der. A disorder need not be named in the DSM to be found a qualifying mental disorder under the law. Further, it is not enough simply to have an expert label an individual with a named mental illness. It is also necessary to show that a defendant's ability to function normally in society is impaired and disrupted. Once this is shown, as a matter of law, it is a mental illness or disorder under the Walsh Act.

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Retroactive Changes to the Diminished-Capacity Defense: Reviewing the Effect on Due Process

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The U.S. Supreme Court Upholds Retroactive Application of a Michigan State Court Decision That Abolishes the Diminished-Capacity Defense

In *Metrish v. Lancaster*, 133 S. Ct. 1781 (2013), the U.S. Supreme Court reviewed the case of a defendant in a Michigan murder trial who sought to present a diminished-capacity defense on retrial. The defendant unsuccessfully attempted this defense strategy in his original trial. In the time period between the defendant's original trial and retrial, the Michigan Supreme Court abolished the use of the diminished-capacity defense.

The Michigan Court of Appeals disallowed the defendant's use of the diminished-capacity defense on retrial, raising the question of whether the Michigan Court of Appeals violated due process in its retroactive application of the Michigan Supreme Court's decision to abolish the defense.

Facts of the Case

On April 23, 1993, Burt Lancaster, a former Michigan police officer with a protracted history of psychiatric illness, shot and killed his girlfriend. He was charged with first-degree murder and possession of a firearm in the commission of a felony. At his Michigan state court jury trial in 1994, Mr. Lancaster presented a defense of diminished capacity, admitting that he had killed his girlfriend but asserting that he lacked the necessary *mens rea* to support a conviction for first-degree murder. At that time, a Michigan Court of Appeals precedent allowed a defendant to enter a diminished-capacity plea. Despite the defense's argument, the jury convicted Mr. Lancaster of both charges.

Mr. Lancaster unsuccessfully appealed in Michigan state court. However, his convictions were overturned in *Lancaster v. Adams*, 324 F.3d 423 (6th Cir. 2003), after Mr. Lancaster filed a petition in federal district court, in which he asserted that the prosecutor in his original case had improperly excluded a black juror on the basis of race.

Mr. Lancaster's retrial began in 2005. In this trial, Mr. Lancaster waived his right to a jury and again attempted to present a diminished-capacity defense. Before the retrial, the Michigan Supreme Court disapproved the use of the diminished-capacity defense in *People v. Carpenter*, 627 N.W.2d 276 (Mich. 2001). The trial court held that the Michigan Supreme Court ruling applied retroactively and, therefore, Mr. Lancaster could not assert a diminished-capacity defense. The court again convicted Mr. Lancaster of first-degree murder and the associated firearms charge, and imposed a sentence of life imprisonment for the first-degree murder conviction and a consecutive two-year sentence for the related firearms offense.

Mr. Lancaster appealed unsuccessfully to the Michigan Court of Appeals. The appeals court rejected Mr. Lancaster's argument that retroactive application of *Carpenter* violated his right to due process. The Michigan Supreme Court declined review of the case, thereby maintaining Mr. Lancaster's convictions.

Undeterred, Mr. Lancaster filed a petition for a writ of *habeas corpus* in federal district court, reasserting his due process claim. He argued that the abolition of the diminished-capacity defense was a substantive change in the law and that the trial court violated his Fifth and Fourteenth Amendment rights in retroactively applying the change to his case.

The district court denied the petition but granted a certificate of appealability. Mr. Lancaster appealed the denial, and the Sixth Circuit Court of Appeals

considered the case. A divided panel of the Sixth Circuit reversed the decision, noting that the Michigan Court of Appeals denied Mr. Lancaster his right of due process and "unreasonably applied clearly established federal law" (*Lancaster v. Metrish*, 683 F.3d. 740 (6th Cir. 2012), p 747). The Sixth Circuit concluded that the Michigan Supreme Court's decision was unforeseeable because of the "Michigan Court of Appeals' consistent recognition of the diminished-capacity defense; the Michigan Supreme Court's repeated references to this method of defense without casting a shadow of doubt on it; and the inclusion of the diminished capacity defense in the Michigan State Bar's pattern jury instructions" (*Metrish*, p 1786). The U.S. Supreme Court granted *certiorari*.

Ruling and Reasoning

In a unanimous decision, the U.S. Supreme Court, supported the decision of the Michigan Court of Appeals to reject the defendant's use of the diminished-capacity defense on retrial, reversed the ruling of the Sixth Circuit Court of Appeals.

The Court considered whether the rejection of Mr. Lancaster's due process claim by the Michigan Court of Appeals represented an unreasonable application of the law as redefined by the Michigan Supreme Court. The Court reviewed the history of the diminished-capacity defense in Michigan, noting that the Michigan Supreme Court, in its decision to abolish the defense, emphasized that it had "never specifically authorized . . . use [of the defense] in Michigan courts" (*Carpenter*, p 281). The Court also cited the Michigan court's conclusion that the diminished-capacity defense was not compatible with the Michigan legislature's statutory scheme that "created an all or nothing insanity defense" (*Carpenter*, p 283).

The Court further concluded that the retroactive application of the Michigan court's ruling did not violate Mr. Lancaster's due process rights, given the foreseeability of the legal change. Justice Ruth Ginsberg noted that "fairminded jurists could conclude that a state supreme court decision of that order is not 'unexpected and indefensible by reference to [exisiting] law'" (*Metrish*, p 1792). In her conclusion, Justice Ginsberg referred to a prior Court decision that addressed the retroactive application of legal statutes at the state level, *Rogers v. Tennessee*, 532 U.S. 451 (2001).

