VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA	)	**CRIMINAL NUMBERS**	**FE-2021-658,**
VERSUS	)		**FE-2021-715**
ALEXANDER RYAN BELLINI	)		

MEMORANDUM OPINION AND ORDER

Before the Court is a matter of first impression: *Whether psychological reports from a sanity evaluation that have been admitted into evidence in support of an uncontested Not Guilty by Reason of Insanity plea should be open to public inspection or should be sealed.*[1] For the reasons stated in this Opinion, the Court holds that the psychological reports, having been admitted into evidence, should be, and hereby are, open to public inspection.

I. Background

After the death of Christopher Bellini on October 22, 2020, Alexander Ryan Bellini ("Defendant") was charged with second degree murder and violating a protective order.[2] The Defendant entered a not guilty plea, and the Fairfax County General District Court certified the case to the grand jury. On November 15, 2021, the grand jury indicted the Defendant on counts of murder, violation of a protective order, and breaking and entering while armed in FE-2021-658, and with assault on a police officer in FE-2021-715.

The Defendant presented his notice of intent to present evidence of insanity pursuant to Virginia Code

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[1] The reports are in the court's file at the present time but have not been opened for public inspection, pending the resolution of this matter.

[2] The Defendant is the son of the decedent.

§ 19.2-169.5 in FE-2021-658 on January 31, 2022.[3] On February 18, 2022, the Court ordered the appointment of a sanity evaluator for the Defendant. On August 10, 2022, the Commonwealth moved for appointment of an expert to evaluate the Defendant pursuant to Virginia Code § 19.2-168.1.[4] The Court ordered that the Defendant be evaluated by a licensed clinical psychologist and that the evaluator submit her report to both parties.

On March 2, 2023, the matter came before the Court for a change in plea, in which the Defendant entered an uncontested Not Guilty By Reason of Insanity plea. After making a finding that the plea was made freely, intelligently, and voluntarily, and with a full understanding of the nature of the charges and the consequences of the plea, the Court accepted the plea. After the Court accepted the Defendant's plea, the issue of disclosure of the sanity evaluations arose when one of the victim's daughters noted that she had not seen the evaluation reports but wished to review the reports. The Court asked the Commonwealth's and the Defendant's views on the matter, ordered briefing, and received briefs from both parties. Neither party sought oral arguments, and so the matter is now ripe for disposition.

II. Position of the Parties

a. Commonwealth

The Commonwealth argues that the psychological reports *admitted* into evidence in support of an uncontested Not Guilty By Reason of Insanity plea should be open to public inspection. The Commonwealth relies upon the principle that admitted court records are presumptively open to the public, and that, in order to have such records sealed, the defendant would have to establish that disclosure of the records would cause

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[3] On June 6, 2022, the Defendant also moved for a mental health evaluation regarding the Defendant's sanity at the time of the offense in FE-2021-715.

[4] This statute permits the Commonwealth to seek a sanity evaluation after the defense provides notice of its intention to present evidence of insanity pursuant to Virginia Code § 19.2-168. *See* Va. Code §§ 19.2-168 and 19.2-168.1.

actual harm. The Commonwealth contends that the Defendant has not established such harm in this case.

b. Defendant

The Defendant requests that the Court seal the records from the sanity evaluation. The Defendant concedes that the Court has the authority to control its own records, but argues that there is a compelling interest in sealing mental health records, especially in this case where the records contain a substantial amount of the Defendant's personal mental health information.[5]

III. Analysis

There is no controlling legal authority on this issue. Consequently, the Court has considered the presumption of openness in court records and the public interest in access to such records, especially records actually admitted into evidence.

a. Virginia Law

i. Access to Judicial Records

Virginia Code § 17.1-208(B) states: "[e]xcept as otherwise provided by law, any records that are maintained by the clerks of the circuit courts shall be open to inspection in the office of the clerk by any person . . . ."[6] The Supreme Court of Virginia has defined judicial records as "documents filed with the court

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[5] The Defendant notes, however, that "he consents to the records being made available to review by the victims in this case." Def. Br. at 2.

