Middle District of Florida Unseals Competency Evaluation Report of Man Accused of Terrorism

By Timothy J. Conner

On January 25 the United States Court for the Middle District of Florida unsealed roughly 90 percent of a competency evaluation report of a man accused of a terror plot. Federal authorities have accused 20 year old Joshua Ryne Goldberg of Orange Park, Florida, of conspiring to have a pressure cooker bomb detonated at a 9/11 memorial event in Kansas City, Mo, in September 2015. *United States v. Goldberg,* No. 3:15-MJ-1170. He is charged under a criminal complaint with distributing information related to explosives, destructive devices and weapons of mass destruction.

Following his arrest, defense attorneys argued he was not competent to stand trial, and he was ordered to undergo an evaluation by a court appointed psychologist. The standard for determining whether a defendant is mentally competent to stand trial is whether the defendant "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and [if] he has a rational as well as factual understanding of the proceedings against him." *Johnston v. Singletary*, 162 F. 3d 630, 634 n.4 (11th Cir. 1988). Goldberg underwent an evaluation by Lisa B. Feldman, Psy.D., between September 2015 and November 2015. She issued a competency report and provided it to the Court and to counsel.

The media argued that the common law and First Amendment rights of access outweighed any alleged privacy interests asserted by Goldberg.

On December 14, 2015, the court held a hearing to determine competency, which was open to the public. Dr. Feldman testified regarding her findings, and her conclusion that Goldberg was not currently competent to stand trial. The court also received into evidence the competency evaluation report as Government's Exhibit No. 2. In its written Order the Court ruled "[a]fter hearing testimony from Dr. Feldman and reviewing the Government's exhibits, the court finds that Defendant is mentally incompetent to stand trial at the present time because he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense."

At the competency hearing the defense requested that the Court place Dr. Feldman's report under seal. The court indicate it would temporarily place the report under seal, but directed the defense to file a motion to seal explaining the basis for sealing, for the United States to state its position on sealing the report, and invited other "interested parties" to submit any motion by

(Continued on page 34)

(Continued from page 33)

December 29, 2015. The defense promptly filed an "unopposed" motion to seal, arguing that the entire report should be sealed as it revealed personal and private information about Goldberg that was protected by a right to privacy. The United States agreed, and filed no opposition.

Media Interests Intervene and Move to Unseal

A coalition of media interests filed a Motion to Intervene and Opposition to the Motion to Seal on December 29, 2015. The media argued that the common law and First Amendment rights of access outweighed any alleged privacy interests asserted by Goldberg. Although there is a little federal law directly on point, there are several important state court decisions which have addressed competency hearings and reports and the need for public access.

In one key case, *Poole v. South Dade Nursing & Rehabilitation Center*, 139 So. 3d 436 (Fla. 3d DCA 2014), the Court offered the following analysis:

> In forensic examinations, the person being examined is not seeking care and treatment. … In the instant case, the physicians were consulted for purposes of examinations only, not for treatment. The purpose behind the examinations was to assist the court in determining whether the defendant was capable of participating in the criminal process. Any reports resulting from such an examination are intended to be communicated outside the patient-physician relationship. Thus, they are not the type of patient's medical record generally entitled to confidentiality protection.

139 So. 2d at 441-442.

Other state courts have also found both competency proceedings and reports to be open. *See, e.g., State v. Chew*, 309 P.3d 410 (Wash. 2013) (*en banc*)("competency evaluations are presumptively open once they become court records"); *State v. Koch*, 169 Vt. 109, 730 A.2d 577 (Vermont 1999)(non-hospitalization order); *In re Times-World Corp.,* 488 S.E.2d 677 (Vir. App. 1997) (holding that documents which were admitted into evidence during a competency proceeding should have been open to the public); *Soc. of Prof. Journalists, Utah Chapter v. Bullock*, 743 P.2d 1166 (Utah 1997) (holding that pretrial competency proceedings in criminal cases may be closed only upon a showing that access raises a realistic likelihood of prejudice to the defendant's right to a fair trial); *Express-News Corp. v. MacRae*, 787 S.W.2d 451 (Tx. App.

(Continued on page 35)

(Continued from page 34)

1990) (holding the examination and report were "criminal law matters" and thus it was error for trial court to deny media's motion for access to competency report).

In federal court, mental competency hearings have historically been open to the public in the absence of specific facts supporting closure. *United States v. Guerrero,* 693 F.3d 990, 1000-02 (9th Cir. 2012); *United States v. Curran,* 2006 WL 1159855 (D. Ariz. 2006)(unpublished); *United States v. Moussaoui*, 2002 WL 1311734 (E.D. Va. 2002)(unpublished). In *United States v. Guerrero*, 693 F.3d 990, 1000-02 (9th Cir. 2012), the Court ruled that the district court did not commit clear error by denying a criminal defendant's motion to close a competency hearing. The Court held that there is a clear qualified First Amendment right of access to mental competency hearings and "related filings."

The Court Unseals the Competency Report

On January 25, 2016, the Court held a hearing on the media's opposition to the sealing of the competency report. After hearing argument, the Court indicated that it planned to unseal a significant amount of the competency evaluation report immediately, and took a brief recess. Following the recess, the Court unsealed 90 percent of the report, and redacted the remainder. The redacted portions consisted mainly of portions that provide personal background information. The Judge indicated he wanted to consider the redacted material more carefully, and would issue a future ruling on whether it should be unsealed as well. The Judge stated, however, that he did not want to hold up release of the vast majority of the report while he considered the remaining portions, and that is why he went ahead and unsealed most of the report on the spot. The Judge actually hand redacted the information, made copies for counsel, and handed those copies out in open court, honoring the principle of "news delayed is news denied."

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Timothy J. Conner, and Jennifer A. Mansfield, Holland & Knight LLP, Jacksonville, FL, represented Morris Publishing Group LLC, d/b/a The Florida Times-Union, The Associated Press, Multimedia Holdings Corporation d/b/a WTLV/WJXX First Coast News, Graham Media Group, Florida, Inc., d/b/a WJXT News4Jax, and Cox Television Jacksonville, LLC, WJAX/ WFOX, and Edward L. Birk, Marks Gray, P.A., Jacksonville, FL, represented Graham Media Group, Florida, Inc., d/b/a WJXT News4Jax..