In *Rogers*, a second-degree murder conviction was appealed on grounds that the Tennessee homicide statute no longer included the common law year-and-a-day rule, which barred a murder conviction unless the victim dies within a year and a day of the act. The victim died one year and three months after the event. The Court concluded that the abolition of the year-and-a-day rule could apply retroactively to the crime, which was committed before the court abolished the rule. The Court asserted that where a change in the law is readily foreseeable, the retroactive application does not represent a due process violation.

In its application of *Rogers* to *Metrish*, the Court found that the decision to abolish the defense retroactively was, in fact, foreseeable based on existing Michigan statute, so due process was not violated. The U.S. Supreme Court has left it to the states to determine whether to permit the use of the diminished-capacity defense. In *Metrish*, the Court did not assert a constitutional right to a diminished-capacity defense, and it opined that state courts are within their rights to interpret statutes in a manner that abolishes the defense. In making its decision, the Court reviewed precedent in *Rogers*. The Court maintained a high standard for overturning the decision to deny Mr. Lancaster the diminished-capacity defense, that of unreasonable application of federal law.

Discussion

In a diminished-capacity defense, the defendant argues that, because of mental impairment, he lacks the mental state needed to be found culpable for committing a particular criminal act. The defendant acknowledges committing a guilty act (*actus reus*) without possessing the guilty mental state (*mens rea*) and, through this plea, seeks to be found guilty on lesser charges. This plea stands in contrast to an insanity defense, in which a successful plea, in most states, will result in a verdict of not guilty and lead to psychiatric hospitalization.

The use of a diminished-capacity defense presents challenges for forensic clinicians and attorneys alike, because of its inevitable comparison to the insanity defense, its variability by state, and its historically questionable use in high-profile criminal proceedings, such as in *People v. White*, 172 Cal. Rptr. 612 (Cal. Ct. App. 1981). In that case, Mr. White was convicted of the lesser offense of voluntary man-

slaughter after he presented an argument of diminished capacity, asserting that a history of depression and chemical imbalance (manifested by a junk food diet) rendered him unable to premeditate murder. In Michigan a judicial decision ended the diminished-capacity defense, as described in *Metrish.* In California, voters approved a 1982 proposition to abolish the diminished-capacity defense following the *White* verdict.

Variability in application of the diminished-capacity defense is likely to persist from state to state. Therefore, forensic clinicians should be aware of the relevant statutes and case law pertaining to diminished capacity in the jurisdictions in which they practice.

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Involuntary Commitment and the Risk of Harm if Released

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Risk of Harm Determination for the Purpose of Commitment Can Consider a Broad Range of Historical and Clinical Data

In United States v. Taylor, 513 F. App'x 286 (4th Cir. 2013), the United States Court of Appeals for the Fourth Circuit considered whether the District Court for the Eastern District of North Carolina erred when it found that Cornell M. Taylor continued to satisfy the criteria for civil commitment. On appeal, Mr. Taylor argued that his recent good behavior justified his release. Mr. Taylor further stated that the opinions offered by his treating psychiatrist and an independent forensic evaluator, suggesting that he was high risk for violent behavior because of the potential of a re-emerging psychosis and aggression, were speculative in nature, and thus not sufficient to support a finding of "substantial risk" under 18 U.S.C. § 4246 (1992). The court of appeals affirmed the district court's finding that Mr. Taylor continued to meet the criteria for civil commitment.

Facts of the Case

On February 1, 2006, the District Court for the Central District of Illinois found Cornell M. Taylor incompetent to stand trial after he had been charged with threatening a federal officer. He was committed to the Federal Medical Center in Butner, NC.

Before his release, in July 2006, Mr. Taylor was evaluated for civil commitment under 18 U.S.C. § 4246(b) (1992) pursuant to an order from the Illinois district court. In November 2006, the Government filed a certificate of mental disease or defect and danger. On January 10, 2007, the district court committed him under § 4246(d) (1992) based on finding clear and convincing evidence that Mr. Taylor had a mental disease or defect that would create a substantial risk of bodily injury to another person or serious damage to property of another if released.

After another approximately eight months at the federal medical center, Mr. Taylor was granted conditional release to reside at a community home for adults in Springfield, Illinois. After several months at the residence, Mr. Taylor was found to have violated the terms of his release by returning to the home under the influence and in possession of a bottle of alcohol. In addition, his probation officer indicated that there had been difficulties supervising him in the home. Based on these problems, on April 7, 2008, the district court revoked his conditional release, and Mr. Taylor returned to the federal medical center in Butner.

On March 28, 2011, in an annual report pursuant to 18 U.S.C. § 4247(e) (2006), Mr. Taylor's psychiatrist and psychologist at the federal medical center informed the court that Mr. Taylor had refused the Haldol decanoate prescribed to treat his schizoaffective disorder. His doctors recommended ongoing treatment at the facility, as they believed that his refusal of medication indicated that he was not appropriate for conditional release.

On November 9, 2011, Mr. Taylor filed a motion to the district court to determine his ongoing commitability under 18 U.S.C. § 4246 (1992), arguing that his recent good behavior justified his release. An independent examiner, Katayoun Tabrizi, MD, was appointed to conduct an evaluation of Mr. Taylor.

Dr. Tabrizi diagnosed Mr. Taylor with schizoaffective disorder, bipolar type, as well as alcohol abuse and adult antisocial behavior (provisional). She argued that his refusal of antipsychotic medication suggested limited insight into his mental illness and she