

tions. When addressing her appeal, the Supreme Court of Missouri relied on the statutory definition of abuse, neglect, and knowing action. Using the definition of what it means to act knowingly, the court must answer whether a reasonable person would expect abuse to be the outcome of Ms. Stone's actions and also must determine whether Ms. Stone was "a reasonable person" at the time of the incident and should have expected that outcome herself. The court held that both of these determinations are within the skill set of nonpsychiatrists.

Second, in citing *Oakes*, Ms. Stone was seemingly attempting to draw a connection between her behavior and the conduct of Ms. Oakes. The court refuted this comparison citing, in part, that Ms. Stone acted aggressively, whereas Ms. Oakes acted reflexively. One can make the case that these two concepts need not be mutually exclusive. Rather than drawing a distinction between reflex and aggression, the court seems, in this comparison, to contrast controllable and uncontrollable behavior. The difference between controllable behavior and uncontrollable behavior is not always so clear, and in cases where this distinction becomes germane, a forensic psychiatrist could be called in to offer an expert opinion.

The challenges that patients like K.S. face in the health care system are far from unique. It is necessary to appreciate the difficult task faced by a system of care that is being strained by a growing number of individuals who lack the capacity to make medical decisions and who may have a tendency to act out aggressively. Appropriate staffing and institutional training programs focused around recognition and intervention with challenging patients will become increasingly necessary.

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## Not Competent and Not Restorable: Now What?

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## Connecticut Supreme Court Rules That a Defendant Found Not Competent and Not Restorable Remains Under the Jurisdiction of the Trial Court Until the Statute of Limitations Elapses

In *State v. Johnson*, 26 A.3d 59 (Conn. 2011), the Supreme Court of Connecticut held that defendants found not competent and not restorable under Conn. Gen. Stat. § 54-56d(m)(5) (2007) remain under the jurisdiction of the trial court, regardless of the seriousness of their charges, until the statute of limitations for their offense expires. In addition, the court clarified that the statute of limitations period for bringing criminal charges begins on the date the crime is allegedly committed.

### Facts of the Case

In January 2007, Keir Johnson was arrested and charged with operating a motor vehicle while his license was suspended and with improper illumination of a license plate. He pleaded not guilty to these charges in March 2007. In September 2007, he was arrested and charged with breach of the peace in the second degree, which the state later changed to assault in the third degree. Mr. Johnson was also charged with violation of probation related to an offense in 2006. The trial court subsequently issued a protective order against Mr. Johnson related to the events of September 2007. In October 2007, Mr. Johnson pleaded not guilty to the assault charge and denied having violated probation. In February 2008, the trial court ordered a competency-to-stand-trial evaluation. Mr. Johnson was found not competent but restorable, and was referred to the Department of Disability Services (DDS) for 90 days of outpatient restoration. In May 2008, Mr. Johnson was arrested for violating the protective order from the September 2007 incident (a felony), and he pleaded not guilty in June 2008. In a second competency hearing in November 2008, the court concluded that he was not competent and not restorable under Conn. Gen. Stat. § 54-56d(m) (hereafter referred to as sub(m)) and placed him in the custody of the DDS.

In June 2009, Mr. Johnson motioned to dismiss all the charges against him. The trial court concluded that it did not have personal jurisdiction over him, given that he was found sub(m) in the prior proceedings, and consequently dismissed all charges without prejudice. In addition, the court did not feel that maintaining jurisdiction over Mr. Johnson after his sub(m) finding was appropriate, because his actions

did not result in the death or serious injury of another individual as required by statute for periodic re-examinations of his competence. The state appealed the judgments of the trial court with respect to all four cases, noting that the trial court improperly concluded that the dismissal provision of Conn. Gen. Stat. § 54-56d(m) (5) did not apply to the defendant and that if that statute did apply, the statute of limitations period applicable to Mr. Johnson's charges should be calculated from the date of the finding of not competent and not restorable, rather than the date of the offenses. The case was subsequently brought before the Supreme Court of Connecticut. The defense then challenged the state supreme court on four grounds: that the supreme court lacked appellate jurisdiction secondary to the state's failure to file its appeal in a timely manner; that the state lacked standing to appeal, because it was not aggrieved by the dismissal of charges; that the dismissal of charges was not an appealable final judgment; and that the state's claims regarding the misdemeanor charges were moot.

*Ruling and Reasoning*

The Connecticut Supreme Court rejected several of Mr. Johnson's claims outright. It found that the state's appeal was timely, because it did not challenge the finding of incompetent and not restorable, but the later ruling that the court lacked jurisdiction. The court also found the dismissal of the misdemeanor and felony charges appealable; in the former, the trial court's dismissal had the effect of stopping the state from prosecuting, and in the latter, it prevented the state from reinstating charges should Mr. Johnson regain competency.

With regard to Mr. Johnson's claim that the state was not aggrieved by the dismissal of the charges without prejudice, the court observed that were the state's assertion that the period set forth in the statute of limitations would begin at the time of the sub(m) finding true, then the statute of limitations would expire one year after the sub(m) finding for the misdemeanor charges. Therefore, the trial court's dismissal of the misdemeanor charges would potentially deprive the state of its right to reinstitute charges between the date of the dismissal of charges and one year after the sub(m) finding; hence, the state was aggrieved for the purposes of appellate review. In addition, the misdemeanor charges could not be moot, as asserted by Mr. Johnson. The court offered

the same reasoning with respect to the felony charge, except that the statute of limitations would extend to five years rather than one year. With regard to the charge of violation of probation, the state was not aggrieved; it could reinstitute the charge at any time, there being no statute of limitations for violation of probation.

