Hendricks v. People: Forcing the Insanity Defense on an Unwilling Defendant

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One exception to the legal principle that competent criminal defendants have the right to determine the pleas that they enter involves the insanity defense. As early as 1910, some appellate courts have held that a trial court may impose an insanity defense on an unwilling defendant.[1] The leading cases have come from the District of Columbia, where the appeals court, in a series of cases, upheld the authority of a trial court to impose the defense,[2–4] until it finally reversed itself and held that a competent defendant may reject an insanity defense if the decision is intelligent and voluntary.[5] The court listed persuasive reasons that a competent defendant might elect to reject a potentially successful insanity defense, including a desire to avoid a mental commitment potentially longer than the prison term for the crime charged, an objection to the quality of treatment or type of confinement attendant on an insanity acquittal, a genuine belief that he or she is not insane, the fear that raising the defense would be equivalent to an admission of guilt, the stigma of insanity, an irrational fear of persons who have mental illness and risk of future discrimination, and denigration of political or religious protest.

The same court instructed trial judges to examine the defendant's "awareness of his rights and available alternatives, his comprehension of the consequences of failing to assert the defense and the freeness of the decision to waive the defense" (Ref. 4, p 586). The judge should avoid, however, "an incursion into the area of mental capacity which might develop into an irreconcilable conflict with the finding of competency to stand trial" (Ref. 4, p 586). For a survey of case law in this area, see Miller *et al.*[6]

Colorado has litigated the issue on several of occasions, beginning in 1941 with *Boyd v. People*[7] in which the Colorado Supreme Court held that ". . . [the] court was without authority to enter plea of not guilty by reason of insanity . . . since court could properly enter only the plea of not guilty" and "under no circumstances can the court, on its own motion, enter the plea of not guilty by reason of insanity. Such a plea is in the nature of confession and avoidance" (Ref. 7, p 195). Subsequently, however, in 1977 the same Court held in *Les v. Meredith*[8] that the "administration of justice is improved if upon having reason to do so and after holding a hearing, a trial judge can enter a plea of not guilty by reason of insanity on behalf of the defendant, irrespective of the defendant's wishes."

Other decisions appear to conflict with *Les*, however. In *Labor v. Gibson*, the Colorado Supreme Court held that "a defendant may strategically decide not to enter a plea of not guilty by reason of insanity, due to the possible greater length of confinement . . . ."[9] In *People v. Lopez*, the Colorado court of appeals held that: "The tactical choice of whether to enter a plea of not guilty by reason of insanity by a defendant found 'mentally competent' . . . is left to the defendant and his counsel."[10] The same court subsequently reaffirmed this position in *People v. Benns.*[11]

Colorado statutes reflect the inconsistencies in the court decisions:

> If counsel for the defendant believes that a plea of not guilty by reason of insanity should be entered on behalf of the defendant but the defendant refuses to permit the entry of the plea, counsel may so inform the court. The court shall then conduct such investigation as it deems proper, which may include the ap-

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> pointment of psychiatrists or psychologists to assist a psychiatrist to examine the defendant and advise the court. After its investigation the court shall conduct a hearing to determine whether the plea should be entered. If the court finds that the entry of a plea of not guilty by reason of insanity is necessary for a just determination of the charge against the defendant, it shall enter the plea on behalf of the defendant, and the plea so entered shall have the same effect as though it had been voluntarily entered by the defendant himself.[12]

Most recently, the Colorado Supreme Court again addressed the question in *Hendricks v. People.*[13] Hendricks was charged with the murder of her husband. She denied committing the crime, despite considerable evidence against her, and at times she denied that her husband was dead. There was significant evidence that she was mentally disordered, and her attorneys gave notice of intent to enter an insanity plea over her objections. The judge ordered a psychiatric evaluation, which opined that Hendricks had been insane.

The judge reviewed the report, conducted a hearing, interviewed Hendricks, and concluded that she was competent to proceed. He therefore declined to permit an insanity defense to be entered over her objections. Hendricks was convicted. On appeal, she challenged the trial court's refusal to permit an insanity defense to be entered. The appeals court affirmed, relying on its reading of the common law that held a trial court may not enter an insanity plea over the objections of a defendant who voluntarily and intelligently waives the defense.