[6] Va. Code § 17.1-208(A) indicates "For the purposes of this section, 'confidential court records,' 'court records,' and 'nonconfidential court records' shall have the same meaning as set forth in § 17.1-292." Pursuant to Va. Code § 17.1-292(B):

> "Confidential court records" means court records maintained by a clerk of a court of record, as defined in § 1-212, or a court not of record, as defined in § 16.1-69.5, and recognized as confidential under any applicable law or sealed pursuant to court order.
> "Court records" means any record maintained by the clerk in a civil, traffic, or criminal proceeding in the court, and any appeal from a district court.
> "Nonconfidential court records" means all court records except those court records that are confidential court records.

. . . if they play a role in the adjudicative process, or adjudicate substantive rights." *See*, *Daily Press, LLC v. Commonwealth*, 878 S.E.2d 390, 403 (Va. 2022) (adopting the U.S. Court of Appeals for the Fourth Circuit's definition from *In re U.S. for an Ord. Pursuant to 18 U.S.C. Section 2703(D)*, 707 F.3d 283, 290 (4th Cir. 2013)). "Exhibits entered into evidence in a judicial proceeding that lead to the judgment constitute judicial records." *Perreault*, 276 Va. at 387.

The Supreme Court of Virginia has repeatedly held "[t]he right of access to judicial proceedings and records is well-established." *Globe Newspaper Co. v. Commonwealth*, 264 Va. 622, 628 (2002) (citing principles established in U.S. Constitution and the Virginia Constitution). Moreover, the Virginia Supreme Court and the Virginia Court of Appeals have held that there is a "strong presumption in favor of public access to judicial records." *Perreault v. The Free Lance–Star*, 276 Va. 375, 389 (2008); *see also Shenandoah Publishing House, Inc. v. Fanning*, 235 Va. 253, 258 (1988); *In re Times-World Corp.*, 25 Va. App. 405, 419 (1997) (when considering media access to a competency hearing, the Court held that the lower court should have permitted press access to the hearing and the documents the court admitted into evidence at the hearing "should have been open to the public.").

The presumption of openness can be overcome; however, it requires that the moving party establish "an interest so compelling that it cannot be protected reasonably by some measure other than a protective order." *Shenandoah Publishing House, Inc.*, 235 Va. at 259. To overcome this burden, the party seeking non-disclosure must establish actual, rather than abstract, harm. *See, e.g.*, *Perreault,* 276 Va. at 392.

This presumption of openness applies with particular strength to records actually admitted into evidence. *See, e.g., Daily Press, LLC*, 878 S.E.2d at 403. The Court of Appeals of Virginia held that "the media does not have a constitutional right of access to documents produced by parties through discovery in a criminal matter" but that right of access shifts when the documents change from "unfiled discovery documents" to documents "admitted into evidence." *In re Times-World Corp.*, 25 Va. App. at 419.

ii. Court-Ordered Psychological Evaluations

1. Competency Reports & Sanity Reports

The two most common reasons for the creation and admission of psychological or psychiatric reports in criminal proceedings are with respect to a defendant's competency[7] or sanity.[8] While the reports serve significantly different purposes, they each typically contain sensitive information regarding a defendant's mental health, background and circumstances. Therefore, in determining whether sanity reports should be open for public inspection, it is instructive to examine how competency reports have been handled in similar circumstances.

b. Virginia Attorney General Advisory Opinion

In 2009, the Honorable William C. Mims, who was then the Acting Attorney General, issued an advisory opinion as to whether a competency evaluation, which is not sealed by court order, is open to inspection or protected by Virginia's law on health record privacy. Va. Att'y Gen. Op. No. 08-099 (Feb. 25, 2009). The Attorney General indicated "[i]t is my opinion that a competency evaluation report that was ordered by and submitted to a court as part of the court's record is open to inspection . . . provided that such report is not sealed by court order." *Id.*

