

Dissociative Identity Disorder in the Courtroom

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Defendant Charged With Murder Is Denied a Motion for a New Trial to Present Evidence of Dissociative Identity Disorder Diagnosed After the Guilt Phase of the Trial

In *Orndorff v. Commonwealth* 691 S.E.2d 177 (Va. 2010), the Supreme Court of Virginia decided that the Court of Appeals of Virginia properly denied a motion for a new trial by a defendant, convicted of the murder of her husband, to present the evidence of the dissociative identity disorder diagnosed after the conclusion of the guilt phase of the original trial.

Facts of the Case

Janice Larue and Goering Orndorff married in 1993. By 2000, the marriage had begun to unravel. Suspecting that her husband was unfaithful, Ms. Orndorff consulted a divorce attorney and told her mother-in-law that she “would see him dead before he left her for another woman” (*Orndorff v. Commonwealth*, 628 S.E.2d 344 (Va. 2006)). Given her professions of love at other times, the mother-in-law was not alarmed. After returning from an anniversary dinner the evening of March 20, 2000, Ms. Orndorff placed two phone calls, one to an attorney who was a family friend and the other to the 911 operator, reporting that she had shot her husband in self-defense after he came at her with a knife and a baseball bat. During the 911 call, she was alternately lucid and calm, disoriented and agitated. Later that night, police found Mr. Orndorff on the kitchen floor shot five times; he held a knife in one hand and a baseball bat in the other. Ms. Orndorff was arrested and charged with murder and use of a firearm in the commission of a murder.

At the request of the defense counsel, Ms. Orndorff was examined before trial by two mental health professionals, who found that she had a propensity to dissociate her emotions and actions from her conscious awareness, but did not suffer any mental dis-

order that would support an insanity defense. Although Ms. Orndorff introduced testimony to establish that she had amnesia after the shooting, she did not pursue an insanity defense. The jury found her guilty of both charges.

Ms. Orndorff’s mental state deteriorated in jail while awaiting sentencing. The trial judge doubted that she could properly participate in the sentencing phase of the trial and ordered a competency evaluation. Ms. Orndorff was found not competent and was committed to Central State Hospital, where she was hospitalized for eight months. During the hospitalization, an increasing number of alter personalities manifested themselves to various professionals. The dissociative identity disorder (DID) experts consulted by the hospital diagnosed Ms. Orndorff with DID, but other mental health professionals, including those observing her during her lengthy hospitalization, disagreed. Eventually, Ms. Orndorff was found competent, and the case proceeded to the sentencing phase.

Before sentencing, the defense moved for a new trial based on the “newly discovered” evidence of DID, asserting that this evidence could be used at a new trial to establish insanity at the time of the crime. The trial judge deferred ruling on the motion until the completion of the sentencing hearing. The court permitted Ms. Orndorff to present her DID diagnosis to the jury during the sentencing phase as mitigating evidence. During the sentencing hearing, the court heard testimony from the DID experts. In addition, however, the jury heard that Ms. Orndorff attempted to bribe a witness to claim falsely that she was physically abused by her husband and that she told her prison cellmate that she was manipulating doctors in claiming multiple personalities. Forensic experts testified that the crime scene was manipulated, contradicting Ms. Orndorff’s account of acting in self-defense, and the court observed Ms. Orndorff’s behavior alternating between normal and bizarre, based on whether the trial appeared to be proceeding in her favor. The jury sentenced Ms. Orndorff to 32 years’ imprisonment for murder and an additional 3 years for the firearms offense.

After sentencing, the defense renewed the motion for a new trial. The trial judge rejected it, holding that Ms. Orndorff’s evidence of DID would not produce opposite results at another trial, as the jury had heard that evidence and nevertheless sentenced her to a lengthy imprisonment. A series of appeals followed.

Rulings and Reasoning

Granting of a new trial on the basis of alleged newly discovered evidence requires an appellant to demonstrate that the evidence:

... (1) appears to have been discovered subsequent to the trial; (2) could not have been secured for use at the trial in the exercise of reasonable diligence by the movant; (3) is not merely cumulative, corroborative, or collateral; and (4) is material, and such as should produce the opposite results at another trial [*Orndorff*, p 180, citing *Odum v. Commonwealth*, 301 S.E.2d 145 (Va. 1983)].

In a series of appeals following the trial, the Virginia Court of Appeals and the Supreme Court of Virginia focused primarily on the second and the fourth requirements of the *Odum* test: discoverability and materiality. In 2006, the supreme court ruled that Ms. Orndorff met the second prong. With regard to the fourth prong, materiality of the evidence, the court held that the trial court relied on an incorrect standard in its application of the materiality prong. The court held that the lengthy sentence imposed by the original jury was not an indicator of what a new jury would have decided at a new trial. In addition, the supreme court held that the trial court was required to make its own determination of materiality of the evidence of DID, instead of relying on the jury's decision.

Consistent with the supreme court mandate, the trial court reviewed the case, as well as the applicable case law, and received additional arguments from the parties. The trial court ultimately concluded that the new evidence lacked sufficient credibility to permit a new jury to examine whether Ms. Orndorff actually was diagnosable as having DID. As such, she had not satisfied the materiality requirement for granting a motion for a new trial. In addition to the reasoning provided following the initial trial, the trial court cited lack of evidence of childhood trauma, which DID experts argued was necessary for the person to develop DID, and Ms. Orndorff's shifts in defense strategies, which included initially claiming self-defense, then amnesia for the shooting, and finally insanity caused by DID. The trial court further ruled that even if the jury were to find that Ms. Orndorff had DID, its presence would not permit the jury to acquit her, because no evidence established that her mental disorder rendered her legally insane.

