



Episode 239—Recorded 9-24-22

Announcer 00:00

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Andy 00:18

Recording live from F.Y.P. studios, east and west, transmitting across the internet. This is episode 239 of Registry Matters. Good evening, sir. How are you?

Larry 00:26

Doing awesome. Glad to be back.

Andy 00:30

Outstanding. I just want to make a note, if you notice that the podcast hasn't come out by Wednesday or Thursday, let me know because sometimes I forget to dot an I and cross a t. So for those of you looking for episode 238 from last week, you should have it like right about now. So there you go.

Larry 00:54

Are you telling me that Podcast 238 episode did not come out?

Andy 00:58

It went out. I just forgot to upload the mp3 to the normal podcast channels so that it got distributed out to like iTunes and Google Play and podcast players, so people have it on their drive to work.

Larry 01:15

What are you telling me?-- That tens of thousands of people were deprived last week. Is that what you're telling me?

Andy 01:2322

Basically, yes. But they have it as of now. My phone just downloaded Episode 238. So you should have it now. And if you're hearing this episode on Tuesday, you got Episode 28 four days ago. So you're welcome.

Larry 01:37

Okie dokie.

Andy 01:39

Hey, let me ask you a quick question. How are the wedding plans with Miss Hoover going?

Larry 01:45

Well, we've paused that for a moment, but I'm thinking we'll get back on track, probably in the next two or three months.

Andy 01:51

And what is the delay?

Larry 01:55

I'm still negotiating all the things that are required in terms of a woman with her standing in society to make sure that everything's just right.

Andy 02:04

Is she having you sign a prenup? Or is it you having her sign a prenup?

Larry 02:08

It's both.

Andy 02:11

I see. Okay, enough of the shenanigans. We will move on. But I do want to make sure to highlight something. You've told me before that during a previous administration, when they had victories, they were very humble, and they wouldn't take quote, unquote victory laps. And I want to make sure that we have a victory lap because an article someone on the discord server posted that in Jacksonville, Florida, they will not be putting up signs. Now as I understand it, Florida has a law it is in statute. If I understand this, right, please correct me if I'm wrong, that the sheriff's in the local communities can go post signs on PFRs houses. But because of a federal lawsuit, I'm gonna say these in a bunch of the scare quotes "a federal lawsuit that trumps their ability to put up those signs."

Larry 03:01

That is correct. That would be the lawsuit that was decided in the 11th circuit dealing with Butts County, Georgia, Sheriff. Yours truly designed that lawsuit in terms of what we would be going to attack and what the scope of the challenge would be. And we evaluated the likelihood of success on the merits because these things are expensive to undertake, and there's quite a bit of money invested that was not a cheap undertaking on our behalf. And this lawsuit now is binding precedent and the 11th circuit. And folks that is a small circuit is Georgia, Florida and Alabama. But it's persuasive authority throughout the United States. And we hope that there'll be other litigation around the United States with this being cited as persuasive authority if they're outside those three states. But this would not have happened, and I had a high-powered attorney after the victory because I said I was kind of surprised that we won as

solidly as we did in 11th circuit. And the attorney told me that he wasn't surprised at all, because it was a slam dunk. And I said, well, that's strange, because if that was such a slam dunk, why did no one do it until we did it? I'm just curious about that. If it was such an easy low, hanging fruit, why did everyone wring their hands about the signage and say, "wish there could be something done," but nobody did anything.

Andy 04:31

And I don't want the trolls saying oh my god, you're going to come out by doing this, then the legislature is going to come out and make new legislation. And then it will be in statute in Georgia, and you've now just raked everyone in Georgia over the coals.

Larry 04:49

There was a person particularly in Clayton County that said that, and he was actually not completely irrational. That is what the legislature would have done, and they actually did have a proposal in Georgia General Assembly to do that. But the breadth of the decision for the 11th circuit pretty much makes it unlikely now because they're going to have to actually narrowly tailor it. They're going to have to provide due process for anyone who they impose such a requirement on. So therefore, it's very unlikely. But you never know, what would if you would never let it get anything if you're afraid that they're going to change the law. But they do change the law. There was a premises challenge in North Carolina. It was won, and they went back and made a premises challenge that's even worse than the one that was struck down. There was a satellite-based monitoring challenge. They went back and created a law that says, well, after 10 years, you can petition to be taken off of it. I mean, I can go on and on. That's exactly what legislatures will do. But under that theory, we would just never litigate anything, because they would just keep trying, so why not just live with it and accept it?

Andy 05:57

Right? Why would you make waves, Larry? Don't do that.

Larry 06:01

Well, that's the rationale from some of our people out there that don't understand. What North Carolina failed to do, was after they won these lawsuits, they failed to understand the importance of the legislative process and making sure you hold the line in the legislature. If you don't have powerful influence and good representation of people that understand your issue, if you're not connected in the legislature, if you take a hands-off approach, then stuff will pass. And they have had that done to them more than once because they don't seem to gain any traction to speak of in the legislature when something is taken away from them by a change of law.

Andy 06:41

Give me the quick background of your picture for this week. Who is it?

Larry 06:47

That would be Coach Paul Bear Bryant, the late coach from the University of Alabama.

Andy 06:52

I'm going to play the little audio clip because it is about a half a second long. And you can expand on what he has said. I will play it three or four times-- "when the game, when the game" and one more "time to win the game." What's he saying?

Larry 07:08

They're trying to win the game.

Andy 07:11

And isn't that what we're trying to do is just win the game.