The Attorney General considered both Virginia Code § 17.1-208, the statute codifying the common law presumption of openness to judicial records, and Virginia Code § 32.1-127.1:03, the law on health records privacy. *Id.* The Attorney General determined that both the law on inspection of judicial records and the health records privacy act applied to competency evaluation reports. *Id.* When a competency evaluation report is

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[7] *See* Va. Code §19.2-169.1 (appointment of a clinical psychologist or psychiatrist to evaluate a defendant's competency).

[8] *See* Va. Code §19.2-169.5 (appointment of a clinical psychologist or psychiatrist to evaluate a defendant's sanity at the time of the offense), and Va. Code §19.2-168.1 (appointment of a clinical psychologist or psychiatrist to evaluate a defendant's sanity at the time of the offense at the request of the Commonwealth after the defendant has given notice of his intent to present an insanity defense.)

submitted to a court, the presumption of openness conflicts with the presumption of privacy. *Id.* The Attorney General noted that when statutes conflict, the "more specific statute prevails." *Id.*[9] In this case, the Attorney General determined the statute on inspection of judicial records was more specific than the health records privacy statute:

> Section 32.1-127.1:03 applies generally to all health records and their use and disclosure. However, § 17.1-208 applies to all records and papers maintained by the clerk of the court, which would include competency evaluation reports filed as part of a court record. When there is an apparent conflict between different statutes, the more specific statute prevails. Because § 17.1-208 specifically governs the records and papers maintained by the circuit court clerks, § 32.1-127.1:03 must yield to § 17.1-208.

Id. (Internal citations omitted). The Attorney General also cited the Virginia Court of Appeals' determination in In re *Times-World Corp.*, which held that the media and the public have a right to attend competency hearings and to access "the documents admitted into evidence during such hearing." *Id. (*citing 25 Va. App at 415-19).

The Attorney General concluded that competency evaluation reports were open for public inspection, assuming the reports remained unsealed by the court. *Id.*

c. Law from Other Jurisdictions

While case law from other jurisdictions are certainly not controlling, they have been helpful to the Court in considering this issue.

i. *McNally v. Pulitzer Pub. Co.*, 532 F.2d 69, 77 (8th Cir. 1976)

In *McNally v. Pulitzer Pub. Co.*, the plaintiff argued the defendant violated his right to privacy when its newspaper published part of his "confidential psychiatric report" that was not read openly in Court. 532

[9] "When 'two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed [legislative] intention to the contrary, to regard each as effective.' And to the extent such harmony cannot be achieved, the more specific statute takes precedence over the more general one." *Seaton v. Commonwealth*, 42 Va. App. 739, 758–59 (2004) (quoting *FCC v. NextWave Personal Comm. Inc.*, 537 U.S. 293, 304 (2003) (citation omitted)).

F.2d 69, 77 (8th Cir. 1976). In assessing the alleged privacy violation, the Court stated, "[a]ny intrusion upon privacy posed by the public disclosure . . . must be assessed in the context of the public record regarding [the plaintiff's] mental condition." *Id.*

During the initial trial, the defense filed a "Motion for Judicial Determination" of the defendant's mental capacity, and the trial court entered an order for psychiatric evaluation to determine the defendant's competency to stand trial. *Id.* At the competency hearing, the Judge read several portions of the report out loud. *Id.* The defendant published parts of the report that the Judge did not read in court. *Id.* The Court held that the information about the plaintiff's competency "was a matter of public record" and the defendant's publication of the report did not violate the plaintiff's privacy. *Id.* at 77-78.

ii. *United States v. D.C.*, 44 F. Supp. 2d 53, 55 (D.D.C. 1999)

