

order to the release of the evaluation and did not order the release of her preceding medical records to the probation office.

With regard to her assertion that the district court had no basis for its order, merely because four years had elapsed since her sentencing, the Tenth Circuit rejected that claim and responded that conditions of supervised release always follow the person's release from incarceration and that those individuals who serve lengthy prison terms are necessarily subject to conditions of release that were first imposed many years before the completion of their incarceration.

Discussion

The ruling in *Wayne* supports a court's authority to require a mental health evaluation and potential treatment where issues of liberty and privacy potentially clash with a court order for special conditions in a supervised release. The case reveals how the state can compel a parolee to undergo a mental health evaluation and treatment at the expense of the defendant's liberty interests. It leaves unanswered the question of what standards are necessary for such an override of a defendant's interests. While the Tenth Circuit supported the position that the district court did not abuse its discretion, the decision did not provide guidance on the question of what sort of "history and personal characteristics" of the defendant justify court-ordered mental health evaluation and possible treatment. In this case, Ms. Wayne had a diagnosis of depression and a conviction for wire fraud. One could reasonably challenge a decision of forced treatment for depression as having no relationship to the crime of wire fraud. However, this case involved an order that created a mechanism for the court to ascertain whether mental health treatment was indicated in light of the nature of the crime. The district court concluded that a mental health evaluation was necessary to properly weigh the interests of justice, including rehabilitation, versus the liberty interests of the defendant. The Tenth Circuit supported the sentencing court's decision. While the case contained possible consideration of a potential conflict of interest where the court-ordered evaluator could become the eventual treater, the Tenth Circuit did not consider this concern, on the technicality that it was not raised in her initial brief to the court of appeals.

In summary, this case serves as a reminder that, to ascertain the potential benefits of court-ordered

treatment, courts can require a mental health evaluation as a condition of supervised release. Clinicians, probation officers, and the courts involved in such evaluations should strive to ensure that the rights and the clinical needs of the individuals involved in such evaluations are taken into consideration in a sensitive and professional manner, while weighing the needs and interests of society.

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Due Process Violation When Prosecutors Failed to Provide Mental Health Evidence

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A Due Process Violation Occurred When Prosecutors Failed to Provide Mental Health Evidence Regarding Two Key Eyewitnesses

In *Wilson v. Beard*, 589 F.3d 651 (3d Cir. 2009), the U.S. Court of Appeals for the Third Circuit considered the decision by the U.S. District Court for the Eastern District of Pennsylvania, in which the district court affirmed that the Commonwealth violated Zachary Wilson's right to due process as set forth in *Brady v. Maryland*, 373 U.S. 83 (1963). The district court concluded that a *Brady* violation had occurred, granted Mr. Wilson's request for *habeas* relief, vacated his conviction, and allowed the Commonwealth 180 days in which to retry him. The court of appeals affirmed the judgment of the district court.

Facts of the Case

On August 3, 1981, a man entered a Philadelphia bar, pulled a gun from his coat, walked past several other patrons to the rear of the bar, and aimed the gun at Jamie Lamb. After shooting Mr. Lamb four times, the man fled the scene. Mr. Lamb later died of the gunshot wounds. Two eyewitnesses, Jeffery Rahming and Edward Jackson, identified Mr. Wilson as

the shooter. Mr. Rahming sat in the rear of the bar, just behind Mr. Lamb. Mr. Rahming observed the shooter enter the bar, aim the gun, and shoot Mr. Lamb. When he attended a police lineup in March 1982, Mr. Rahming identified Mr. Wilson as the shooter. Mr. Jackson was sitting in the front of the bar when the shooter entered. As the shooter fled the scene, he tripped and fell over Mr. Jackson, who had dived to the floor when the shooting began. The shooter and Mr. Jackson came face to face before the shooter rose to his feet and ran. When Mr. Jackson attended a police lineup in March 1982, he failed to identify Mr. Wilson as the shooter. Despite the conflicting identifications of Mr. Rahming and Mr. Jackson at the police lineup, Mr. Wilson was charged with Mr. Lamb's murder. However, the charges were dismissed when Mr. Rahming failed to identify Mr. Wilson at the initial preliminary hearing.

