

criminal code does not *ipso facto* make the provision a matter of criminal law. The court relied on multiple provisions in the same title of the state's criminal code that are unquestionably matters of civil law. The court held that Mr. Parsons' commitment, although secondary to a finding of NGRI, which is indeed a criminal judgment, is based on his ongoing mental illness; he is not committed because of a criminal judgment. The court stated, "Once Parsons' acquittal became final, no criminal issues remained" (*Parsons*, p 595).

Having determined jurisdiction, the Oklahoma Supreme Court addressed the merits of the appeal. The court determined that the trial court erred in failing to place the burden of proof on the state in its objection to therapeutic visits. The court also ruled that the trial court erred by failing to determine whether therapeutic visits were necessary for treatment and, if necessary, the extent to which the power to initiate therapeutic visits for insanity acquittees is vested in the FRB. The court stated that the state (or the objecting party) has the burden to support its objection by presenting evidence in opposition to the visits. The court based its ruling on plain language of the statute, which requires commencement of therapeutic visits unless a timely objection is filed by the state, and on multiple instances of case law that impose the burden of proof on "the party who asserts an entitlement to the judicial relief sought" (*Parsons*, p 596, citing *In re Initiative Petition No. 397*, 326 P.3d 496 (Okla. 2014), p 512). The language of the statute demonstrates legislative intent to afford broad authority to the FRB when recommending therapeutic visits for insanity acquittees, and that these visits take place automatically unless the state raises timely objection, with the burden of proof on the state as the objecting party. The court ruled that the state must support any objection to therapeutic visits by a preponderance of evidence.

#### Discussion

In its ruling in *Parsons*, the Oklahoma Supreme Court helped to clarify the scope of the criminal code with regard to insanity acquittees. Although such an acquittee's subsequent mental health treatment and commitment may result from criminal court proceedings, questions pertaining to involuntary commitment are a civil rather than criminal matter under Oklahoma law. In its ruling, the Oklahoma Supreme Court placed the burden of proof on the state to oppose treatment

recommendations made by the FRB, rather than on the acquittee to demonstrate necessity and safety of such treatment recommendations. The implication of this is significant because it places the FRB's treatment recommendation as the default course of action. Broadly speaking, the acquittee's treatment becomes the driving factor behind commitment decisions. Treatment recommendations are only superseded when the state can adequately demonstrate that the treatment recommendations are unnecessary or inappropriate.

In assessing insanity acquittees's readiness for conditional release, it is not uncommon to advance them through a level system or gradually permit them increased independence with continued monitoring of how they manage the privilege. One tool for clinicians is the use of therapeutic passes, especially like the one in *Parsons*, where the insanity acquittee is to use passes to participate in mental health services in the community. The *Parsons* case makes clear that this is a clinical decision that can be overridden by the state with sufficient proof.

The Oklahoma Supreme Court's ruling is, of course, in line with the state statute, which dictates that an insanity acquittee shall not be punished for the criminal offense committed while insane. The necessity of the *Parsons* ruling, despite extant language in the state statute that clarified the criminal versus civil aspects of persons found NGRI, demonstrates that ambiguity existed in the criminal code in Oklahoma. It is likely that such ambiguity exists in other state codes, and it is worth examining who has jurisdiction over insanity acquittees at various stages of their case and commitment.

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## Prolonged Solitary Confinement of a Pretrial Detainee

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**Officials With Personal Involvement in a Pretrial Detainee's Extended Period of Solitary Confinement Are Not Guaranteed Qualified Immunity in Claim for Due Process Violations**

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In *Williamson v. Stirling*, 912 F.3d 154 (4th Cir. 2018), the Fourth Circuit Court of Appeals ruled that the district court erred in granting summary judgment based on qualified immunity to two officials involved in a pretrial detainee's extended period of solitary confinement. The Fourth Circuit found that the circuit court failed to properly analyze Mr. Williamson's substantive and procedural due process claims independently.

**Facts of the Case**

In August 2013, 17-year-old Dustin Williamson was arrested for murder and armed robbery in Barnwell County, South Carolina. After being denied bail, he was assigned to the county detention center's maximum security unit based on the seriousness of his charges. He received three rule infractions during his three months there, including one fight with another inmate. On November 22, 2013, he gave officers a letter in which he confessed to a murder and threatened to harm ten law enforcement officers and Judge Early of the state's Second Judicial Circuit. When interviewed later that day, Mr. Williamson became combative, repeated his threats, and struck an officer. After a series of phone calls between various officials, including Judge Early, the decision was made to place Mr. Williamson on safekeeper status, a program that allows a pretrial detainee to be transferred to the South Carolina Department of Corrections (SCDC) by an executive order from the Governor if the detainee is a high escape risk, exhibits extremely violent and uncontrollable behavior, or must be removed from the county facility for their own protection. The order is valid for 120 days and may be subsequently renewed every 90 days with a showing of good cause and no material change in circumstances. Chief Deputy David Deering submitted an affidavit on behalf of Sheriff Ed Carroll detailing Mr. Williamson's threats and behavior. Deputy Circuit Solicitor David Miller certified that he notified Mr. Williamson's defense attorney. The application also included medical and mental health screening forms. SCDC Director Bryan Stirling recommended approval of the application to Governor Haley, who signed the executive order.