Larry 07:16

That's exactly what we're trying to do. That was the reporter was asking him why he made a quarterback change. And the context of that was the narrative on the sideline at halftime, and why did you change quarterback? Did you lose confidence? He says, "I'm trying to win the game. That's what I'm trying to do."

Andy 07:30

Just simply that. All right, well then let's move on. We have some sad news. We're going to offer some condolences for PFR that was killed in a psychiatric center. And this was just passed along to you a few hours ago by someone. And do you have anything that you want to speak to about this?

Larry 07:49

I didn't really get into reading the article because it was handed to me really about an hour ago. But anytime a person is killed in a correctional facility, at a psychiatric hospital, any type of place where they're there against our will, it's a sad day that we have not been able as a society to protect them. Well, we take your freedom away. I'll say this emphatically when we take your freedom away, we have the responsibility for your well-being--that includes your health includes your personal safety. And that may cost money, but we have a responsibility. When we don't let you defend yourself, we have to defend you.

Andy 08:30

This came from Audacy.com. "The murder of a registered sex offender on Tuesday inside of Brooklyn psychiatric facilities under investigation by the New York Police Department Police Department." They released that on

Friday. You can find a link to this in the show notes, should you want to follow up further. To continue moving on--you know what I never asked you. Can you give me the rundown for the night?

Larry 08:54

Yes, we're going to be doing several questions from listeners. Comments from listeners. And we've got three cases. We've got a case that's going to be mind boggling that you gave me a lot of grief about that has no connection to what we're doing. It has to do with religious freedom. I've been hearing you rant about this for three days now since I put it in. We've got a case from Illinois having to deal with a person who was conditionally release from civil commitment. And we've got a case from Virginia from a guy named Galen who petitioned for civil commitment a second time, and they committed him, and he's undone that commitment through the state Supreme Court. So we got three decisions. We have to talk really fast.

Andy 09:38

I am up to that challenge. I can blurt out some words at high speed. Well, this first one came in from an email message from Jacob. This is maybe a question for Larry, or do you have a Georgia attorney that might be able to help? I did email this question to Brandon Thomas after hearing him on a past episode of the show. I was charged with distribution of obscene material to a minor in Iowa in 2019 and pled guilty to contributing to the delinquency of a minor in 2020. The original charge would have required a PFR registration in Iowa. But the charge to which I pled, does not. Therefore, I am not a registered PFR. My family is considering relocating to Georgia. Are there any considerations or concerns I should have, given that the material facts of the case and my plea indicate that the behavior involves the sharing of adult- themed images/humor with a minor. if he's not registered in the other state, my understanding the way that Georgia Works, he wouldn't have to register in Georgia.

Larry 10:43

That's not the way it works in Georgia. Georgia could have a scenario where he would have to register even though another state doesn't require a register, they don't have that. That's not the way that statute works. It works in reverse. But here's what I would say to Jacob. Based on the dates that you put in your communication, it's likely that you might still be under supervision. Therefore, if you were to have your supervision follow you, the Georgia supervising authorities do have authority in terms of your supervision if you do have supervision to follow you. When you get to Georgia, they have the authority to expand your conditions of supervision. They could supervise you with some stringent conditions that they would apply to people who have sex offense convictions. I don't believe that they

would be allowed to require you to register if you're coming without that in your conditions from Iowa. But let's assume he's completely free of all restraint. If he's completely free of all restraint, and he comes in not needing to report to anybody. First of all, they wouldn't know he was there. I mean, would you agree with me that he's coming in with no probation? That's what I was thinking. Yeah, there would be nobody to know he was there. So unless he's going to do like McGuire did in Alabama and continue to call the sheriff's office and--we've had that happen on multiple occasions where they keep calling.

Andy 12:11

There was a guy in North Carolina that called like three times.

Larry 12:15

So if, if you're determined to be registered, I can just about assure you that eventually an agency will take your registration. So if you can't take no for an answer, then Jacob you will probably be getting yourself on the Georgia registry. But to the substance of this. It's a non-registerable offense in Iowa. Contributing to the delinquency of a minor in some states that can be registered registerable if it has a sexual motive, underlying it, and that has to be a factual finding in the record that there's a sexual component to it. You can contribute to the Lego civil minor by trying to get them intoxicated so that they will they fornicate with you. You can also contribute to delinquency of a minor by asking them to skip school so you can smoked weed with them and have no intention of having sex. So it depends on the underlying facts. But as a general rule, he should be fine. Stay off the telephones. Leave the Georgia authorities alone if you're not under supervision. And you'll be fine.

Andy 13:21

All right. Now we have something I would like to almost consider hate mail for you, Larry. Pilot guy, so I'll leave the name out of the equation. You know who you are. Mister Pilot Guy in Texas says Larry still does not get it. Yes. IM-- International Megan's Law--restricts international travel, period. End of story, many explanation points. If the Oklahoma guy who should have never moved to the "F" state of Florida, wants to travel, he cannot because of Florida. He is not free to just hop on a plane boat or motorcycle boat or motorcycle and travel across the border without the real threat of federal prison on return. How in the bleep-- and he bleepedy bleeped and used the F word, is this not a disability? It's like buying a car in Florida and it was registered there but you take it to Oklahoma. Florida says hey, you have a Florida car, and we are going to keep it on the auto registry. Seriously. A massive hurricane needs to wipe that state out. Regards, The Pilot Guy in Texas.