The supreme court then addressed the state's claims on appeal that the trial court retains jurisdiction over a defendant who is found sub(m) until the charges are dismissed pursuant to statute. According to the trial court, maintaining jurisdiction of a defendant found sub(m) applies only when a defendant has been charged with a crime that results in death or serious injury. The state, on the other hand, contended that it should apply to all defendants, irrespective of the seriousness of the crime. After a thorough review of the legislative history and the various amendments to the statute over time, the court ruled that the language of Conn. Gen. Stat. § 54-56d(m)(5) applies to all pending charges against an individual who has been found incompetent and not restorable. It further ruled that the trial court improperly dismissed the charges in this case. The trial court should maintain jurisdiction over a defendant until charges are nolle or dismissed at the expiration of the statute of limitations.

Finally, on reviewing the state's claim that the period set forth in the statute of limitations begins on the date the defendant is found sub(m), not on the date the offense was committed, the supreme court ruled that the period is calculated from the date of the offense. Therefore, since the statute of limitations for the misdemeanor charges had expired before the date Mr. Johnson originally moved to dismiss them, the court affirmed the trial court's judgment to dismiss the charges. With regard to the felony charge, the supreme court ruled that the trial court improperly determined that it lacked jurisdiction and, since the statute of limitations had not expired, it reversed the trial court's ruling and remanded the case to the trial court for a determination as to whether the felony charge should have been dismissed pursuant to Practice Book § 41-8(5).

*Discussion*

Individuals found not competent and not restorable pose a significant challenge to the criminal justice system. Their inability to stand trial places them in legal limbo and can create an uncomfortable po-

sition for prosecutors, judges, and the community at large. The vexing question is, should these individuals, by virtue of their being not restorable to competency, be absolved of all their charges and released into the community, or should there be another mechanism to hold them accountable? This case illustrates that struggle.

The supreme court resolved the conundrum by ruling unequivocally that the trial court retains jurisdiction over defendants found sub(m) until the state enters a *nolle prosequi* or the statute of limitations expires. The state, therefore, retains the right to reinstate charges until the statute of limitations expires.

The American Bar Association recommends a hearing to determine factual guilt for those deemed permanently incompetent of crimes that “threaten serious bodily harm.” If found guilty during this hearing, which provides all the same rights as a trial (aside from the right to a trial while competent), then the defendant is “subject to the special commitment procedures set forth” for insanity acquittees. It also provides for the possibility of civil commitment for those who committed less severe crimes (American Bar Association Criminal Justice Mental Health Standards, Part IV. Competence to Stand Trial, Standard 7-4.13 Disposition of Permanently Incompetent Defendants, 1984. Available at [http://www.americanbar.org/publications/criminal\\_justice\\_section\\_archive/crimjust\\_standards\\_mentalhealth\\_blk.html#7-4.13](http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_mentalhealth_blk.html#7-4.13). Accessed September 29, 2013).

In Connecticut, charges involving death or serious injury have a statutory provision for judges to require periodic competency evaluation of defendants found unrestorable until the statute of limitations for the offense(s) expires. Should defendants be found to have regained competency at any of these assessments, their charges could be reinstated and the trial recommenced. However, the statute is silent with regard to individuals found unrestorable on less severe charges. In such situations, the judges may order the Department of Mental Health and Addiction Services to apply for civil commitment in a psychiatric hospital. Some courts have elected to retain the charges and impose a bond on the defendant and potentially to order reappearances in court, even though the sub(m) statute states that such persons must be treated like any other civilly committed patient. Under these circumstances, discharge planning for an inpatient may be made quite difficult, and the

defendant-patient may be charged with failure to appear for court appearances during a time in which no prosecution is pending.

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## Heat-of-Passion Manslaughter and the Mentally Ill Defendant

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### Mentally Ill Defendant Convicted of Heat-of-Passion Manslaughter After Court Finds That He Did Not Meet the M’Naughten Standard for an Insanity Defense

In *Nolan v. State*, 61 So.3d 887 (Miss. 2011), the Supreme Court of Mississippi considered the appeal of a mentally ill man convicted of manslaughter in the death of his father. The court overturned the judgment of the court of appeals and upheld the trial court’s conviction of heat-of-passion manslaughter, reasoning that the defendant had acted in response to provocation by his father’s statements. The court also found that the passage of time from the provocation to the killing did not preclude a heat-of-passion defense.

#### *Facts of the Case*

On the morning of May 26, 2006, Clinton Nolan took a gun from beneath his bed and went to his father’s room and shot him in the chest as he lay sleeping. Mr. Nolan then called 911 and told the dispatcher, “I got a GSW to the body” (*Nolan*, p 895). When asked who had shot the man, Mr. Nolan replied, “I did.” He added, “I can’t believe I did that” (*Nolan*, p 895). He told the dispatcher that he had “acted out of emotion.” His father, Donald Nolan, was alive at the time of the call, but died shortly thereafter. He told the 911 dispatcher that his son was “having an episode because his medicine is messed up” (*Nolan*, p 896).