The court of appeals affirmed this judgment in an unpublished opinion, and in 2010, the Supreme Court of Virginia agreed. In its 2010 holding, it specifically indicated that it made no finding about the

issue of whether a defendant with DID may ever assert an insanity defense.

Discussion

Over the past several decades, criminal offenders have raised the defense of DID for a variety of offenses, from drunk driving to murder (Farrell H: Dissociative identity disorder: medicolegal challenges. *J Am Acad Psychiatry Law* 39:402–6, 2011). Although defenses based on mental illness are not infrequent in criminal courtrooms, DID defenses are unusual because the defendants claim that more than one fully developed personality inhabits a single human body and that a criminal act was committed by a destructive alter of whose actions the dominant personality had only limited, or no, awareness. Applying traditional rules of criminal responsibility to these cases, therefore, poses a significant challenge. There is currently no consensus within the legal system as to the extent to which individuals with DID can or should be held responsible for their actions.

Courts that are receptive to the DID diagnostic construct have used one of three approaches to assess the criminal responsibility in such cases. The alter-in-control approach assesses the mental state of the alter personality in control at the time of the crime. The each-alter approach examines all personality alters for their criminal responsibility, and the host-approach assesses whether the host personality was unable to appreciate the nature and quality or wrongfulness of the conduct the alter(s) controlled (Behnke SH: Assessing the criminal responsibility of individuals with multiple personality disorder: legal cases, legal theory. *J Am Acad Psychiatry Law* 25:391–9, 1997).

Amidst the above challenges, the legal system must also deal with potentially conflicting mental health testimony, especially given enduring controversies about the DID diagnosis. The task of validating DID is hampered by difficulties in reliably diagnosing it, given the significant overlap of symptoms with other Axis I and II disorders. Lacking agreement on the clinical meaning of the operational terms, such as "personality" or "personality state" and observable and quantifiable phenomena, clinicians are left to diagnose without specific operational guidance. In the forensic setting, diagnosis is even more problematic, because the disorder may be phenomenologically difficult to distinguish from malingering.

Theorists in the field of forensic psychiatry and psychology vary dramatically in their opinions as to which personality bears a burden of criminal responsibility. Some advocate that individuals with DID are generally not responsible for their crimes (Saks ER: The criminal responsibility of people with multiple personality disorder. *Psychiatr Q* 66:119–31, 1995). Others take the view that the fundamental flaw in the DID approaches elevates personalities to the status of persons. Because only a person can commit a crime, they assert that courts are mistaken in trying to determine whether to assign responsibility for the crime to the alter in control, the host personality, or all alter personalities (Behnke SH: Confusion in the courtroom: How judges have assessed the criminal responsibility of individuals with multiple personality disorder. *Int J Law Psychiatry* 20:293–310, 1997).

The *Orndorff* decision seems to add further confusion by noting that “the expert failed to ‘support the basis for the opinion’ that Orndorff would have been deprived of the mental power to control or restrain the actions of her ‘alter’ personalities” (*Orndorff*, p 181). This implies a test related to the host’s ability to control the behavior of alter personalities, a further variant of the list of available clinicolegal theories that might be applied to these cases.

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Once Found Dangerous, “How Dangerous” May Be Irrelevant

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Rhode Island Supreme Court Affirms Judgment of Trial Court in Finding Insanity Acquittee Dangerous, Stressing That the Finding Is a Legal Rather Than a Clinical One

In *State v. Fuller-Balletta*, 996 A.2d 133 (R.I. 2010), the Rhode Island Supreme Court addressed the appeal of an insanity acquittee who asserted that the treating psychiatrist and expert witness’s description of her level of risk in the community as “low,

low-moderate” failed to meet the minimum bar to find her “dangerous.” Her assertion that the trial judge had erred in committing her to inpatient rather than outpatient treatment was also addressed.

Facts of the Case

On October 29, 2004, when a Rhode Island State Trooper attempted to execute an arrest warrant on Tonya Fuller-Balletta, she cursed at him while she and her daughters, 12-year-old Talia and 13-year-old Marina, kicked and punched him, causing him to retreat to his vehicle and call for backup from other police officers. Ms. Fuller-Balletta had bipolar disorder, and her mental state had progressively worsened during the preceding two years. At the time of her arrest, she was experiencing paranoid delusions and hallucinations and was displaying extreme behavior. She believed that the officers and her husband (who had returned home during her arrest) were involved in a conspiracy against her.

Ms. Fuller-Balletta barricaded herself and her daughters—all three armed with knives—in a bedroom and set fire to the bed. She told her daughters that they should be prepared to commit suicide and later reported that she would rather have them all die than be taken by the police. After a standoff, the officers broke down the bedroom door and fought the fire while Ms. Fuller-Balletta and her daughters threatened to kill them. Ms. Fuller-Balletta and Marina were pulled from the smoky room and survived the incident. One month later Talia died of burns and smoke inhalation, and Ms. Fuller-Balletta was charged with murder.

In November 2004, Ms. Fuller-Balletta was found not competent to stand trial and psychiatrically hospitalized for competency restoration and treatment. In June 2006, she was found competent to stand trial, and her trial began in April 2007. On May 25, 2007, she was found not guilty by reason of insanity and committed to the Rhode Island Department of Mental Health, Retardation, and Hospitals (MHRH) “for the purpose of observation and examination to determine whether the person is dangerous” (R.I. Gen. Laws § 40.1-5.3-4(b) (2007)).

The director of MHRH was required to submit a report indicating “whether by reason of mental disability the [acquittee’s] unsupervised presence in the community [would] create a likelihood of serious harm” (R.I. Gen. Laws § 40.1-5.3-4(c) (2007)). R.I. Gen. Laws § 40.1-5.3-4(e) (2007) re-