Larry 14:30

So well, at the risk of running off a patron, I'll just say he's just flat out wrong. He's just flat out wrong. The attorney in the case was the Oklahoma person who went to Florida. Let's make sure everybody understands. He lived in Florida for seven. I think it was like seven years before the hovercraft caught him. And then contrary to what everyone says, they did not arrest him for having not been registered. They did what Larry has said on the podcast for five years-- they give you a notice. If you've been dutifully discharged from registration, I have said emphatically that the protocol is to give the person a notice, because if you've got a court order, and he had an order from an Oklahoma court, as everyone recalls, that removed him from the registry. So therefore, Florida said, well, we know you're here now. And you need to register. But the Pilot Guy is just flat out wrong. The attorney did not plead this in the case. They did not make any argument, or anything related to such assertions that he's making. If you're not on a registry and registered. Being listed on a website, despite what you think, is not the same as being registered. So the website is an accumulation of interfacing data that the states have put out about people. Being registered is an agency, putting you in the NCIC, the National Crime Information Computer system. And they've listed certain things about you. And the agency has an operator reporting identifier, an ORI. And you are registered as a sexual offender. When he left Florida, if they followed their processes, he would have been removed by the registry agency because he's no longer registered in Florida. When he got to Oklahoma and got the order removing him, that agency that had him registered would have removed him from that from the NCIC. And he would have a below the line, historical fact in the NCIC that he was once registered. But nobody has ever been able to show me a single person who's been prosecuted, who has been deregistered and is simply listed on a website. And I hate to say this, but it's just scare tactics. There is nobody to file the report with that you're traveling. You filed it with your local registration office. He's not registered in Oklahoma. He doesn't have anywhere to file that report. It is filed with your local registry agency who transmits it to the marshals who transmits it to Interpol, as I understand it. There's no one to file that with. And then people will come back, and they'll say, "Well, Larry, you just don't understand." But he can't because there's no form online. "And then there's the marshals, you can file it with them." No, you can't. Charles from New York tried to do that very thing. He looked into filing it directly. There's nowhere to file that travel plan.

Andy 17:45

Wasn't that form designed for the law enforcement officer or somebody like that to then pass it along. They're asking the questions to a client sitting at the desk across from them, something like that.

Larry 17:56

Yes. It has that law enforcement agency's number and everything else on it. That form is not for the individuals. If you want to live your life in terror, thinking that after you're off the registry, you can't travel, I can't help you on that. But it's an unfounded fear. It just really is.

Andy 18:13

But it is true. That if you are deregistered, and you're only quote unquote "only a felon," and you try to go visit Niagara Falls on the Canadian side, they are not letting you in.

Larry 18:27

That is correct, but it has nothing to do with the fact that you are on the registry. It has to do with the fact that you're a felon.

Andy 18:31

I'm with you. Correct. You're a felon, and Canada says "no, you can't be here." The US did not stop you from traveling. Canada stopped you from entering their nation.

Larry 18:42

Well, but Americans do not accept the fact that they don't have that right to enter automatically. They are hell bent on believing that because they're an American, that they can just simply land anywhere and enter at will. But the funny thing is to save Americans don't offer that service to other nations. They don't tell you just come you land here. We'll admit you. We turn away 1000s of people that we don't admit who show up here. But somehow Americans feel entitled to go anywhere they want. And they don't respect that another nation might have the same standards that America has. We deem some people undesirable, and we don't admit them.

Andy 19:21

Those wouldn't be those S-H-hole countries, would it?

Larry 19:26

Possibly.

Andy 19:28

Well, let's get on with the cases for the episode because we have about 40 minutes to run through three cases. And I'm gonna have to talk as fast as I possibly can. So the transcriptionist is going to have a blast. And you people put in this case from the United States Court of Appeals for the Seventh Circuit named Rufus West versus Dylan Radtke. You're going a bit senile this week, Larry, and I think that more than just this week. I've read this case thoroughly, thoroughly, thoroughly. I see little connection between our issue that West was litigating and issues. Anyway, his issues related to PFRs tell me that you are not going senile.

Larry 20:09

I can't tell you that for sure. But I think I'm not.

Andy 20:14

You ask me any other day, and I will totally tell you that you are going senile. He filed this pro se and I know how much you like pro se litigation. We talked about that pretty regularly. Can you admit that sometimes it works. That was another time very recently that it worked that I can think of.

Larry 20:29

Well, I can admit that it does work. But often, more often than not, it doesn't work, and it establishes bad precedent. Did you overlook the fact that he did have pro bono counsel, appointed by the Seventh Circuit?

Andy 20:42

I did see that. In footnote two, the court said "Nicholas Gowen and Geneva Ramirez of the firm Burke, Warren, MacKay, and Serritella PC accepted the pro bono appointment. They have ably discharged their duties; we thank them for their service to the court and their client."

Andy 21:04

So Rufus West was confined in Wisconsin's Green Bay correctional institution where he must undergo strip searches by prison staff on a regular basis. That's normal in prisons. I gotta tell you, I've had my fair share of strip searches.

Larry 21:18

Well, but it's a little deeper than that. West is a Muslim and strip searches by prison guards of the opposite sex violate the moral tenets of his faith, which prohibit him from exposing his body to a woman who is not his wife.

Andy 21:32

I see. I can't think that I ever got stripped search by a woman. No, that's anyway, that's my own personal experience. So now I get it, though. You have an agenda to show the courts that can rule in favor of prisoners.

Larry 21:45

That's my agenda. I want to show that a prisoner can occasionally win.

Andy 21:53

And they did with Packingham in a similar religious kind of context. So let me set this up. In July 2016, West was required to submit to a strip search by a guard who is a transgender man, a woman who identifies as a man. West objected on religious grounds but was refused an accommodation, and the transgender guard participated in the strip search as the observing officer. After this incident,

West requested an exemption from future cross sex strip searches. The warden denied the request and told West that he would be disciplined if he objected again. So tell us what happened next.

