

IN THE DISTRICT COURT OF PAYNE COUNTY  
STATE OF OKLAHOMA

IN THE DISTRICT COURT OF  
Payne County, Oklahoma  
FILED

NOV 06 2015

BY: LORI ALLEN, Court Clerk

STATE OF OKLAHOMA,  
Plaintiff,

v.

ADACIA CHAMBERS,  
Defendant.

)  
)  
) Case No. CF-2015-676  
)



**MOTION FOR CORRECTED ORDER AND REQUEST FOR ORDER SEALING  
DEFENDANT'S PRIVILEGED AND CONFIDENTIAL MENTAL HEALTH RECORDS**

COMES now Laura Austin Thomas, District Attorney, in and for Payne County, State of Oklahoma, and moves this Honorable Court for an Order correcting a previous Order filed on October 26, 2015, in response to Defendant's Motion to Permit Psychological Evaluation, and request of the State to seal any documents relating to the defendant's mental health. In support thereof the Court is advised as follows.

1. Counsel for the defendant filed a Motion to Permit Psychological Evaluation on October 26, 2015.
2. The Motion was heard before the Court on the October 26, 2015, and Counsel prepared and filed an "Order at the Hearing of the Application for Determination of Competency." The title of the Order is completely misleading and confusing as Counsel made it clear in his presentation before the Court that his Motion was specifically not an application for competency, but only a request that a doctor be allowed access to the defendant to perform a psychological evaluation. The Court granted access for the psychological evaluation and specifically did not order a competency evaluation as represented by Counsel in the prepared Order with a misleading title. Counsel obtained the signature of an Assistant District Attorney without allowing him to read the proposed order.
3. On November 4, 2015, following the filing of the State's Application for Determination of Competency, Counsel filed an Application for Determination of Competency and he

attached a copy of a letter addressed to him from Shawn Roberson, Ph.D. which appears to be a confidential and privileged report containing information about the mental health and competency of the defendant. No competency examination had been ordered by the Court.

4. Pursuant to 22 O. S. § 1175.2, an application to determine competency does not require a psychological report to be attached, but only facts alleged in the application sufficient to raise a doubt as to the defendant's competency.
5. The only apparent motive for the filing of a misleading court Order and the filing of a confidential and privileged mental health report is the desire to have it communicated publicly and to confuse and prejudice the venire on the issues of competency and insanity.
6. Counsel has continued to address the media specifically commenting on the defendant's mental health both prior mental health, her state of mind at the time of the crime and her mental state following the incident.

### **BRIEF IN SUPPORT**

All mental health records are privileged pursuant to 43A O.S. § 1-109.

“All mental health and drug or alcohol abuse treatment information, whether or not recorded, and all communications between a physician or licensed mental health professional as defined in Section 1-103 of this title, or a licensed alcohol and drug counselor as defined in Section 1871 of Title 59 of the Oklahoma Statutes, and a consumer are both privileged and confidential. In addition, the identity of all persons who have received or are receiving mental health or drug or alcohol abuse treatment services shall be considered confidential and privileged.”  
43A O.S. § 1-109 (A)(1).

There are some exceptions. Records may be disclosed pursuant to a valid court order or with a valid patient release. 43A O.S. § 1-109 (D). In this matter there was neither a Court order directing a competency evaluation or a release of the records nor an apparent consent of the

defendant. The doctor who examined the defendant states that the defendant “claimed to understand” the informed consent, but “as the interview progressed it became clear that this was not the case.” He did not believe she was competent to consent.

Even when information is authorized to be made available, the act limits the information to the minimum amount of information necessary for the person or agency to carry out its function. 43A O.S. § 109 (A)(2). In this matter, there was no legal requirement or need for the Court or the public to have all the information reported by Dr. Roberson in order to raise a doubt as to the defendant’s competency.

The importance of the misleading title on the “Order at the Hearing of the Application for Determination of Competency” prepared by Defendant’s counsel on or about October 26, 2015, is twofold:

- 1) Had the Court ordered the examination conducted by Dr. Roberson for the purpose of determining defendant’s present competence to participate in criminal proceedings, its content would be an exception to a claim for privilege pursuant to 12 O.S. § 2503(D)(2).

And

- 2) Because the Court’s order, in fact, only authorized an evaluator of Defendant’s choice to have *access* to defendant and was *not* an order for a competency examination, the records resulting therefrom were likely privileged and confidential unless waived by the defendant. But, if the Defendant was incompetent, as expressed by the evaluator, she could not waive the privilege and confidentiality or approve the filing of a report containing privileged and confidential information.

Defense counsel’s actions in attaching the complete mental health report in support of his Application to Determine Competency are particularly troubling as it was not necessary to his Application, particularly in light of the fact the State had filed its own Application to Determine Competency earlier in the day. Regardless of the motive for the actions of defense counsel, they appear to violate his client’s rights to control the dissemination of this protected material and the Court’s statutory duty to restrict dissemination of mental health records.

Of significant concern to the State is what appears to be a deliberate and inappropriate effort by Counsel to prejudice any potential jury pool, particularly in light of the fact that he has continue to seek out media attention. Also, on October 27, 2015, he approached the District Attorney and inquired about changing venue, the discussion of which is clearly premature. While the Court and the attorneys understand that questions of current competency are completely separate from and even unrelated to potential defenses, specifically the insanity defense, the public does not understand the difference and there is a potential material and prejudicial effect upon the fact-finding process resulting from the public release of the defendant's mental health information.

Although it is too late to un-ring the bell that was caused by counsel's filing of the evaluation, the State would request the Court admonish counsel regarding this improper release of information and require that any future filings specifically related to matters of mental health or containing any mental health records be subject to court scrutiny and order as required by the statute before being made available in the public domain.


If and when the issue of defendant's competence becomes contested, this information and other information may become evidence in a public hearing, but we are far from that stage in the instant proceedings.

### **CONCLUSION**

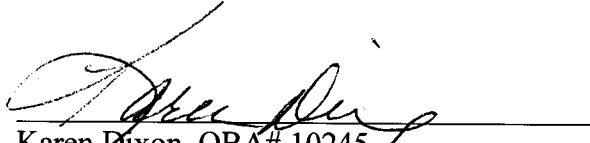
The State requests that the Court require the previous misleading Order to be clarified and corrected to reflect that it was an Order Granting Access to the Defendant for a Psychological Evaluation. The State also requests that based upon the unnecessary public release of privileged and confidential mental health information, the parties be ordered to file any mental health information under seal until such time as it authorized to be made public by a court or it becomes public because offered as evidence in a public proceeding.

Respectfully submitted,

LAURA AUSTIN THOMAS  
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**CERTIFICATE OF DELIVERY**

I hereby certify that on the 6<sup>th</sup> day of November, 2015, I delivered a true and correct copy of the above and foregoing Motion for Corrected Order and Request for Order Sealing Defendant's Privileged and Confidential Mental Health Records by U.S. Mail and by e-mail to:

Anthony Coleman  
101 Park Avenue, Ste 300  
Oklahoma City, OK 73102  
Attorney for Defendant



Laura Austin Thomas