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Recent Developments: Williams v. Wilzack: Maryland Statute Allowing Involuntarily Committed Mentally Ill Patients to Be Forcibly Medicated Violated Procedural Due Process

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Id. at 2648. Thus, the statements were not testimonial. Id. at 2649.

However, the Court concluded that when Muniz was asked whether he knew the date of his sixth birthday, he was confronted with the cruel dilemma in a coercive environment created by the custodial interrogation. Id. Since his answer was testimonial, it should have been suppressed.

The Court then addressed the State's argument that the initial questioning period did not constitute custodial interrogation or its "functional equivalent." Id. at 2650. In Rhode Island v. Innis, 446 U.S. 291 (1980), the Supreme Court defined the "functional equivalent" of interrogation as "any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." Muniz, 110 S. Ct. at 2650. Finding that custodial interrogation did exist, it nonetheless held Muniz's answers regarding name, address, weight, eye color, date of birth, and current age admissible as falling within the newly adopted "routine booking" exception, established in United States v. Horton, 873 F.2d 180 (8th Cir. 1989), which exempts questions to secure the information necessary to complete booking or pretrial services. Muniz, 110 S. Ct. at 2650.

Muniz made additional statements while performing three sobriety tests and while deciding not to take a breathalyzer test. Yet, the Court noted, the statements were made in response to carefully scripted instructions not intended to elicit any verbal responses. Id. at 2651. Therefore, the officer's words or actions did not constitute interrogation or even the questions requesting a response were merely "attendant to" legitimate police procedure. Id. Hence, Muniz's statements were made voluntarily and thus were admissible. Id.

Chief Justice Rehnquist, writing a concurring opinion, agreed that the statements made when the accused was asked the date of his sixth birthday, should not have been suppressed. This result was premised on the grounds that if the police may require Muniz to use his body in order to demonstrate the level of his physical coordination, they should be able to require him to speak or write in order to determine mental coordination. Id. at 2653 (Rehnquist, C. J., concurring). Rehnquist disagreed with the recognition of a routine booking exception to Miranda. He felt the "booking" questions were not testimonial so there was no need to apply the privilege. Id. at 2654 (Rehnquist, C. J., concurring).

Justice Marshall, the sole dissenter, agreed with the majority that Muniz's response to the question regarding the date of his sixth birthday should have been suppressed as the question constituted custodial interrogation prior to receipt of Miranda warnings. Id. (Marshall, J., dissenting). He disagreed, however, with the recognition of the routine booking exception and believed the Court had misapplied the Innis test when considering custodial interrogation. Id. at 2655-56 (Marshall, J., dissenting). Marshall believed the routine booking exception would necessitate difficult, time consuming litigation over whether particular questions were routine, necessary for recordkeeping and designed to elicit incriminating testimony. Id. at 2655 (Marshall, J., dissenting).

It is apparent that the Supreme Court will continue their conservative outlook with regard to drunk driving prosecutions. As illustrated by this case, if evidence is not obtained by way of custodial interrogation or falls within the routine booking exception to Miranda, the courts will allow evidence obtained by way of videotape.

— Freddie J. Traub

Williams v. Wilzack: MARYLAND STATUTE ALLOWING INVOLUNTARILY COMMITTED MENTALLY ILL PATIENTS TO BE FORCIBLY MEDICATED VIOLATED PROCEDURAL DUE PROCESS

In Williams v. Wilzack, 319 Md. 485, 573 A.2d 809 (1990), the Court of Appeals of Maryland held that § 10-708 of the Maryland Health-General Article, which established procedures for medicating mentally ill patients against their will, lacked the requisite procedural due process protections guaranteed by the state and federal constitutions. Although the decision did not render the statute unconstitutional, it potentially did weaken the ability of psychiatrists to forcibly medicate possibly dangerous patients, even if such medication is approved by a clinical review panel.

Laquinn Williams was committed to a state mental hospital after a judicial determination that he was not criminally responsible. See Md. Health-Gen. Code Ann. § 12-108 (1990). After Williams was diagnosed a paranoid schizophrenic, his doctor prescribed treatment with an antipsychotic drug. Williams objected to taking the medication for fear it would disrupt his thought process, interfere with the exercise of his Sunni Muslim religion, and reduce his ability to assist his attorney in a subsequent release hearing. Id. at 490, 573 A.2d at 811. A clinical review panel was convened to review William's decision. Williams and his lawyer were allowed to be present for part of the hearing so that Williams could explain his reasons for objecting. The panel, however, unanimously determined that the medication was the least intrusive way to effectively treat Williams and ordered that he be forcibly medicated. Id. at 490, 573 A.2d at 811. Williams was medicated against his will for approximately two weeks until he stated his plans to obtain an injunction to prohibit the medication. The medication was, therefore, temporarily discontinued and another review panel was convened. This second review panel also unanimously recommended that Williams be forcibly medicated. Id. at 491, 573 A.2d at 812.

Williams filed an action in the Circuit Court for Montgomery County alleging that the procedures under § 10-708 violated his state and federal constitutional rights to privacy, due process, freedom of speech, thought, and religion. Id. The trial court determined that § 10-708 was both constitutional on its face and as applied. As such, the court granted the State's motion for summary judgment and denied Williams's motion for partial summary judgment. Williams appealed, and the court of appeals granted certiorari before the court of special appeals decided the case. Id. at 492, 573 A.2d at 812.

The court of appeals initially explained that without § 10-708, the common law rule as set forth in Sard v. Hardy, 281 Md. 432, 379 A.2d 1014 (1977) would apply. The Sard rule required that a physician obtain a patient's consent before he treated a patient in a non-emergency situation. Wil-
liams, 319 Md. at 494, 573 A.2d at 814 (citing Sard, 281 Md. at 439, 379 A.2d at 1014).