The Colorado Supreme Court rejected the absolutist approach and reversed. It interpreted the language of the Colorado Revised Statute[12] more expansively than had the lower courts. Specifically, the goal of a "just determination of the charge against the defendant" is not overridden by a voluntary and intelligent waiver of the defense on the part of a defendant. The Court held that the trial court must balance the public's interest in not convicting a defendant who was not criminally responsible, and a defendant's interest in autonomously controlling the nature of her defense. To effect this balance, the court must first consider the viability of the proposed mental state defense, by reviewing a "complete, neutral mental evaluation performed by a qualified expert."[12] Second, a defendant does not waive her privilege against self-incrimination during a court-ordered mental evaluation. The court should therefore not permit the prosecution access to the evaluation unless the mental state defense is ultimately entered. Third, the court must consider the reasons the defendant refuses to enter a mental state defense, including (1) avoidance of potentially longer confinement (Colorado has an indeterminate commitment after an insanity acquittal, and commitments average nine years); (2) avoidance of the social stigma that follows an insanity finding; (3) avoidance of collateral effects of a commitment, including loss of civil rights and subsequent civil commitment; (4) disparate quality of medical treatment in prison compared with a forensic hospital; (5) denigration of a defendant's views as civil or religious protest; and (6) avoidance of the impression that raising an insanity defense is an admission of guilt. It is inappropriate, however, for a court to give weight to a defendant's choice if it is "devoid of rational basis" (Ref. 13, p 1242). This analysis is similar to the voluntary and intelligent analysis from common law, but a finding of competency to proceed does not substitute for the required basic rationality analysis.

The Court concluded that "an individual's interest in autonomously controlling the nature of her defense, provided that interest is based on a choice that satisfies the basic rationality test, will predominate over the broader interest of society unless pressing concerns mandate a contrary result" (Ref. 13, p 1243). In the case before it, the Court concluded that there were significant questions as to Hendricks' sanity and the rationality of the reasons for her refusing an insanity plea. It remanded to the trial court to conduct an inquiry consistent with this decision.

Discussion

More than a third of jurisdictions that have an insanity defense permit its imposition against a defendant's wishes. Our study[6] revealed that neither state mental health forensic program directors nor state attorneys general were even familiar with the enabling statutes or case law, much less with their implementation in practice. Who can enter the defense varies considerably. Four jurisdictions reported that the defense could be imposed only on competent defendants, five that it could be imposed only on incompetent defendants, and five that it could be imposed on either. Judges can impose insanity defenses in eight jurisdictions, defense attorneys in 11 jurisdictions, and prosecutors in five. The director of an institution to which a defendant is committed can raise the defense in one jurisdiction.

We were surprised to find in our study of Colorado defendants referred for insanity evaluations that 16 (32%) of 50 of defendants were opposed to the pleas. Evaluators opined that most (but certainly not all) refusers objected for reasons related to their mental disorders. Three defendants went so far as to discharge their attorneys and proceed *pro se*, to prevent anyone from entering the defense against their wills.

Involuntary insanity defenses appear to be raised chiefly for three reasons: (1) defense attorneys genuinely believe that their clients were insane at the time of the crime and that the insanity defense is therefore the most appropriate; (2) defense attorneys believe that insanity is the only possible defense to the charges against their clients (especially in the case of very serious charges); and (3) defense attorneys use the threat of an insanity defense, with or without their clients' agreement, as bargaining ploys, to attempt to convince prosecutors to come up with better plea offers. All three rationales were found in our Colorado study.

The Colorado Supreme Court's balancing test at least explicitly acknowledges the conflicting interests involved. Unfortunately, the Colorado Supreme Court, and most other courts, artificially separates competency to proceed from competency to enter a plea (in this case an insanity plea). Most of the conflicts could be resolved if the basic rationality analysis were subsumed under the general competency evaluation. After all, if defendants lack the capacity to consider all available pleas because of a mental disorder, then they lack a rational understanding of the proceedings and cannot assist meaningfully in their own defenses.

I am unpersuaded by the argument that society has an interest in the "just determination of the charge against the defendant."[12] That same argument was rejected by the U.S. Supreme Court in *Faretta v. California*,[14] in which the Court held that competent defendants have the right to self-representation, even though they might be at a disadvantage without an attorney, and a just determination might not result. The right of a competent defendant to choose which plea to enter appears analogous to the right to represent one's self.

Summary

At least 17 jurisdictions permit insanity defenses to be entered over the objections of defendants. Those jurisdictions believe that society's interest in a just determination of the charges outweighs a competent defendant's choice. If competency includes the ability to rationally choose a plea, competent defendants should not be forced to enter insanity defenses against their wills.

References

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14. Faretta v. California, 422 U.S. 806 (1975)