In the summer of 1984, Lawrence Gainer told Philadelphia police officer John Fleming that in October 1983, when he and Mr. Wilson were incarcerated together (Mr. Wilson had been incarcerated on unrelated charges), Mr. Wilson confessed to killing Mr. Lamb out of revenge for Mr. Lamb's involvement in the murder of Mr. Wilson's adopted brother. Mr. Gainer refused further cooperation; however, in March 1986, Mr. Gainer agreed to provide police with a statement. Based on this statement, Mr. Wilson was rearrested and charged a second time with Mr. Lamb's murder.

The Commonwealth's case against Mr. Wilson was based almost entirely on the testimony of Mr. Jackson, Mr. Rahming, and Mr. Gainer. A jury found Mr. Wilson guilty of first-degree murder and possession of an instrument of crime and sentenced him to death.

The Pennsylvania Supreme Court affirmed Mr. Wilson's conviction. The United States Supreme Court denied *certiorari*. Mr. Wilson filed a petition pursuant to the Post Conviction Relief Act (PCRA), in which he claimed that "the prosecution withheld evidence demonstrating that Officer Fleming coerced and threatened Gainer and Rahming into falsely incriminating Wilson and that Detective Keenan exerted undue and improper influence over Jackson" in obtaining Mr. Jackson's false testimony against him (*Wilson*, p 656). Mr. Wilson's *Brady* claim evolved during the course of the PCRA proceedings, as Mr. Wilson obtained new information that Mr. Jackson had an undisclosed history of prior

convictions for impersonating a police officer; that psychological testing obtained before conviction revealed a history of severe head injury, subsequent deficits in cognitive functioning, and a propensity to side with police in criminal matters due to distorted perceptions; that Mr. Rahming had received prior mental health treatment for psychosis with antipsychotic medications that affected his experience and recall of events; and that Officer Fleming provided Mr. Gainer with interest-free loans during the period that Mr. Gainer served as a police informant. Given this new knowledge, Mr. Wilson filed a PCRA hearing memorandum, per the instruction of the PCRA court, and used this information as a basis for his *Brady* claim.

On May 6, 1988, the PCRA court denied his petition. The Pennsylvania Supreme Court affirmed the decision. On June 6, 2005, Mr. Wilson filed a writ of *habeas corpus* containing 13 claims, one of which was an assertion that the prosecution had violated his right to due process by failing to allow the defense access to information that could be used to impeach the prosecution's witnesses. The U.S. district court ordered Mr. Wilson's conviction vacated and allowed the Commonwealth 180 days to retry him.

Ruling and Reasoning

The Third Circuit Court of Appeals examined three factors in reviewing the case to determine whether a *Brady* violation had occurred in *Wilson v. Beard*: "The evidence at issue must be favorable to the accused, either because it is exculpatory or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued" (*Wilson*, p 659). The court stressed that it is not the purpose of *Brady* to make certain that the prosecution discloses all favorable evidence to the defense; rather, *Brady* ensures that defendants will not be prevented from having access to evidence that would enable a fair trial. The court believed the ultimate question was not whether Mr. Wilson would have received a different verdict with the suppressed evidence, but whether he received a fair trial without it.

Mr. Wilson believed that the prosecution withheld three pieces of information "which could have been used to impeach the Commonwealth's primary witnesses against him at trial and which, if disclosed, clearly would have led to the discovery of additional

information that also could have been used for impeachment purposes” (*Wilson*, p 660). The three key pieces of information included Mr. Jackson’s prior conviction for impersonating a police officer (and his mental health history, which was revealed during the court proceedings surrounding this conviction); Mr. Rahming’s mental health history, along with his psychiatric interventions; and Officer Fleming’s history of providing Mr. Gainer with interest-free loans during the time Mr. Gainer acted as a police informant. The circuit court believed all the information to be indisputably favorable to Mr. Wilson. Furthermore, the court noted that the information “could have been used to impeach the Commonwealth’s three primary witnesses at trial and to undercut the Commonwealth’s case against [Mr.] Wilson” (*Wilson*, p 662). As a result, the court focused on whether this information had been suppressed by the prosecution and whether it had directly influenced the jury’s verdict.

