

likely to confess falsely. . . videotaping confessions by such persons would serve an especially salutary purpose” (*Edwards*, p 131, ellipses in original, citing *State v. Lawrence*, 920 A.2d 236 (Conn. 2007)). Intonation, facial cues, and body language may provide valuable information when trying to understand individuals who do not think or act in a manner similar to most. Mandating the videotaping of police interviews, particularly for mentally ill persons, could provide greater context to their statements and improve the understanding of fact finders.

Of note, shortly after this appeal, the Connecticut General Assembly passed a new act mandating the electronic recording of custodial interrogations in major felony investigations, although the act makes no specific mention of the mentally ill (Public Act No. 11-174, effective Jan. 1, 2014).

Disclosures of financial or other potential conflicts of interest: None.

## Ready or Not? Expert Testimony in Competency Proceedings

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### Court Has No Duty to Reorder Successive Competency Evaluations or Allow a Change in Plea Absent Evidence to Support Good Cause

In *Fletcher v. State*, 245 P.3d 327 (Wyo. 2010), the Wyoming Supreme Court reviewed the decision by the District Court of Park County that found Chester D. Fletcher competent to continue to trial and to sentencing and denied his request to be allowed to change his plea to not guilty by reason of mental illness or deficiency.

#### Facts of the Case

During the 1990s, Chester Darral Fletcher was living with Clay Coleman in Sheridan, Virginia. In

1998, their relationship failed. Mr. Coleman obtained a civil judgment against Mr. Fletcher, which led to the seizure of Mr. Fletcher’s car and motorcycle. Twice, in 2004 and 2006, Mr. Fletcher stole and destroyed Mr. Coleman’s car.

On July 9, 2007, Mr. Fletcher fired shots at Mr. Coleman in the parking lot of the Cody, Wyoming, Wal-Mart. Mr. Fletcher fled but was found at home by Cody police. He was charged with one count each of attempted first-degree murder and reckless endangerment.

Before the arraignment, the defense petitioned the court to evaluate Mr. Fletcher’s competence to stand trial. In the motion, the defense “wondered” whether, at the time of the offense, he met the statutory requirements necessary to support a plea of “not guilty by reason of mental illness.” He was evaluated by Dr. Cathy Buckwell, a psychologist at Wyoming State Hospital, who opined that he was competent, did not have a mental disorder, and did not meet the requirements for establishing an insanity defense. He ultimately pleaded not guilty at a video arraignment in November 2007.

In March 2008, a competency evaluation was completed by defense expert Trent Holmberg, MD, and was introduced as evidence to support the motion for another competency evaluation. Dr. Holmberg diagnosed delusional disorder, which the doctor believed interfered with Mr. Fletcher’s capacity to develop a collaborative relationship with his attorney. Mr. Fletcher waived his right to a speedy trial, and the competency hearing was set and continued twice. Dr. Buckwell re-examined him twice in mid-May 2008, and the hearing was finally set for June.

At the hearing, Drs. Buckwell and Holmberg testified at length regarding the findings and their impact on Mr. Fletcher’s competence. Both experts were allowed an opportunity to justify their opinions. After hearing both testimonies, the court found him competent to stand trial.

Two weeks before trial, in September 2008, pursuant to Wyo. Stat. Ann. § 7-11-304 (2009), Mr. Fletcher petitioned the court to change his plea to not guilty by reason of mental illness. The court denied the late motion. He accepted a plea bargain and pleaded guilty to one count of attempted manslaughter. Sentencing was set for January 2009.

However, because of a report of “deteriorating mental health” noted in records from Park County

Detention Center, the court ordered that Mr. Fletcher be examined by Dr. Ronna Dillinger, a psychology intern, under the supervision of Dr. Buckwell at Wyoming State Hospital. Dr. Dillinger recommended that he be found competent to proceed to sentencing despite having “a chronic mental disorder.” The court concurred, and in August 2009, he was sentenced to not less than 18 or more than 20 years in Wyoming State Penitentiary.

He challenged the district court’s finding that he was competent to stand trial and the court’s dismissal of his motion to change his plea from not guilty to not guilty by reason of mental disorder.

#### *Ruling and Reasoning*

The Wyoming Supreme Court affirmed the district court’s judgment and sentence. First, regarding Mr. Fletcher’s challenge of the ruling that he was competent both to stand trial and to be sentenced, the appellate court relied on *Godinez v. Moran*, 509 U.S. 389 (1993), in which the Supreme Court held that a defendant’s plea must be made “competently and intelligently.” The *Godinez* Court, in turn, cited *Dusky v. United States*, 362 U.S. 402 (1960) that competency is defined as “sufficient present ability to consult with [one’s] lawyer with a reasonable degree of rational understanding and. . . a rational as well as factual understanding of the proceedings against [the defendant].”

During the June 2008 competency hearing, Dr. Buckwell said that although Mr. Fletcher had paranoid personality disorder, it did not interfere with his ability to understand the charges or to work with his lawyer. The supreme court indicated that paranoid personality disorder apparently did not rise to the level of mental illness as defined by Wyoming statutes, where it is defined as “those severely abnormal mental conditions that grossly and demonstrably impair a person’s perception or understanding of reality and that are not attributable primarily to self-induced intoxication” (Wyo. Stat. Ann. § 7-11-304 (2009)).