Larry 22:28

Well, West responded with this lawsuit against the warden and various corrections officials. He sought an injunction against cross sex strip searches under the Religious Land Use and Institutional Persons Act of 2000, or abbreviation--RLUIPA. It's a code in the United States Code at 42, United States Code 2000, blah, blah, blah. It prohibits a prison from substantially burdening an inmate's religious exercise, unless doing so is the least restrictive means to further a compelling governmental interest. Separately, he asserted a violation of his Fourth Amendment rights to be free from unreasonable searches.

Andy 23:12

And then the District Court dismissed the constitutional claim based on circuit precedent holding that a prisoner has no Fourth Amendment interest against visual inspections of his body. West asked us to reverse this ruling based on Henry vs. Hewlett 969 F.3d, like I can't read all that, but it did go on BOC which overruled that precedent. Was West correct in his theory?

Larry 23:37

Yes, the religious claim failed on cross motions for summary judgment. The trial judge concluded that West had not shown a substantial burden on his religious exercise because he was subjected only to one cross strip search. And it's not clear when officers will do it again or if it will happen again. The judge also determined that cross strip searches are permissible in any event, as to the prisons only means to avoid unlawfully discriminating against its transgender employees.

Andy 24:06

And then the Seventh Circuit reversed and noted that Henry vs. Hewlett case revives the Fourth Amendment claim, and West is entitled to judgment in his favor on the RLUIPA. Look, man, if you're going to make an acronym, can you please make it pronounceable. And how did they come to that conclusion?

Larry 24:29

Well, they stated, I'm just going by the words, they stated "there's no dispute that his objection to cross sex strip searches as both religious in nature and sincere. The prison has substantially burdened his religious exercise by requiring him to either submit to cross strip searches in violation of his faith or face discipline. The burden is unjustified under the religious strict scrutiny standard" of that statute that's too difficult to pronounce.

Andy 24:58

And as I read the decision, Larry, the prison put forth a plethora of arguments against accommodating West. They even argued it would violate the Civil Rights Act of 1964 because it would discriminate against transgender employees. And what did the court say then?

Larry 25:13

Well, the court didn't think too much of that. They said West's request for exemption from cross-sex strip searches will not violate the anti-discrimination rights of transgender prison employees under the Civil Rights Act of 1964, or the equal protection clause of the 14th Amendment. So accordingly, they remanded for entry of appropriate injunctive relief on their religious claim and further proceedings on the Fourth Amendment claim.

Andy 25:40

I think it's ironic, though, Larry, that they stated we are guided by the Supreme Court's decision in Hobby Lobby and Holt, both of which addressed what constitutes a substantial burden on religious exercise. In Hobby Lobby employer sued the Secretary of Health and Human Services under the Religious Freedom Restoration Act, or RFRA, seeking an exemption from a federal law requiring them to provide health insurance coverage for contraceptives in violation of the religious beliefs. Refusing to provide the coverage brought hefty fines of potentially millions of dollars. The Supreme Court held that forcing the employers to choose between considerable financial penalties and providing the coverage and violation of the religious beliefs was a substantial burden on their religious exercise. Did the Hobby Lobby decision weigh heavily in the seventh circuit's analysis?

Larry 26:26

Oh, it did. Indeed. It absolutely did.

Andy 26:29

Alright, and then before we move on, can we examine his Fourth Amendment claim?

Larry 26:35

Yes, that's interesting, because based on precedent as it existed when the trial judge ruled, that child judge dismissed his fourth amendment claim at screening, because as the precedent stood at that time, he had failed to state a claim upon which relief can be granted. And she was relying on--I believe it was a female judge--she was relying on King versus McCarthy. But that 2015 decision, which held that a prisoner has no Fourth Amendment privacy interests against visual inspections. But after that, the judgment below the Seventh Circuit overruled King, holding in Henry that the Fourth Amendment protects the right to bodily privacy for convicted prisoners, albeit in a

significant limited way, including during visual inspections. So he gets to go back and litigate that dismissed claim now because it was reinstated because the precedent of the circuit has been overturned. So that gives him another bite at the apple.

Andy 27:34

They also stated "the precise contours of the Fourth Amendment claim need not be worked out on this appeal. It is enough to say that Henry has revived West constitutional claim, and he is entitled to develop it on remand." So West might establish additional precedent in terms of strip searches for prisoners?

Larry 27:53

He very well may indeed. He's already established these he's got to religious assertion that the cross-sex searching is problematic in that circuit. But he may have established it beyond the cross sex, that there's some reasonable expectation of privacy in your body. There may have to be some level of probable cause or something to justify the need to invade your privacy. He may get the opportunity, and he may succeed in setting some minimal standard, rather than just them coming and saying stripped naked, we want to strip you today.

Andy 28:30

It is my understanding that after my time in the wonderful facilities of Georgia that a group of--I am pretty sure it was Muslims because they have facial hair--and they sued, and they got the right to have facial hair, and they just then extended they probably just dropped the whole requirement. Not that if you're a Muslim, you can have facial hair, they just said you don't have to shave anymore. So now you have everyone running around looking like ZZ Top.

Larry 28:56

There was a case mentioned. I don't know if it was from Georgia. In this decision of about 30 pages, I spotted that they had decided that if prisons can allow you to have hair on the top of your head that goes down to the middle of your back that having a half inch, or a one-inch beard did not seem to pose any reasonable security threat. So therefore, they allowed on religious basis people to have their facial hair.