In *United States v. D.C.*, the United States sought to obtain the defendants' psychiatric records, "pursuant to D.C. Code Ann. § 24–301(d)(1)." 44 F. Supp. 2d 53, 55 (D.D.C. 1999). The defendants had been admitted to Saint Elizabeth's Hospital after they were found not guilty by reason of insanity. *Id.* The defendants opposed the plaintiff's request for access, arguing the government was "not legally entitled to the records." *Id.*

In permitting the government to access the records, the Court held that "the defendant[s] . . . have, to some extent, made their mental conditions matters of public record by pleading not guilty to federal crimes by reason of insanity." *Id.* at 61. The Court determined the defendants' privacy interests were not outweighed by the compelling interest of the plaintiff in obtaining the records. *Id.*

iii. *State v. Hall*, 752 N.E.2d 318, 323 (Ohio Ct. App. 2001)

In *State v. Hall*, the appellant argued that the psychiatric reports from his competency evaluation should be exempted from Ohio's Public Records Act because the competency reports were medical records.

752 N.E.2d 318, 323 (Ohio Ct. App. 2001). The Court disagreed. *Id.* at 323–25. As a preliminary matter, the Court held that the reports from the competency evaluation were not medical records because

> the psychiatric reports at issue in this case were not generated as a part of appellant's "medical treatment." The reports at issue were compiled solely to assist the court in determining whether appellant was competent to stand trial. Thus, those reports are not "medical reports" exempt from public disclosure requirements.

Id. at 323. The appellant also argued that "the public's 'right to know' . . . must be balanced with his generalized right of privacy." *Id.* The appellant asserted the balance tipped in the favor of privacy, and therefore, the records should be kept confidential. *Id.* at 325. Again, the Court was not convinced. *Id.*

The underlying case against the appellant arose from the death of nine people, to which the Court noted "[t]here has never been any question that appellant caused this tragedy." *Id.* The Court held that the public had "a right to know why" the appellant was not required to "confront the civil charges against him." *Id.* Ultimately, the Court held, "[i]n the absence of some affirmative showing that appellant would be irreparably harmed or damaged by not keeping that information confidential, we err on the side of openness and conclude that the psychiatric evaluations should be made available for public inspection." *Id.*

iv. *State v. Chen*. 309 P.3d 410, 411 (Wash. 2013)

In *State v. Chen*, the defendant was accused of two counts of murder. 309 P.3d 410, 411 (Wash. 2013). After pre-trial hearings, the lower court ordered the defendant to submit to a competency evaluation. *Id.* at 411-12. The defendant asked the lower court to seal the reports from the competency evaluation. *Id.* at 412. The lower court denied the motion to seal but redacted some information. *Id.*

The defendant appealed the lower court's decision to leave the records unsealed, citing Washington's statutory limitation on disclosure, which states:

> Except [for certain situations not relevant here], 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 professional persons who, upon proper showing, demonstrates a need for access to such records.

Id. (citing Wash. Rev. Code § 10.77.210). The defendant argued that the statute created a presumption of privacy for competency evaluations, even when the evaluations become court records. *Id.* at 413. In contrast, the State argued that "the state constitutional requirement that all court records be presumptively open to public view" created a "presumption of openness." *Id.* Ultimately, the Court held: "competency evaluations are presumptively open once they become court records" and found no error by the trial court. *Id.* at 414.

v. *Poole v. S. Dade Nursing & Rehab. Ctr.*, 139 So. 3d 436, 437 (Fla. Dist. Ct. App. 2014)

In *Poole*, the plaintiff, who had been charged with murder, sought to prevent the disclosure of his psychiatric reports used to determine his competency to stand trial. *Poole v. S. Dade Nursing & Rehab. Ctr.*, 139 So. 3d 436, 437 (Fla. Dist. Ct. App. 2014). The plaintiff argued that the Florida Rules of Criminal Procedure, Florida Supreme Court Rules, and Florida's Constitutional Right to Privacy law *required* the court to keep the reports under seal. *Id.* at 437-38.