Next, the court looked at each applicable health statute in detail, noting their procedural and substantive due process requirements. Williams argued that § 10-708 did not provide for proper notice, the right to attend the meeting, the right to a written decision, or the right to an appeal. Id. at 492, 573 A.2d at 813.

After addressing the applicable health statutes, the court focused upon the Supreme Court cases of Youngberg v. Romeo, 457 U.S. 307 (1982) and Washington v. Harper, 110 S. Ct. 1028 (1990). The court used these cases to support the rationale that due process considerations could be satisfied if professional judgment was used to override the patient's objections. Williams, 319 Md. at 495, 573 A.2d at 813.

Although Youngberg did not deal with forcible administration of antipsychotic drugs, the case did address what rights a person involuntarily committed to a state institution possessed under the due process clause of the fourteenth amendment. The Court in Youngberg concluded that such an individual could be restrained to the extent deemed necessary by the medical profession. Williams, 310 Md. at 497, 573 A.2d at 814 (citing Youngberg, 457 U.S. at 324). In reaching this decision, the Supreme Court stated "it was necessary to balance the liberty of the individual and the demands of an organized society." Id. at 495, 573 A.2d at 814, (citing Youngberg, 457 U.S. at 320). Specifically, the court reasoned that although the committed individual possessed certain rights, the state also had legitimate reasons for restraining a committed individual's liberty. Id.

Additionally, the Supreme Court stated that deference should be given to the decisions made by the medical staff of an institution in that judges and juries were not better qualified than medical professionals in determining which procedures best protect an individual's liberty interests. Id. at 496, 573 A.2d 814 (citing Youngberg, 457 U.S. at 322-23).

Unlike Youngberg, the recently decided case of Harper deals specifically with whether a state had the right to forcibly administer antipsychotic drugs to an involuntarily committed prisoner. In answering in the affirmative, the Court held that the state had a rational basis for administering the drugs to the inmates, regardless of their displeasure. Williams, 319 Md. at 499, 573 A.2d at 816.

It found that, substantively, the state's administrative policy was a "rational means of furthering the state's legitimate objectives of administering drugs for treatment purposes under the direction of a licensed psychiatrist." Id. at 502, 573 A.2d at 817 (citing Harper, 110 S. Ct. at 1042). Procedurally, the Court stated that nothing in the Constitution prohibited the state from permitting medical personnel to make that decision "under fair procedural mechanisms." Id. at 503, 573 A.2d at 818 (citing Harper, 110 S. Ct. at 1042).

Although the court of appeals noted that Williams was not a prisoner in a penal institution, as was the patient in Harper, it stated that Harper set forth procedural due process guidelines for determining whether Williams' constitutional rights were violated. Id., at 508, 573 A.2d at 820. The court concluded that because § 10-708 did not provide Williams with notice of the final review proceeding, or the ability to present evidence, or the ability to cross examine witnesses, it did not afford the requisite procedural due process protections to which Williams was entitled. Id. at 509-10, 573 A.2d at 821.

The court ruled, therefore, that it was error to enter summary judgment against Williams, and it was error to deny Williams' motion for partial summary judgment. Consequently, the court held that the common law rule, as set forth in Sard v. Hardy, requiring a patient's consent before the administration of such drugs, applied in Williams' case. Id. at 510, 573 A.2d at 821 (citing Sard, 281 Md. at 439, 379 A.2d at 1014).

The court of appeals concluded that additional procedural due process protections were owed to Williams even though the Supreme Court, in Harper, specifically did not require such protections. In so holding, it is obvious that the Maryland court wished to give involuntarily committed individuals additional guarantees of due process protection above and beyond what the Supreme Court required.

— Kathleen Dunivin Schmitt

Eanes v. State: RESTRICTIONS ON THE VOLUME LEVEL OF PROTECTED SPEECH HELD CONSTITUTIONAL

In Eanes v. State, 318 Md. 436, 569 A.2d 604 (1990), the Court of Appeals of Maryland held that a statute limiting the volume level of protected speech does not violate the first amendment to the United States Constitution.

While speaking against abortion in front of the Hagerstown Reproductive Clinic ("Clinic"), Jerry Wayne Eanes ("Eanes") made no threat of violence, no effort to physically restrain those entering the Clinic, and made no attempt to block access to the Clinic. Eanes, 318 Md. at 441, 569 A.2d at 606. Additionally, Eanes did not use obscenity, profanity or attempt to incite violence. Eanes spoke without artificial amplification, yet, was alleged to have spoken so loudly that he was heard above the noise generated by traffic. Throughout the day, local residents and people employed in the vicinity made several complaints to the local police regarding the loudness of Eanes' speech. Id.

After the police department had received numerous complaints concerning the volume level of the demonstrator, the police warned Eanes to lower his voice. Eanes ignored the warning and was arrested for disturbing the peace in violation of Md. Ann. Code art. 27, § 121 (1989). Section 121 makes it unlawful for anyone to "wilfully disturb any neighborhood in [any Maryland] city, town or county by loud and unseemly noises." Md. Ann. Code art. 27, § 121 (1989). Eanes was found guilty in the District Court of Maryland for Washington County. Eanes, 318 Md. at 442, 569 A.2d at 607.

On appeal, Eanes, citing Diehl v. State, 294 Md. 466, 451 A.2d 115 (1982), cert. denied, 460 U.S. 1098 (1983), contended that only speech not protected by the first amendment was subject to a statutory prohibition against "loud and unseemly noises." Eanes, 318 Md. at 443, 569 A.2d at 607. The court, disagreed with Eanes' interpretation, and explained that the prohibition against "loud and unseemly noises" in Diehl sought to regulate objectionable content of speech. Whereas in Eanes, the court pointed out, it was the volume level which was objectionable, not the