Andy 29:20

And you'll see in certain states people just have hair down to their halfway down their back and beards out then, and then you have other ones that look like they're in a military boot camp practically. I think that in a place like in a hot state specifically, that has got to keep down on cooling, but also anything like lice or that nature. If you have less hair, you have less chance of getting those kinds of things.

Larry 29:45

I would agree. It's also a discipline thing. Prisons are run similar to military boot camp. They want you to understand that they're in control and that's part of the process of ordaining you to the control of the prison.

Andy 29:59

But I don't think that having you strip search is part of the dehumanizing aspect. It is a security thing so that you're not bringing contraband. Though Abu Ghraib would show you otherwise. People do strip search you and do terrible things to you, when they have that kind of power over you, too.

Larry 30:14

I've heard about that.

Announcer 30:17

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Andy 31:05

Alright, well, let's move along to this case from Illinois. And this is the civil commitment Supreme Court of State of Illinois. Shall we go there?

Larry 31:15

Yes, let's do it.

Andy 31:18

So this is a case that you people put in named Illinois versus Kastman, which should be interesting. It's from the state Supreme Court. It says "in 1994, defendant Richard Katsman was found to be a sexually dangerous person and was committed to the guardianship and custody of the Director of the Department of Corrections under the Sexually Dangerous Persons Act. He was granted conditional release and subsequently filed a petition requesting that the director of the Department be compelled to provide financial assistance to cover his treatment costs and living expenses." Let's talk about that again really quick. So he sued the Department of Corrections head person that the Department of Corrections should be compelled to provide financial assistance to cover his treatment and cost of living

expenses. I'm betting that the state of Illinois was not amused by this.

Larry 32:10

They were not. Rob Jeffries, who is director of corrections intervened and opposed Kastman's petition. The circuit court of Lake County, despite his opposition, granted the petition and ordered the director to pay a portion of Kastman's monthly expenses. The Director filed an interlocutory appeal. And you have to admit that this is funny.

Andy 32:34

That is kind of funny. But I do believe that you need to come up with a better way to define the word funny if you think that this is funny for real.

Larry 32:44

If you say so. It's funny because the Appellate Court affirmed the trial court and the state Supreme Court allowed the Director's petition for leave to appeal, and then they've affirmed both the trial court and the appellate court. Now this is funny.

Andy 33:01

Well, why was he confined at Big Muddy? Is that the actual name of this place or is that the colloquial name?

Larry 33:10

That is the actual name.

Andy 33:12

That is a terrible name for an institution. "Kastman filed several recovery applications seeking his released or for review of his treatment. His most recent application for conditional release was filed in 2013. The application was supported by the evaluation of Dr. Mark Carich, who determined that Kastman appeared to no be dangerous within the confines of an institution. In addition, Dr. Kristopher Clouch evaluated Kastman and support his request for conditional release. Based on the opinion of these two evaluators, the state did not contest Katherine's application, and the party submitted an agreed order of conditional release, which was approved by the circuit court on January 11, 2016." So his released was approved. Now he thinks the hardworking taxpayers of Villanova should pay for his treatment and housing. You've got to be kidding me?

Larry 34:00

No, I'm not kidding. That was his claim, and he has prevailed. "The conditional release order mandated that Kastman become self-supporting by obtaining employment, at least part time at a job site approved by the parole and probation department, or by performing voluntary public service work at an approved site while receiving Social

Security disability benefits. The order also required that he pay all monthly living expenses and comply with parole and probation department in developing a budget. In addition, the order directed that during periods of unemployment that he was to actively seek employment or pursue an approved course of study or vocational training." But he was unable to afford the treatment and pay for the approved PEFR housing.

Andy 34:48

To move along. "In December of 2020, approximately five years after he was placed on conditional release Kastman filed a motion seeking further modification of that order. In particular, he requested that the circuit court ordered the Director, as his guardian, to provide financial assistance to cover certain of his living expenses and mandated treatment costs. Kastman's motion asserted that he was unemployed, disabled, and could not afford his \$300 monthly treatment costs and the \$1,800 monthly rent for housing that complied with SORA." And I've heard it all. Now did Kastman prove his financial status?

Larry 35:25

Yes, he did. "At hearings conducted in February and March of 2021, the court was advised of information to his financial status situation. He had been paying for all of his essential living and treatment expenses for the previous five years but had depleted much of his accumulated funds. So you gotta hand it to him, he must have had a nice accumulation. "As of March 3, 2021, Kastman had approximately \$9,000 remaining in his checking account, and a monthly disability income of \$1,130." Now people look at that saying, I wish I could have \$9,000. "His monthly expenses necessitated by the conditional release order total \$2,912." This was all proven to the satisfaction of the trial court. "Kastman argued that without financial assistance, he would exhaust all of his savings in approximately five months, and then he could not afford to comply with the terms of that conditional release order."

Andy 36:17

I mean, like roughly averaging math out there. He's short 2000 bucks a month. So what did the circuit court do after the hearings in early 2021?

Larry 36:29

Well, as I said, in preshow banter, if you had brought this case to me and said, I would like NARSOL to fund us, I would have said--go ahead and play my favorite left track. That is what I would have played.

Andy 36:40

Play this one. (Laugh track)

Larry 36:48

So I would have, I would have done that if that case had been brought to me as a potential NORSAL action. So I'm confessing I am not always right. But I would have been very sinister about this case, but the circuit court order the director to contribute \$2,412 per month toward Kastman's essential expenses, including rent pay off or treat my utilities and medical payments. The modified order also required Kastman to pay 500 toward his monthly living expenses. I remember he gets \$1,130. So they're taking just shy of 50% for his contribution.