The Court considered the rules "governing the public's access to court records" and noted that competency reports were not included in the mandatory confidentiality provisions of the rule. *Id.* at 439-40. Second, the Court determined that Florida's privacy law did not apply in this case. *Id.* at 441. As a foundational issue, the Court noted competency evaluations are not for "care and treatment." *Id.* The Court specifically stated,

> 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 . . . Thus, they are not the type of patient's medical record generally entitled to confidentiality protection.

Id. at 441-42. The Court denied the plaintiff's petition to keep the records under seal. *Id.*

IV. Application

"The commission of crime, prosecutions resulting from it, and judicial proceedings arising from the

prosecutions . . . are without question events of legitimate concern to the public . . . ." *Daily Press, LLC*, 878 S.E.2d at 397 (quoting *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 492 (1975)). Undeniably, the public has a great interest in the disposition of criminal acts that end in a finding of Not Guilty by Reason of Insanity.

Virginia Code § 17.1-208(B) states: "Except as otherwise provided by law, any records that are maintained by the clerks of the circuit courts shall be open to inspection . . . ." Furthermore, the public interest in access to these *particular* records is substantial. This is for multiple reasons:

- The defendant was charged with an extremely serious offense: murder.
- The Commonwealth exercised its prosecutorial discretion to agree to an *uncontested* Not Guilty by Reason of Insanity plea.
- Both family members of the victim, who were present in court, advised the Court that they objected to the Commonwealth's decision to enter into an uncontested Not Guilty By Reason of Insanity case disposition and expressed an interest in reviewing the records from the sanity evaluations.
- The *sole* evidence offered by the Commonwealth or by the defense in support of the Not Guilty by Reason of Insanity were the two psychological assessments, which the Court admitted into evidence without objection.

Given the gravity of the case, and given the other circumstances described above, the Court finds that the public should have access to these records.

The Court need not reach the question of whether or not sanity evaluation reports are "health records" as that term is defined in Virginia Code § 32.1-127:103(B).[10] Even if the Court were to assume the reports

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[10] Pursuant to Va. Code § 32.1-127:103(B):

> "Health record" means any written, printed or electronically recorded material maintained by a health care entity in the course of providing health services to an individual concerning the individual and the services provided. "Health record" also includes the substance of any communication made by an individual to a health care entity in confidence during or in connection with the provision of health services or information otherwise acquired by the health care entity about an individual in confidence and in connection with the provision of health services to the individual.

constitute "health records," it would not alter the Court's determination that *admitted* sanity evaluation reports, at least under the circumstances of this case, should be open for public inspection.[11]

V. Conclusion

Because the Defendant in this case has not overcome the presumption of openness, and the public interest is so great, the Court holds, and hereby ORDERS, that the sanity evaluation reports admitted in support of the Defendant's Not Guilty by Reason of Insanity plea be made available by the Clerk of the Court for public inspection and, if requested, duplication.[12]

This Order is suspended for 14 days to give the Defendant an opportunity to decide whether he wishes to appeal this order. In the event that defense counsel notifies the Court within that time period that the Defendant will be filing an appeal, this Order is stayed pending further court order. In the event that defense counsel does not notify the Court within that time period that the Defendant will be filing an appeal, the order shall go into effect on April 21, 2023.

IT IS SO ORDERED.

ENTERED this 6 day of APRIL, 2023.

[redacted]
Judge Randy I. Bellows
Fairfax Circuit Court

[11] *See* also this statement from the Attorney General's Advisory Opinion: "Because § 17.1-208 specifically governs the records and papers maintained by the circuit court clerks, § 32.1-127.1:03 must yield to § 17.1-208." Va. Att'y Gen. Op. No. 08-099 (Feb. 25, 2009).

[12] The reports in question are Commonwealth's Exhibits Numbered 2, 3, and 4.