Regarding whether the prosecution had suppressed information about Mr. Jackson’s prior conviction, the Commonwealth disputed that suppression had occurred. Mr. Wilson maintained that, during the course of the trial, the prosecutor asserted that Mr. Jackson had no prior convictions. The Commonwealth argued that the prosecutor did not intentionally mislead the defense and asserted that Mr. Jackson’s conviction was a matter of public record that could have been easily discovered by Mr. Wilson’s legal counsel. The court opined that suppression had occurred because the prosecutor had information about Mr. Jackson’s prior conviction in her file and failed to disclose this information “when asked by the court during a charging conference for the witnesses’ criminal histories” (*Wilson*, p 664).

The Commonwealth did not dispute that “the prosecution ‘suppressed’ the information regarding Rahming being taken to the emergency room, following his testimony, and Officer Fleming’s extension of interest-free loans to Gainer” (*Wilson*, p 664). Regarding Mr. Rahming, the court held, “Whether it was a detective from the prosecutor’s office or a police detective who took Rahming to the hospital, it is clear that ‘the government’s duty to disclose under Brady reaches beyond the evidence in the prosecutor’s actual possession’ ” (*Wilson*, p 664). Regarding Mr. Gainer, the court held that, as Officer Fleming was a member of the prosecution team, and, since the Commonwealth did not decide to proceed with the

charges against Mr. Wilson until Mr. Gainer came forward, it was the responsibility of the prosecution to fully disclose the financial relationship between Officer Fleming and Mr. Gainer.

The court of appeals maintained that “the question under Brady is whether ‘disclosure of the suppressed evidence to competent counsel would have made a different result reasonably probable’ ” (*Wilson*, p 664). The court believed that competent trial counsel would have requested information about Mr. Jackson’s prior conviction and mental health history. In addition, competent trial counsel would have sought additional information about Mr. Rahming’s mental health history had counsel been aware of his hospitalization immediately after testimony. The court concluded that competent trial counsel would have then used this information to impeach the eyewitness testimony of Mr. Jackson and Mr. Rahming.

Having concluded that the Commonwealth suppressed evidence, the Third Circuit turned to the question of whether the suppressed evidence was material. Evidence is considered material “if there is a reasonable probability that, if the evidence had been disclosed, the result of the proceedings would have been different” (*Wilson*, p 665). The court held that Mr. Jackson’s conviction record and mental health history were material because the information could have been used to undermine his reliability. Regarding Mr. Rahming, the court held that his history of severe mental illness and hospital visit immediately after testimony would most likely have been strong impeachment evidence; therefore, this information was material. Regarding Mr. Gainer, Mr. Wilson voiced concern about Officer Fleming’s providing Mr. Gainer with interest-free loans during the time Mr. Gainer served as a police informant, and he believed this information could have been used to impeach Mr. Gainer. Although the Commonwealth argued that trial counsel attempted to impeach Mr. Gainer during the trial by exploring his relationship with Officer Fleming, the court of appeals disagreed with the Commonwealth’s “assertion that this ‘one additional fact’ would not have affected the jury’s assessment of [Mr.] Gainer’s credibility” (*Wilson*, p 667). As Mr. Gainer appeared to be crucial to the Commonwealth’s case against Mr. Wilson, the court believed “that any additional connection between [Mr.] Gainer and Officer Fleming would have been significant in terms of impeachment value, espe-

cially in light of Officer Fleming's emphatic testimony that he had 'never given [Mr. Gainer] anything'" (*Wilson*, p 667).

Because Mr. Wilson's conviction was based almost exclusively on the testimony of Mr. Jackson, Mr. Rahming, and Mr. Gainer and given that each man's testimony was deemed impeachable, the court concluded that Mr. Wilson's "right to due process, as set forth in *Brady*, was violated by the Commonwealth's failure to disclose this information" (*Wilson*, p 667).

Discussion

To ensure due process, *Brady v. Maryland*, placed the burden on the prosecution to make materially relevant records available to the defense. According to this case, a violation of due process occurs when there is an omission of relevant health details that could materially affect the case, such as

information that could influence a jury's understanding of eyewitness testimony or the defense's ability to impeach an eyewitness. In *Wilson v. Beard*, the court of appeals held that such a due process violation occurred when the mental health records of key eyewitnesses were not disclosed by the prosecution. The court opined that such records held information that called into question the credibility of the witnesses, and, as a result, interfered with the fundamental fairness of the trial. Holding that, had such information been disclosed, Mr. Wilson's case may have had a different outcome, the court of appeals vacated his capital conviction. *Wilson v. Beard* established that omission of the mental health history of eyewitnesses that would be materially relevant may constitute a due process violation.

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