Andy 37:20

And so that only leaves him like 500 bucks a month for him to do groceries, cable, whatever those are, that's not a lot of money to make ends meet on.

Larry 37:34

Right, not much.

Andy 37:36

The circuit court commented that "one has to look at the big picture and make a determination as to how anyone can move forward from being actually confined at Big Muddy. The circuit court observed, I don't think it's incumbent on Kastman draining the money he has in his account until it drains completely. The court also stated, it's the courts hope that if he goes forward, he will be in a better position to take on more of the responsibilities with regard to pulling his weight financially in the outside placement." Now, you must admit that this is legislating from the bench. Larry, can you admit that finally?

Larry 38:11

No, I can't. But it does appear that way. But "the appellate court observed that its conclusion was consistent with the state Supreme Court's decision in a case called People versus Cooper." And that was from 1989, which held that a circuit court retains jurisdiction over a sexually dangerous person on conditional release. So they have decided that based on that 1989 case, that the circuit court can do this. So anyway, I would have been very dubious, but here we are.

Andy 38:42

"The appellate court also noted that Cooper differentiated an order granting conditional release from an order that discharges a sexually dangerous person from the supervision of the director, and the jurisdiction of the committing court. According to the appellate court, this distinction reflects the director's guardianship extends to sexually dangerous persons on conditional release." It appears that they held that the state is responsible for a person while on conditional release from civil commitment. That really, totally makes sense to me.

Larry 39:11

So well, it does, but then again it doesn't. Part of the reason why when you're working your way from institutionalization to freedom is that you're supposed to be able to pull your own weight. There would be people who would argue that the taxpayers have to pull their own weight and now they're having to carry this, but that's what I get from this case. That's exactly what they decided.

Andy 39:30

I bet you it's significantly more expensive to have an inside some sort of facility.

Larry 39:36

Well, maybe.

Andy 39:38

Alright, well, let's get what to what the Supreme Court said. What was the issue on the state of appeal of the appellate court's decision?

Larry 39:47

Well, the sole question presented was whether the Circuit Court had authority under the act to require the director to contribute to the treatment and the cost and living expenses of Kastman after he had been placed on conditional release. That was their focus of the state Supreme Court.

Andy 40:04

The director also claimed "that requiring him to provide financial assistance is inconsistent with the purposes of conditional release. According to the director, a purpose of conditional release is to allow the circuit court to determine if a sexually dangerous person is capable of functioning outside an institutional setting before discharging him." What did the court say in response to that?

Larry 40:25

Well, they actually had an answer. As I said, "we reject this argument because it blurs the critical distinction between financial instability and the need for supervision to protect the public. These are not the same thing. Nothing in the Act requires that a sexual dangerous personal unconditional release be self-supporting. And there's no statutory language that addresses the circumstances for the sexually dangerous person on conditional release be self-supporting. This charge conditional release might appear no longer to be dangerous but require financial assistance to live outside an institutional setting." But also the statute doesn't say anything to the other way either. So this is a corporate legislating from the bench. So, go ahead.

Andy 41:05

All right. Well, they went on to say "the obligation to supervise imposed on the director derives from his responsibility as guardian, which are premised on the mental disorder that formed the basis for the sexually dangerous person's commitment in the first place. The ability to pay for treatment costs and living expenses is a purely economic question that need not be directly related to the sexually dangerous person's level of recovery, or his need for supervision outside of the institutional setting." (See the opinion at pages 24 and 25.) This is powerful, though.

Larry 41:36

It is very powerful. The court concluded "the director's public policy arguments do not compel us to conclude that the Circuit Court lacked authority to order the director to contribute financial assistance toward Kastman's treatment cost of living expenses, which is based upon the plain language of the Act." This is fantastic news. I would have never imagined that this decision would come down this way. But it did.

Andy 42:05

So in summary, he's been treated, so to speak. And so they let him go. But he's in like something of a halfway house, and he can't afford all the expenses. So he petitioned to have the state still support him, at least partially. And he won that.

Larry 42:22

Except for he wasn't really in a halfway house. I think he was in a regular in a more traditional setting. But nonetheless, he's on unconditional release from civil commitment until they fully discharge him. He is a ward of the state according to this decision. This has huge ramifications. I mean, I would whether two things are going to happen. They're going to try to change the law in Illinois--they're going to try to change the statute. But if they don't succeed in that effort, they'll need to have fewer people and conditional discharge. So they'll either fight to keep them in custody longer. If they're going to pay for their overhead anyway. Or they'll discharge they'll fully discharge them sooner. And I would bank on to try to keep them in custody. If they're gonna spend a whole bunch of money supporting you, they'd rather your threat of recidivism be virtually zero.

Andy 43:11

Sure, sure. Like I said, it's gotta be more expensive to keep somebody behind the walls than it does to let them live on the economy and subsidize, I guess you could say.

Larry 43:23

Well, liberals have said that for a long time, you know, it costs \$40,000 a year to keep a person in prison. What if we gave the person a \$40,000 guaranteed income? Would they commit less crime? What if we gave him a \$31,000 annual income. We've said that for a long time, the economic disparities in this nation where people--the federal minimum wage is \$7.25 an hour? Do your calculation. Figure out what that comes out to now.

Andy 43:51

15 grand a year.

Larry 43:53

Very few people work for the federal minimum wage, but there are people who are working for something approximating seven to \$10 an hour, and you just can't live on it. So therefore, economically, it's very difficult to survive in this country if you're in that category of folks. So criminal behavior is a quick generator of income. There are many things you can do that generate income very quickly.

