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-

quires either inpatient commitment if the person is dangerous or discharge from the state hospital if the person is not. The report was submitted and a hearing was held on Ms. Fuller-Balletta's dangerousness. The report noted that Ms. Fuller-Balletta's illness "was in full remission" and that she "would be at low risk for harming others if she were to be *supervised* in the community" (*Fuller-Balletta*, p 138, emphasis in original). The treating doctor and author of the report, Barry Wall, MD, testified that Ms. Fuller-Balletta's "*unsupervised presence in the community would create a likelihood of serious harm*. That likelihood would be low, low/moderate, but to let her go completely unsupervised . . . would pose a risk" (*Fuller-Balletta*, pp 138–9, emphasis in original). The trial justice found by clear and convincing evidence that "by reason of mental illness, Fuller-Balletta's unsupervised presence in the community would create a likelihood of serious harm" (*Fuller-Balletta*, p 139) and ordered that she remain in the custody of MHRH. Ms. Fuller-Balletta appealed the decision to the Rhode Island Supreme Court, arguing that the expert's testimony that her "low, low/moderate likelihood" of serious harm was less than the statutorily mandated "substantial risk of physical harm" (R.I. Gen. Laws § 40.1-5.3-4(a)(4)(i) and (ii) (2007)).

Ruling and Reasoning

In a unanimous decision, the Rhode Island Supreme Court affirmed the lower court's order committing Ms. Fuller-Balletta to MHRH for continued inpatient hospitalization. The court noted that in the relevant statute, the phrase "likelihood of serious harm" is defined as "a substantial risk of physical harm" to self or others, and that the statute does not require the expert to estimate the level of risk. The court described Ms. Fuller-Balletta's argument as "somewhat semantical," failing to appreciate the trial justice's duty to view the entire record before the court, not just one element of the expert witness's testimony, in making a determination of dangerousness. The court ended its decision by emphasizing that for insanity acquittees, the question of dangerousness is a legal, not medical, determination, and is therefore not controlled by the expert witness's testimony in any case.

In addition, Ms. Fuller-Balletta argued that the judge overlooked the circumstances surrounding the NGRI-related event and her lack of intent or malice. She asserted that if the state trooper had not come to her house, she would never have posed a threat of harm to anyone. The court found this argument unconvincing; any number of events might have precipitated similar actions by Ms. Fuller-Balletta, and the motivations of her actions had no bearing on the case.

The final claim raised by Ms. Fuller-Balletta was that the trial justice should have placed her in community-based treatment rather than inpatient hospitalization. This argument was rejected in that the statute does not have any provision for such an action.

Dicta

At trial, the prosecution and the defense agreed that the state would bear the burden of proving Ms. Fuller-Balletta's dangerousness by a clear-and-convincing-evidence standard. Therefore, the court maintained that that burden and standard should be applied to the present appeal. In its opinion, the Rhode Island Supreme Court discussed the appropriate standard of proof for the involuntary commitment of insanity acquittees, even though this issue had not been raised by either the state or Ms. Fuller-Balletta. The court cited *Jones v. United States*, 463 U.S. 354 (1983), which held that the insanity acquittee performs an act constituting a criminal offense and does so due to mental illness, thus providing sufficient reason to involuntarily hospitalize him as a "dangerous and mentally ill person." In *Jones*, the Court held that the constitutionally required standard for commitment of an insanity acquittee was less than the clear and convincing standard used in civil commitment, and that a preponderance of the evidence standard was sufficient.

Discussion

This case highlights the difficulties that arise when clinical and legal aims and determinations confront one another. In Rhode Island, the court must decide between inpatient treatment and release, since there is no provision for supervised outpatient monitoring of an acquittee. Consequently, there is the necessity of determining whether an insanity acquittee is dangerous, without any further consideration of appropriate risk-management interventions or processes. "Dangerousness" posed as a binary question does not reflect clinical circumstance, where gradual exposure to increased access to the community can be titrated against current level of function and the availability

of mitigating circumstances and interventions. Forcing the decision of inpatient involuntary commitment versus discharge to the community without any stipulations must surely either deny some individuals treatment in the least restrictive setting or place others in outpatient treatment without adequate clinical preparation and supervision (although the latter seems less likely, given the usual concerns expressed about public safety in cases involving insanity acquittees).

Dr. Barry Wall, the forensic expert in this case, noted that it is difficult to establish that an acquittee is nondangerous. That opinion is usually expressed by experts in Rhode Island as dependent on qualifications, such as a "certain treatment environment (e.g., group home) or circumstance (e.g., court-ordered outpatient treatment)" (Wall B, personal communication, October 26, 2011). The Rhode Island expert typically then proposes a management plan to the court, although the statute does not require it, which the court either implements or does not. Thus, a work-around has been reached to reestablish shades of gray to a legally black-and-white statute, as was described in the written report in this case.

The court made the point that, according to *Jones*, the state need only prove its case for commitment of insanity acquittees by the preponderance of evidence, even though this matter was not before it. The court appeared interested in applying the principle that the commission of a criminal act due to mental illness is sufficient basis for a finding of dangerousness. Since the current case did not raise the question of the standard of proof, the court did not comment further, other than to say that it would revisit it when it is raised. The court's posture here suggests that it is oriented in the direction of public security rather than toward individual liberties when the two principles collide. Should a similar case occur in the future, the court seems to indicate that it would hold the state to a lower burden of proof than in the present case, further increasing the likelihood of persons not requiring hospitalization being confined in a state psychiatric facility.

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