Mr. Williamson entered SCDC custody at the Maximum Security Unit at Kirkland Correctional Institution on November 25, 2013. Mr. Williamson remained in solitary confinement, was not allowed time outside, had little access to reading materials, and only left his cell twice weekly to shower. His defense requested transfer to a less restrictive environment, and he transferred to the Restricted Housing Unit at Lee Correctional Institution in August 2015. He remained in similarly restrictive conditions, however, until his transfer to the county detention facility in June 2017 for trial. He had no infractions while in SCDC custody. The record lacked all of the renewal orders necessary to maintain Mr. Williamson's safekeeper status, containing only memoranda from Director Stirling recommending renewals and several of the Governor's approval orders. His status was renewed about 13 times every 90 days for three-and-a-half years. Mr. Williamson's SCDC treatment records indicated that he received treatment for depression, grief, nightmares, and psychosis, beginning in May 2015 through at least November 2016, including antipsychotic medications which he had not previously taken. On June 15, 2017, Mr. Williamson was acquitted of murder and pled guilty to armed robbery, receiving a sentence of time served with five years' probation.

In November 2015, Mr. Williamson filed a *pro se* complaint under 42 U.S.C. § 1983 (2012) in the District of South Carolina against Director Stirling, Sheriff Carroll, jail administrator Deloris Charlton, and other unnamed officials. He amended the complaint in May 2016 to add Deputy Circuit Solicitors Miller and Jack Hammack. He asserted that the defendants violated his Fourteenth Amendment due process rights by not holding a hearing, not providing him notice before transferring him to SCDC, not providing him information justifying his safekeeper status, and subjecting him to punitive conditions as a pretrial detainee. The defendants moved for summary judgment in September 2016, and the district court referred the motions to a magistrate judge who recommended awarding the summary judgments, asserting that Mr. Williamson's conditions were not unconstitutionally punitive because the defendants justified them for security purposes with no express intent to punish and that the defendants were entitled to qualified immunity. The district court accepted the recommendations and awarded summary judgment to the defendants. Additional amended

complaints resulted in subsequent summary judgments or dismissals. Mr. Williamson appealed with legal counsel.

#### Ruling and Reasoning

The Fourth Circuit Court of Appeals vacated the summary judgment awards to Director Stirling and Sheriff Carroll and affirmed the summary judgment awards to Ms. Charlton and Solicitor Miller. The court remanded the case for the lower court to determine whether Mr. Williamson's solitary confinement was disciplinary or administrative and whether the defendants violated his due process rights. Under 42 U.S.C. § 1983 (2012), suits alleging violations of federal constitutional rights can be brought when the official depriving the plaintiff of constitutional rights does so while acting "under color of" state law, but the plaintiff must demonstrate "that the official charged acted personally in the deprivation of the plaintiff's rights" (*Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985), p 850).

Although the defendants argued that they were not personally responsible for Mr. Williamson's solitary confinement, the court ruled that Director Stirling and Sheriff Carroll played key roles in Mr. Williamson's confinement. The court noted their involvement with the initial application to place Mr. Williamson on safekeeper status and with the renewals for the three-and-a-half years that he remained in solitary confinement. The court ruled that Mr. Williamson did not sufficiently establish that Ms. Charlton and Deputy Solicitor Miller were personally involved in his placement in or continuation of solitary confinement.

The Fourth Circuit ruled that the lower court erred in awarding Director Stirling and Sheriff Carroll summary judgment by asserting that they possessed qualified immunity. Citing *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), the court found that claims of qualified immunity are overcome when officials violate constitutional rights. While Mr. Williamson's complaint claimed substantive and procedural due process violations, the Fourth Circuit determined that the lower court did not properly analyze those claims. Citing *Bell v. Wolfish*, 441 U.S. 520 (1979), the Fourth Circuit noted that pretrial detainees have a right to be free from punishment. To show substantive due process violations, according to *Slade v. Hampton Roads Regional Jail*, 407 F.3d 243 (4th Cir. 2005), a detainee must dem-

onstrate that the conditions were imposed with an expressed intent to punish or that the conditions were not reasonably related to a nonpunitive, legitimate governmental objective, inferring punishment. The court found that Mr. Williamson's three-and-a-half years in solitary confinement for 23 hours per day with minimal access to human contact, phones, or books for a single threat could have been found to be excessive relating to the state's interest in preventing Mr. Williamson from carrying out that threat, and thus may be found by a jury to be punitive. The Fourth District found that the decision-making process for the continued renewals of Mr. Williamson's confinement status was arbitrary and lacked documentation to support the renewals, especially without considering his good behavior or his worsening mental health symptoms.