Andy 44:12

Right, totally, especially in those conditions. You're not going to be able to find just any job if you have that "sexually dangerous person" somewhere in your background check. All right. Let's move over to Galen Baughman. In the Virginia civil commitment update, as I recall, they sought to have Galen's commitment years ago, when he was about to be released from prison.

Larry 44:41

Your recollection is correct. That jury at that hearing found that he was not dangerous, so they denied the state's petition. At that time, I forgot how many years ago, but it was several years ago.

Andy 44:52

It's been since we've been doing the podcast so if I'm not mistaken and do they have an axe to grind.

Larry 44:57

I would suspect that they did. Galen is attracted to adolescent males. And there's a good probability that they sought commitment due to their distaste for that attraction. You shouldn't assert it when you can't prove it. But on background, it's probably one of the things that made them find him so distasteful that they thought we don't need that kind of person on the street.

Andy 45:25

As I understand this case, the court narrowly decided on the expert who testified at the probable cause hearing on the second petition for Galen commitment.

Larry 45:34

That is correct. On appeal from being committed on that second hearing, Galen argued that the trial court, by permitting, Doctor Sjolinder--

Andy 45:48

Sjolinder's the way that the Google Search looked for it. So Sjolinder's what I got.

Larry 45:54

By allowing her to testify as an expert witness, and she was not appointed by the state commissioner. And there was a process in Virginia of who gets to assist in these petitions for civil commitment. Specifically, Baughman contends that under the Sexually Violent Predator Act, only the psychologists designated by the commissioner can testify as an expert for the Commonwealth. And Dr. Sjolinder was not designated by the commissioner and Baughman insisted that she was not permitted to testify at either the probable cause or the subsequent trial. But she was allowed to testify.

Andy 46:31

So Dr. Sjolinder was not appointed.

Larry 46:35

That is correct. The person that was appointed through the process found that Galen was not a candidate for commitment and recommended against them filing a petition. And the state went outside the process and retained Dr. Sjolinder later.

Andy 46:48

There's that axe to grind. A court noted "it is an undisputed fact that Dr. Sjolinder was not designated by the commissioner, nor did she take part in both Baughman's mental health examination. She was, instead, retained by the Commonwealth after it received Dr. Graver's report. Although the Commonwealth is clearly permitted to consult with Dr. Sjolinder, nothing in the code statute 37.2-906 permits the Commonwealth to call her as an expert witness at the probable cause hearing." That is on page five. They're doing everything that they can to try and keep him locked up. Shocking.

Larry 47:25

They were. And the court noted that Baughman clearly raised the issues relating to Dr. Sjolinder's expert testimony before trial. As Dr. Sjolinder expert testimony provided the only means for the trial court to determine Baughman's mental state, the trial court's error was clearly prejudicial, and substantially influenced trial court's determination of probable cause.

Andy 47:50

So does this mean he gets out? Or is out?

Larry 47:52

It should mean that. I don't know if he's out yet. But barring something extraordinary, it was reversed, and the petition was dismissed read the opinion. So it shouldn't mean that he would be out. But there was a lot of issues that I thought were meritorious in this as I looked at it when it was happening, because he had been acquitted. And that's not the right word. But the state's first petition years ago, the jury had decided he was not sufficiently dangerous to commit him. They had found him not a candidate for commitment. He was released on probation. And he was doing fairly well on under probation. But then, in the course of his probation, he was able to travel to a funeral. And then in that trip, he met some adolescent males, as I recall. And he got phone numbers and was involved in texting communication, which was a violation of his probation. So his probation was revoked. And that was probably within the zone of proper action because he was not allowed to have communication with minors while he's under supervision. But that did not create a new sexual offense. And the way I read Virginia law at the time, there must be a predicate offense that triggers the commitment. And then there's a fairly elaborate process--I can't recite every step--but there's a fairly elaborate process, and the state does provide a small level of financial assistance for those whose commitments are being sought to fight that. And they didn't have a predicate offense to follow the second petition, Baughman argued. And he thought it should have been argued that the second petition was improper because he had not committed a sex offense. It had already been fully litigated on the first petition, and this was stopped by the decision of the jury years ago. They chose to strategize differently, and they focused on the examination. And they were correct. It worked. I mean, they won the case. But it's a very narrow victory, as you pointed out, because we've got one answer. We've got the answer on the expert must be one within the process if they're going to testify. We don't know whether they can file a second petition without a predicate offense. Now what would be ironic, since I can't say funny, it would be ironic if they file another petition against him. You'd have to admit that would be ironic, would it not?

Andy 50:39

It would be ironic, I probably just expected though.

Larry 50:44

It would not surprise me if they did.

Andy 50:47

But they're just asserting that he--I know you've never watched the movie Minority Report--but he is guilty of

thought crimes. I am not condemning the guy for being attracted to minors or anything of that sort. But if that just it, that's not he's not guilty of the thoughts until he would commit the act.

Larry 51:08

Well, under the sexually violent commitment statute, the mental abnormality must be diagnosed. And that's a very vague standard, that they have a mental abnormality. And then they must show that that mental abnormality makes them have a higher likelihood of doing something sexually inappropriate. Texting is not a sex crime. So therefore, you could take everything at face value and say there's not enough information here. But the prosecution would argue that that's grooming behavior. And they even had some of the text messages, and the text messages were things you wouldn't want an adult texting to a minor. It was something to the effect of getting away from parental supervision. You generally don't want to encourage minors to be evading adult supervision. I think you've got a teenager. You would not appreciate someone doing that, would you?

Andy 52:08

No.

