

the state's argument that the reporting duty is ever-present because the statute refers to people by means of their occupation, not just as adults or persons. The court clarified that "failure to comply with the mandatory reporting duty must have some connection between the individual's professional identity and the criminal offense" (*James-Buhl*, p 238). For example, a "connection could be established because of the teacher's relationship to the child or relationship to the alleged abuser, or to the circumstances in which the teacher gained reasonable cause to believe that a child had been abused" (*James-Buhl*, p 238). The trial court recognized the need for this connection, explaining that "James-Buhl was not required to make a mandatory report in this case because she did not have a teacher/professional school personnel relationship with [her daughters]" (*James-Buhl*, p 239). The court considered that "prosecuting the mother of abused children for failure to report may or may not be the best way to advance child welfare" (*James-Buhl*, p 239), but, citing *State v. Jackson*, 976 P.2d 1229 (Wash. 1999), the court said that they should refrain from rewriting an "unambiguous statute" to justify a decision based on a notion of good public policy.

Dissent

The dissenting opinion stated that teachers are mandatory reporters, without exception, and that it was a mistake to hold Ms. James-Buhl to a lower standard because the abuse that she learned about was not linked to her employment duties as a teacher. According to the dissent, there was a clear duty to report because Ms. James-Buhl was employed as a teacher, one of the listed professions in the state statute. The dissent said that the goal of protecting children from physical and sexual abuse was too important to restrict the scope of reporting duties.

Discussion

In this case, the Washington Supreme Court attempted to clarify a gray area within the state of Washington's mandatory child abuse reporting law. With the court's ruling that Ms. James-Buhl was not subject to the mandatory reporting statute because her knowledge of alleged child abuse had no connection to her professional role as a teacher, Washington has narrowed the scope of mandatory reporting of child abuse for professionals in the state.

Like teachers, psychiatrists and other mental health professionals in Washington are mandatory

reporters of child abuse under Wash. Rev. Code § 26.44.030. Mandatory child abuse reporting laws have posed a dilemma for psychiatrists because of potential harmful effects on the patient–doctor relationship that may result from breaking confidentiality. The ruling in this case provides more leeway for psychiatrists and other professionals to not have to report potential child abuse cases that may be encountered outside of their clinical practice. Any limitations set on mandatory child abuse reporting would likely be welcomed by psychiatrists, given that failure to report such abuse could result in negative consequences, such as licensing board investigations, malpractice suits, or other sanctions. An unintended consequence of this ruling, however, might be an overall reduction in the number of child abuse cases reported by professionals. Any missed reported cases of real child abuse would clearly not be in the state's interests of child welfare.

This case highlights the idea that legal responsibility is not always the same as ethics responsibility. Similar to the notion that a physician is not obligated legally, but perhaps is ethically, to provide emergency care to someone who is not his or her patient, psychiatrists who encounter potential child abuse outside of their professional capacity might still be ethically obligated to report, even if legally exempt from doing so. In cases where a psychiatrist might not be legally required to report suspected child abuse, one should carefully weigh the best interests of the child against the potential damage to other parties. In some cases, reporting would still be the best option. In cases where there is ambiguity, psychiatrists should consult with their local medical board, risk-management or ethics boards at their place of employment, or local reporting agencies for guidance.

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Need for Representation in a Pro Se Case

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Assignment of Counsel Not Required If Pro Se Defendant Knowingly and Voluntarily Engages in Misconduct Resulting in His Removal From the Courtroom

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In *State v. Lacey*, 431 P.3d 400 (Or. 2018), Mr. Lacey represented himself *pro se* in his criminal trial. He was warned multiple times that courtroom misconduct could lead to contempt of court and dismissal, thereby leaving his defense table empty. On the fourth day of his trial, he was dismissed from the courtroom due to his misconduct, and the trial continued without defense representation. After conviction, Mr. Lacey appealed his case to the Oregon Court of Appeals, claiming that the trial court violated his Sixth Amendment right to legal representation. The Oregon Supreme Court ruled that the trial court did not err in proceeding with the case because Mr. Lacey voluntarily and knowingly waived his right to counsel by his behavior, which constituted misconduct. Therefore, the court was not required to provide defense counsel or make other arrangements to protect Mr. Lacey's right to representation.

Facts of the Case

Mr. Lacey had criminal charges for multiple counts of unlawful manufacture, delivery, and possession of marijuana and criminal forfeiture. Before trial, Mr. Lacey was represented by four different attorneys in succession. He retained the first two attorneys, but they withdrew at his request. The trial court granted Mr. Lacey's request for a third attorney, but that attorney withdrew after Mr. Lacey attempted to fire him. The trial court attempted to assign Mr. Scales as his fourth attorney. Mr. Lacey had multiple disagreements with Mr. Scales before trial, and Mr. Lacey filed a motion asking for continuance or to discharge Mr. Scales.