Concerning Mr. Williamson's procedural due process claims, the Fourth Circuit found that if a jury were to find that Mr. Williamson's solitary confinement was for disciplinary purposes, then his liberty interest of being free from punishment would be intruded upon, and he would be owed the procedural protections outlined in *Wolff v. McDonnell*, 418 U.S. 539 (1974), including a notice, a hearing, and a written explanation of the decision, providing a floor for the procedural rights of a pretrial detainee. If a jury were to find Mr. Williamson's confinement was for administrative purposes, then Mr. Williamson would be entitled to a nonadversarial, informal review of the supporting information within a reasonable time frame after being placed in solitary confinement as outlined in *Hewitt v. Helms*, 459 U.S. 460 (1983). The Fourth Circuit thought this provided a balance between procedural safeguards, the state's interests, and the pretrial detainee's interests. In addition, evolving case law provided the defendants clear notice of the necessity to extend to pretrial detainees some level of procedural protections of liberty interests against solitary confinement.

#### Discussion

This case highlights the processes owed to pretrial detainees if they are subjected to prolonged solitary confinement, and it clarifies the degree of an official's involvement in placing and continuing solitary confinement for a pretrial detainee to bring suit under 42 U.S.C. § 1983 (2012). Officials who applied for Mr. Williamson's initial and continued confinement were not entitled to qualified immunity without

proper analysis of substantive and procedural due process claims of the detainee. Substantive due process is violated if the solitary confinement is deemed punitive or excessive, which could be determined by a jury. Whether the confinement of pretrial detainees is deemed disciplinary or administrative, procedural safeguards are required to protect their due process rights.

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## Limits to Mandatory Child Abuse Reporting

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**Teacher's Mandatory Obligation to Report Child Abuse Does Not Extend Beyond Professional Role**

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In *State v. James-Buhl*, 415 P.3d 234 (Wash. 2018), the Washington Supreme Court considered whether a mandatory child abuse reporting law was properly applied to a case of a teacher. Tanya James-Buhl was prosecuted for failure to comply with a statute requiring professional school personnel to report to authorities when there is reasonable cause to believe that child abuse or neglect has occurred. She was charged with failing to report disclosures by three of her daughters that her husband inappropriately touched them. The Washington Supreme Court held that Ms. James-Buhl was not subjected to statutory reporting duty because her knowledge of the abuse had no connection to her professional role as a teacher.

### Facts of the Case

Tanya James-Buhl was a school teacher living with her three daughters and married to Joshua Hodges. Joshua Hodges was step-father to the three children. Ms. James-Buhl's daughters had never been her students. In May 2015, one of Ms. James-Buhl's daughters told her pastor that Mr. Hodges was touching

her inappropriately. The pastor contacted Child Protective Services. The Pierce County Sheriff's Department investigated and determined that all three of Ms. James-Buhl's daughters had told their mother about Mr. Hodges' alleged abuse, which they said occurred in the home.

Ms. James-Buhl was subsequently charged with three counts of failure to comply with the mandatory reporting law requiring "professional school personnel" to report child abuse. Ms. James-Buhl argued that the charges should be dismissed because she did not learn about the alleged abuse of her daughters in the school setting or while in her role as a teacher. Her charges were subsequently dismissed by the trial court judge.

On appeal, the Washington Court of Appeals reversed, holding that the mandatory reporting duty for the professionals identified applies in all circumstances. The court further elaborated that a teacher can be subject to prosecution for failing to report suspected child abuse based on information obtained at any location, not just when in school or in the context of teaching duties. Ms. James-Buhl petitioned for review, which was granted by the Washington Supreme Court.

### Ruling and Reasoning

The Washington Supreme Court held that the charge of failing to comply with the mandatory reporting duty outlined in the Revised Code of Washington (Wash. Rev. Code § 26.44.030 (2018)) required some connection between the individual's professional identity and the alleged criminal offense. The court reasoned that the mandatory reporting law, because it specifically pertains to certain occupations as opposed to all people, does not imply that the duty is "unlimited" or "ever-present."

The court examined the mandatory reporting law, which imposes a duty on various classes of people, including practitioners, teachers, counselors, administrators, child care facility personnel, and school nurses. According to state statute, "a mandatory reporter named in Wash. Rev. Code § 26.44.030 (2018) who knowingly fails to make an 'immediate oral report' of child abuse 'shall be guilty of a gross misdemeanor'" (*James-Buhl*, p 237).

When considering the application of the statute, the court stated that the state's interest in the protection of children is unquestionably of the utmost importance. The court was unpersuaded, however, by