Larry 52:09

But that is not the same thing as going to engage them in my act of violence and an act of having sex against these young people's will. So anyway, I don't know that they cannot file another petition. They hate him enough that they very well could try it.

Andy 52:25

Very interesting. All right. But as with many of these things, is there any sort of precedent that this will set for someone else? Does this only apply to Galen? Or does it have any sort of further reaching impact for anybody else.

Larry 52:42

it does have the reaching impact in terms of the expert. They'll have to follow the process. They will make sure that the expert that they put on is as a person who meets the credentials in the statute. And another way to get around is change the statute to allow for the testimony. And that's another thing that they could potentially do. But for the moment, this does have that presidential authority for people who would find themselves with an expert testifying that wasn't appointed by the commissioner. But the bigger question of whether they can file a subsequent petition--we would never even have had to answer this question about the expert. If you couldn't file a second petition without an additional offense. See, I always like to focus on the root of the problem. And that's something that went on with the Zack Anderson case that nobody could understand, which was a strict liability offense. Everybody got fixated over the

fact that he was not given the Holmes Youthful Trainee Act, which would have spared him from registration, and how unfair the judge was, and how the judge had an axe to grind. And that's all well and good. And it worked for Zach. And that's great. But the real problem is there's 10s of 1000s of Zach's out there because of the strict liability nature of Michigan in many states' laws. The problem we have here hasn't been cured fully because nothing will stop a prosecutor from filing a second petition because that wasn't addressed in this case. So they will have to tiptoe around the experts they use, but they can still file a second petition that wasn't addressed.

Andy 54:17

Remind me. Strict liability is if you don't know the law, you're still guilty, even if you don't know what the law is, and you break it.

Larry 54:27

Not necessarily if you don't know the law, but there's a particular element of the crime that you're not aware of like the person's age. So like in Michigan, you have sex with a person. And you say you didn't know their age. They say, well, the fact of the matter is they were only 14. And you say, well, they told me they were 17. It doesn't matter. That's what strict liability is.

Andy 54:48

I had a roommate who provided me with some story, and I was like well, how do you defend against that if you didn't know that it was happening? And then you're guilty. I couldn't wrap my head around it. I had no understanding that, like what you just described, you go to a club, you think everyone's there because you drink because it's an adult club 21 and older, and person turns out to be 16 because they had a fake ID, you're still guilty because they got into the club, but that's not your fault that they got into the club.

Larry 55:14

Yes. And that's referred to as culpable mental status and like you don't have the culpable mental status. When you're not seeking to break the law, it just happens. That's when you have what's called a strict liability. You're on a hiking trail, and a blizzard comes, and they have exclusion zones where you can't go off the trail, and you can't see those barriers. You go off trail, but you say, well, I couldn't see it. And I said too bad, we found you 500 yards off trail.

Andy 55:39

I gotcha. I think that that will do it for this evening, sir. Is there anything that you want to say before we close out?

Larry 55:50

Yes, we have. We have what? That wasn't there a new patron that you forgot to announce last week?

Andy 55:59

There might be. If you will vamp for a moment, then I will go track that down.

Larry 56:04

And then we are communicating with a person that sent us an email part of what we read last week, from the person in Fort Leavenworth and the military about changing your mind. When yes means yes. No means no. But you remember that one? Well, we had a person reached out to us and said that we can talk, and I reached out to the person by email, and I said, "Please provide me your phone number. And please agreed to answer it." And I was kind of snarky. I said, "I don't have time to play phone tag, because most people are afraid to answer their phones these days. So therefore, I'm hoping that if I get a phone number that someone will actually answer it." Because what I usually do is I have a list of people to call. I make the phone call to the person, and that person doesn't pick up, and I go on to the next person on my list that's wanting me to call them. And then the person immediately calls back and says, "I got a missed call." And then they get mad because I didn't pick it up. But guess what, I'm no longer available for you, because I moved on to the next person on the list. So when I call you, answer your phone, please.

Andy 57:07

Okay, and so you can get off that soapbox. We did get a new patron earlier in the week named Ethan. And then probably related to the Chatting with Larry section that we're going to do a person named Jane increased their patron amount so that they could participate in those chats with Larry that are going to start next week.

Larry 57:30

Awesome.

Andy 57:31

Are they going to start next week?

Larry 57:32

I'm hoping that they work out next week.

Andy 57:36

I will try to send out some notice to folks beforehand. Give you a day or so notice maybe Wednesday or Thursday night in the evening or something like that, that you'll make yourself available for people to just kick the Bobo. Shoot the SH, whatever you want to say with Larry, on Patreon on Discord.

Larry 57:55

You know I'm gonna run them off by tell them things that they don't want to hear?

Andy 58:00

I totally understand that. Very good, sir. I hope you have a wonderful night. I'll tell everybody where to find all this stuff. You can find all the show notes over at registrymatters.co and FYP education.org. Leave a voicemail at 747-227-4477. Email at registrymatterscast@gmail.com. And of course, support on Patreon at patreon.com/registrymatters. And one other thing, if you want to listen to us live. We do it on Discord again, but it's at 7pm Eastern Saturday nights. And if you are nice to me, I will let you in so that you can listen to us record this live. And I think that's all I got. I hope you have a great weekend.

Larry 58:39

And don't forget to LIKE IT on YouTube and give us a five or 10- or 15-star review. How many stars do they go?

Andy 58:46

I believe it only goes to five.

Larry 58:49

Then give us a five-star review. And we've got to build that YouTube channel to 1000 subscribers, and we're only halfway there folks. So get to work.

Andy 58:59

Well, very good. And I will talk to you soon, sir. Have a great night.

Announcer 59:06

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