4816(e)(2015) and the P.A.C.R. § 6(a) (2015). The court granted the defendants' motions, ruling that the defendants had a privacy interest and that the redacted information ("personal history, past diagnoses, medical and substance abuse history,

and observations regarding criminal responsibility"; *Gotavaskas*, p 15) was not sufficiently related to competency to be released publicly.

The state argued that the full report should be entered into evidence because of the public's right to access legal information. The defendants argued that they had a right to privacy, given the sensitive nature of a psychological evaluation.

Ruling and Reasoning

The Vermont Supreme Court relied on a previous case *State v. Whitney*, 888 A.2d 1200 (Vt. 2005), which stated that a court cannot use a competency report as a basis for a legal finding of competency if it is not part of the record and entered into evidence. However, if the court relies on the report to determine competency, the report must be entered into evidence, based on both the Vermont statute and P.A.C.R. (2015). *Whitney* also established that relevant portions of the report may be redacted where the necessary showing of "good cause" and "exceptional circumstances" have been made under P.A.C.R. (2015). In the two cases before the court, the superior court did not make findings of "good cause" and "exceptional circumstances" and did not properly use the Vermont Rules of Evidence (V.R.E) to determine relevance. For this reason, the court reversed the decisions to redact the competency reports and remanded the cases for proceedings that may allow the lower court to make the proper case-specific findings according to the V.R.E.

Dissent

Justice Skoglund dissented from the majority decision, stating that the law allows a trial judge to be given significant deference in determining which relevant portions of a competency evaluation will be admitted into evidence. In the two cases, the trial court appropriately decided which parts of the report were relevant (e.g., "evaluator's impressions of the defendant and specific findings of competency") and which were not relevant (e.g., "personal history, past diagnoses, medical and substance abuse history") (*Gotavaskas*, p 38). In *State v. Oakes*, 276 A.2d 18 (Vt. 1971), the court found that the trial court has significant discretion over admissibility of competency evaluations. This evidentiary decision is the trial court's and should not be overturned unless "untenable." Although the court's decision of whether a criminal defendant is competent to stand trial is in the public's interest, the public does not have any legitimate interest in a defendant's "early childhood education, his family's medical and psychological history, and any history of abuse or neglect. Nor would any such information tend to show a defendant's competency is more or less probable than it would be without the evidence" (*Gotavaskas*, p 51). The amount of private information in a competency evaluation suggests that the trial courts should be encouraged to use this type of analysis.

Discussion

The P.A.C.R. (2015), the V.R.E., and Vt. Stat. Ann. tit.13, §4816(e) (2015) are Vermont statutes and rules that guide courts in the admissibility of evidence with regard to forensic reports. These two cases do not involve disagreement about the opinions included in the competence-to-stand-trial evaluations or the court's rulings about competence. Rather, the crux of these cases involves the balance between the public's right to evidence the court used to make a decision and the privacy rights of individuals who were evaluated in a forensic capacity. In *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, (1980), the Supreme Court of the United States held that public access to a trial "historically has been thought to enhance the integrity and quality of what takes place" (p 578). This includes access to evidence, which insures an open process and public perception of fairness. However, persons with mental health problems can be particularly vulnerable to stigma, prejudice, and negative public attitudes, which contribute to reduced self-esteem and access to social opportunities (Corrigan P: How stigma interferes with mental health care. *Am Psychol* 59:614–25, 2004) and could also impair their ability to receive a fair trial. Thus, it is imperative that courts properly balance the competing needs of the public and the defendant.

The Vermont statute gives the court the option to redact specific, nonrelevant information with good reason and explanation. In the current case, the Vermont Supreme Court clarified that the trial judge should provide an explicit rationale, consistent with the V.R.E., for redaction.

Forensic evaluators should be aware of the tension between the need to be thorough in reporting all relevant data and concerns regarding privacy. Respective professional guidelines (American Psychiatric Association, The Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry

2013 Edition, 4.5; Mossman *et al.*, AAPL Practice Guideline for the Forensic Psychiatric Evaluation of Competence to Stand Trial, 2007; American Psychological Association, Specialty Guidelines for Forensic Psychology, 2013, 10.01) indicate that forensic practitioners should report only information relevant to the legal matter. Although evaluators most likely have obtained detailed historical and clinical information in preparing written reports for competence to stand trial, forensic professionals should carefully consider which information is pertinent to the determination of adjudicative competence and restoration.

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Termination of Parental Rights of Mother with Mental Disabilities

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Evidence Found Sufficient to Meet Appropriate Standard for Termination

In re Gabriella A, 127 A.3d 948 (Conn. 2015), is a case involving a respondent mother who appealed claiming that the appellate court erred in affirming the trial court ruling that terminated her parental rights and denied her motion to revoke commitment of her child (*In re Gabriella A.*, 104A.3d 805(Conn. App. Ct. 2014)). The Supreme Court of Connecticut affirmed the decision of the appellate court, holding that the trial court had sufficient evidence to find that the petitioner proved, by clear and convincing evidence, that the respondent was unable to benefit from reunification services facilitated by the petitioner.

Facts of the Case

The respondent, Ms. E., had five children in her native Jamaica who were with their father, and two children, Gabriella A. and Erica M., in Connecticut. During this appeal, Ms. E.'s parental rights of Erica were also terminated. The Department of Children and Families (DCF) intervened shortly after Gabriella's birth because of the hospital staff's concerns that Ms. E. lacked provisions for her care. On April 9, 2011, Ms. E. left for Jamaica, leaving Gabriella (6 weeks old at the time) and Erica (age 10 years), in the care of Ms. Nicolette R. (whose relationship to Ms. E. and her children is unclear). On August 25, 2011, a DCF social worker removed Gabriella, Erica, and a third child, Samantha R., from the care of Ms. R. after discovering a cell phone with videos of the children engaging in sexual behavior and violence against Gabriella. DCF filed an *ex parte* motion on August 29, 2011, for an order of temporary custody of Erica and Gabriella, arguing they were in immediate physical danger. On November 18, 2011, the court adjudicated Gabriella neglected and committed her to the care and custody of DCF.

During this time, Ms. E. had returned to the United States. A reunification permanency plan was established on July 3, 2012. It mandated that Ms. E. obtain adequate housing, find a legal means of income, and attend counseling to develop safe and appropriate parenting skills. DCF was ordered to facilitate this process by referring Ms. E. to appropriate services and monitoring her compliance and progress.

Ms. E. was referred to Radiance Innovative Services (Radiance) for individual therapy and classes on parenting and parenting with sexually abused children. Case management services were provided for immigration, housing, and employment assistance. Ms. E. was discharged from Radiance in December 2012 when the DCF contract expired. She had attended 14 of 24 counseling sessions. She was then referred for individual therapy. Ms. E. received supervised visits with Gabriella. In therapy, Ms. E. disclosed a significant trauma history including childhood sexual abuse, abandonment, witnessing domestic violence, and as an adult, arrest, probation sentence, and removal of six of her children.

On February 6, 2013, Ms. E. filed to revoke commitment of her children. On March 14, 2013, DCF filed to terminate her parental rights over Gabriella pursuant to Conn. Gen. Stat. § 17a-112(j) (2013). DCF claimed Ms. E. was unable or unwilling to benefit from DCF's reasonable efforts at reunification. A permanency plan for termination of parental rights and adoption was filed. Derek A. Franklin, a licensed clinical psychologist, was appointed to evaluate Ms.