The trial court denied Mr. Lacey's request for a continuance. Instead, the court encouraged Mr. Lacey to continue with Mr. Scales as his attorney, explaining that neither Mr. Scales nor Mr. Lacey could raise the defense Mr. Lacey wanted because that defense had already been ruled invalid by the court. The trial court also advised Mr. Lacey that if he proceeded *pro se* and engaged in disruptive conduct, he would be removed from the courtroom and the trial would proceed without him and effectively without any legal defense. The trial court repeated the warning, telling Mr. Lacey that if he engaged in

misconduct, he would be held in jail for the rest of the trial day. Although the trial court continued to advise Mr. Lacey of the risks of self-representation, he continued to proceed *pro se*, and the trial court allowed Mr. Scales to withdraw.

The trial occurred over four days, and Mr. Lacey repeatedly engaged in misconduct and was warned repeatedly about the possibility of being withdrawn from court and having no counsel. On the fourth day, during closing arguments, Mr. Lacey tried to refer to his medical marijuana card, which had not been submitted into evidence. The judge ruled that Mr. Lacey could not refer to the card because it was not in evidence, but Mr. Lacey refused to accept this ruling. Instead, he became defiant and aggressive. He continued to disobey court orders and challenged the court to remove him. Eventually, he was held in contempt and removed from the courtroom. The trial proceeded without him or any legal representation. The jury found him guilty on all but four counts. Mr. Lacey appeared in court at a later date, with counsel, for sentencing.

Mr. Lacey appealed his case to the Oregon Court of Appeals, asserting that the trial court had violated his Sixth Amendment right to representation. The appellate court agreed with Mr. Lacey, relying on *State v. Menefee*, 341 P.3d 229 (Or. Ct. App. 2014), which ruled that even if a *pro se* defendant forfeited his right to be present and the right to self-representation at the proceeding, he did not forfeit his right to any representation at trial. The court should have appointed counsel or taken other measures to ensure the defendant was represented to ensure a fair trial.

The state petitioned for a review for further guidance on what to do when a *pro se* defendant is removed from the courtroom for misconduct.

Ruling and Reasoning

The Oregon Supreme Court reversed the decision of the appellate court and affirmed the trial court's decision. Mr. Lacey did not dispute his behavior or the prior warnings he received, but argued that, after he was removed from the courtroom, the trial court should have appointed counsel or taken other steps to ensure he was represented. The Oregon Supreme Court said that he knowingly and voluntarily made the choice to be removed from the courtroom and to have an empty defense table. They stated that Mr. Lacey

knew the consequences of what he was doing and still did it anyway. In that circumstance, the court can accept the defendant's voluntary choice as a waiver of counsel. A trial court may decide to appoint counsel, but it is not required to do so.

Discussion

This case addresses the Sixth Amendment, specifically the right to self-representation and the right to be present during criminal proceedings, as well as the limits of these rights. Per *Faretta v. California*, 422 U.S. 806 (1975), defendants have a constitutional right to self-representation. If the *pro se* defendant engages in misconduct, however, the trial court can terminate the defendant's self-representation and appoint counsel, even over the defendant's objection. Courts may even appoint a stand-by counsel who can represent the accused if the defendant's self-representation is terminated.

In addition to *Menefee*, there are several court decisions, specifically *People v. Carroll*, 189 Cal. Rptr. 327 (Cal. Ct. App. 1983) and *United States v. Mack*, 362 F.3d 597 (9th Cir. 2004), that support appointment of counsel after a *pro se* defendant is removed from the courtroom for misconduct. In these cases, however, the defendants were not warned of the consequences for their misconduct. Thus, the

defendants' waivers of counsel in these cases were made without knowledge of the consequence. It is interesting to note in this case that Mr. Lacey was deemed able to proceed *pro se* without any psychiatric or psychological evaluation, which could have explored whether a mental illness or condition was rendering him incompetent to proceed *pro se*.

Lacey illustrates the fact that the right to self-representation is not limitless. Defendants can lose their right to self-representation by affirmatively waiving it or by engaging in misconduct. Under *Lacey*, a trial judge is not constitutionally required to appoint counsel for a *pro se* defendant who is voluntarily absent or chooses to engage in misconduct despite knowing that it will result in removal from the courtroom and the absence of any representation.

It is commonly thought that defendants who decide to proceed *pro se* place themselves at a disadvantage in our adversarial court system. Nevertheless, defendants are constitutionally allowed autonomy to direct their own defense. Compelling a defendant to accept an unwanted lawyer violates that autonomy. Keeping this in mind, courts have a difficult job of balancing a defendant's autonomy while ensuring fairness of the legal proceedings.

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E R R A T U M

In the editorial "Media and Mental Illness in a Post-Truth Era" (J Am Acad Psychiatry Law 47:144–149, 2019), Dr. Kolla's title was listed incorrectly. He is Assistant Professor, University of Toronto, Department of Psychiatry, Toronto, Ontario, Canada.

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