Dr. Holmberg diagnosed Mr. Fletcher with delusional disorder, borderline intellectual functioning, expressive and receptive learning disabilities, possible early dementia, and seizures resulting from brain damage. He concluded that, taken in total, Mr. Fletcher’s mental disorder and defects would “render him unable to make a rational appraisal of his situation. . . . [H]e has an unrealistic view of his chances

of success if his case were to go to trial” (*Fletcher*, p 332).

The court noted that when faced with conflicting expert reports, “it does not clearly err simply by crediting one opinion over another where other record evidence exists to support the conclusion” (*Battle v. United States*, 419 F.3d 1292 (11th Cir. 2005)). The court’s ruling was, in part, supported by comparing and contrasting the time spent and the amount and type of data used by each expert to reach an opinion. Dr. Buckwell conducted three six-hour interviews, including a clinical interview and objective psychological tests. Dr. Holmberg conducted a three-hour interview and cited a letter from Mr. Fletcher’s ex-wife as the other source of information to support his diagnostic impression and conclusions. It is unclear whether Dr. Holmberg’s report or testimony described the relationship between Mr. Fletcher’s cognitive deficits and medical disorders. Regardless, the court found that Dr. Buckwell’s findings were “more extensive and considered a broader array of factors and utilized more resources” (*Fletcher*, p 334). The court also cited the third evaluation by Dr. Dillinger, who conducted a diagnostic interview, a thorough review of records and prior competence evaluations, as well as interviews with corrections staff to support her recommendation that Mr. Fletcher was competent.

The second point of appeal was the district court’s finding that Mr. Fletcher entered his plea knowingly and considered alternative pleas before arraignment. The Wyoming Rule states “the defendant shall enter a plea of not guilty by reason of mental illness or deficiency at arraignment” and “for good cause the court may permit the plea to be entered at a later time” (W.R.Cr.P. 12.2). The supreme court highlighted that he was competent at the time the plea was entered, that he considered alternative pleas and did not enter the plea by “mistake, inadvertence, or ignorance” (*Fletcher*, p 336). Furthermore, the court determined that there were no grounds to support the change in plea, which affirmed the lower court’s ruling.

#### *Discussion*

This case illustrates several important points about competency evaluation. First, although competency is a constitutionally mandated component of due process, its determination often rests on conflicting

assessments. In cases where there is a difference of opinion, the court relies on the forensic expert who presents his opinion most effectively.

Psychological testing is not always included or necessary in competency determination. In this case, however, the time spent with Mr. Fletcher and the performance of testing by the psychologist led the court to conclude that Dr. Buckwell's evaluation was more comprehensive and thus, more credible. It is unclear whether the psychiatric expert educated the court through his report or testimony in the ways in which the forensic psychiatrist and psychologist use their fields of expertise to form the bases of their conclusions, but it was moot absent the court's impression regarding thoroughness and how the experts communicated their findings.

Next, the defense chose not to challenge the potential for bias in the opinion of Dr. Dillinger. In her capacity as a trainee, she would not only have to establish the prerequisite criteria necessary for incompetence, but would also be in the potentially awkward position of challenging the judgment of Dr. Buckwell, her supervisor, if she recommended him as incompetent.

Finally, this case illustrates the different criteria states use to define mental illness or deficiency. Wyoming defines mental deficiency as "a defect attributable to intellectual disability, brain damage and cognitive disabilities" (Wyo. Stat. Ann. § 7-11-301 (2009)) and mental illness as only those conditions that impair "a person's perception or understanding of reality" (Wyo. Stat. Ann. § 7-11-304 (2009)). Under this definition, it could be argued that any diagnosis other than a psychotic disorder would not qualify as a mental illness. One could wonder how the court interpreted the testimony of both experts, while utilizing these statutes as a guide.

In summary, this case illustrates the necessity that the forensic expert convey effectively how a defendant's mental disorder meets the statutory requirement for incompetence. With a clear report and well-reasoned conclusions, the forensic psychiatrist can be ready to help the court answer these questions and promote justice as defendants with psychiatric and intellectual disabilities are processed through the criminal justice system.

Disclosures of financial or other potential conflicts of interest: None.

## Family Preservation Versus Child Wellbeing Under the Indian Child Welfare Act

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### Trial Court Verdict Upheld in Termination of Parental Custody Due to Risk of Serious Emotional or Physical Harm

In *Lucy J. v. State*, 244 P.3d 1099 (Alaska 2010), the Supreme Court of the State of Alaska reviewed the case of Lucy J., who appealed the termination of her parental rights. The mother of two acknowledged the superior court's classification of her children as children in need of aid under Alaska Stat. § 47.10.011(9)(2008) but appealed the court's conclusion that she had not remedied her behavior, that the Office of Child Services (OCS) had actively attempted to preserve her family, and that her actions were cause for termination under the Indian Child Welfare Act (ICWA) 25 U.S.C. § 1903(4) (2006).

#### *Facts of the Case*

Lucy and Rick were in a tumultuous relationship between 2001 and 2005. The relationship resulted in two children: Jack, born in 2003, and Carmen, in 2005. (These names are pseudonyms adopted by the court.) OCS was often involved due to allegations of neglect, abuse, and domestic violence. In 2004, Lucy was diagnosed with alcohol dependence and later admitted to drinking during her pregnancy with Carmen. Following each intervention, she had access to a range of social and psychological services that she utilized to various degrees. Despite successfully completing two treatment programs, she experienced frequent relapses and refused or terminated many recommended programs. In 2005, she ended her relationship with Rick because of domestic violence and moved to a shelter with her children. Throughout their lives, the children were left with inappropriate caregivers; just a few months after Jack was born, Lucy left him with a registered sex offender,