

from taking the Mirapex after April 2008 were therefore time-barred.

The Eighth Circuit Court found that the district court did not abuse its discretion by denying Dr. Mancini's motion to stay summary judgment. At the time of the district court's ruling, the case had been pending for more than two years, and nothing prevented the plaintiff from conducting discovery. The Eighth Circuit also stated that numerous other companion cases settled, providing further evidence that Dr. Mancini had had ample time to conduct discovery.

Discussion

California, like other states, presumes mental capacity in civil litigation unless it can be demonstrated that the individual does not meet the standard for mental capacity. In *In re Mirapex*, Dr. Mancini asserted insanity under civil law in an effort to toll his case against the pharmaceutical company. The standard for mental capacity may vary depending on the complexity of the subject at hand. For example, testamentary capacity typically has an extremely low standard. Marital capacity and contractual capacity often require a low standard of mental capacity. In the case of medical decision-making, informed consent functions more akin to contractual capacity where the complexity and risk of the treatment or procedure may factor into the individual's ability to consent. Proving that one lacks mental capacity in civil litigation usually requires testimony from an expert witness. It is incumbent upon experts to be aware of the relevant capacity standard for the specific civil matter about which they will be testifying.

Impeaching a Witness Who Has a Mental Illness

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Court Considers When to Allow Evidence of a Fact Witness' Mental Health History for Impeachment Purposes

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In *Collins v. State*, 571 S.W.3d 469 (Ark. 2019), Ronnie Collins argued that the circuit court abused its discretion by not allowing him to impeach Lakeesha Jackson, a fact witness, with extrinsic evidence of her mental illness. The Arkansas Supreme Court affirmed the lower court's decision.

Facts of the Case

Jonathan Brown was shot and killed inside Larry Bailey's residence on May 8, 2015. Mr. Collins was charged with capital murder and the use of a firearm during commission of the offense.

At Mr. Collins' trial in October 2017, Mr. Bailey testified that he allowed homeless persons to stay in his home. On the night of Mr. Brown's murder, Mr. Brown and four additional people were staying there, including Mr. Collins and his girlfriend, Ms. Jackson. Mr. Bailey testified that he awoke to Mr. Collins and Mr. Brown arguing and he saw Mr. Collins shoot Mr. Brown three times with a pistol. Mr. Bailey saw Mr. Collins and the other individuals leave the house. Mr. Bailey went across the street to call 911. While on the neighbor's front porch, he observed Mr. Collins reenter the house; he heard a fourth gunshot and he saw Mr. Collins exit the house and walk down an alley.

Ms. Jackson testified that, several hours before the shooting, she arrived at Mr. Bailey's residence to find Mr. Collins asleep on a pallet in the kitchen with a .45 pistol resting on his chest. She put the gun on the floor and she went to sleep next to him. She testified that in the morning she heard Mr. Collins and Mr. Brown argue. She observed Mr. Collins walk into the living room, and then she heard multiple gunshots. Ms. Jackson witnessed everyone, including Mr. Collins, leave the house after the shooting. She stated that Mr. Collins returned to the house and she heard one more gunshot.

The medical examiner testified that Mr. Brown had four gunshot wounds, which caused his death.

The firearm and tool-mark examiner testified that the four recovered .45-caliber bullets and cartridge casings were fired from the same gun. The crime-scene specialist testified additional rounds of .45-caliber bullets were found in a bag near where Mr. Collins had been sleeping. The gun was never found.

Mr. Collins filed a pretrial motion requesting that the circuit court order the release of Ms. Jackson's mental health records from 2014 to 2017. He contended that her mental state was relevant due to the nature of her expected trial testimony. The state argued that there was no evidence that Ms. Jackson was experiencing a psychotic disorder at the time of the incident and that the physician– and psychotherapist–patient privileges under Arkansas Rule of Evidence 503 (2017) barred discovery of these records. This rule provides the patient with a privilege to refuse to disclose and prevent any other person from disclosing medical records or confidential communications pertaining to the diagnosis and treatment of physical, emotional, mental, and substance use conditions. There is an exception for communications made in the course of a court-ordered examination of a patient, whether a party or a witness to the case. The circuit court denied Mr. Collins' motion.

Defense counsel further indicated they had acquired certified court documents from unrelated cases involving Ms. Jackson that contained information about her mental health history and diagnosis of schizophrenia. The state asserted there was no evidence that Ms. Jackson was experiencing a psychotic disorder currently or at the time of the murder and asked the circuit court to exclude this evidence as irrelevant. Mr. Collins contended that these records indicated that Ms. Jackson's mental health was an ongoing concern and requested that he be allowed to use these documents to impeach her on cross-examination if the matter was brought up during her direct examination. The circuit court deferred ruling on this request until she testified.

During direct examination, Ms. Jackson disclosed she had been psychiatrically hospitalized in the past. Mr. Collins renewed his request to impeach her with the documents in his possession, arguing she had “opened the door” for this evidence to be admitted. The circuit court denied

this request. Mr. Collins later proffered these documents into the record.

The jury found Mr. Collins guilty on both charges, and he was sentenced to life in prison. Mr. Collins appealed to the Arkansas Supreme Court. His appeal rested on one point: whether the circuit court abused its discretion by not allowing him to challenge Ms. Jackson's credibility with evidence of her schizophrenia diagnosis.

Mr. Collins argued the circuit court erred in two ways. First, he asserted the circuit court erred by not examining Ms. Jackson's mental health records before ruling on their admissibility. He cited *United States v. Sasso*, 59 F.3d 341 (2d Cir. 1995), which outlined three factors for a court to consider when assessing the probative value of a witness' mental health records (i.e., the illness, the temporal relatedness of the illness, and symptoms at the time of the event). Second, he asserted the circuit court erred by erroneously interpreting Arkansas' common law of evidence governing impeachment of a witness who has mental illness. He cited *Mell v. State*, 202 S.W. 33 (Ark. 1918), in which the Arkansas Supreme Court held that evidence of a witness' delusions was admissible to challenge her credibility. The state argued that Mr. Collins' right to cross-examine Ms. Jackson was limited by the psychotherapist–patient privilege under Rule 503.

Ruling and Reasoning

The Arkansas Supreme Court affirmed Mr. Collins' conviction and sentence, stating that the circuit court did not abuse its discretion by not allowing Mr. Collins to impeach Ms. Jackson with extrinsic evidence of her mental illness.

Regarding Mr. Collins' first argument, the court ruled he did not request that the trial court examine the mental health records prior to rendering its ruling. Citing *Stewart v. State*, 423 S.W.3d 69 (Ark. 2012), the court stated an appellant is bound by the arguments made at trial and cannot expand those arguments on appeal. Because Mr. Collins raised this request for the first time on appeal, it was not preserved for review.

Regarding Mr. Collins' second argument, the court stated that the witness in a criminal case does not waive her privilege under Rule 503 by testifying because the state, not Ms. Jackson, is the party in a criminal proceeding (relying on *Johnson v. State*, 27

S.W.3d 405 (Ark. 2000)). The court ruled that, even if the exclusion of the proffered records was erroneous, any resulting error was harmless. The court noted an evidentiary error is harmless if the error is slight and the evidence of guilt is overwhelming (citing *Johnston v. State*, 431 S.W.3d 895 (Ark. 2014)). It noted that the error in refusing to allow these records to be admitted, if any, was slight because Ms. Jackson's credibility was challenged by other evidence, such as inconsistencies in her prior statements and her criminal history. The court also stated there was overwhelming evidence of Mr. Collins' guilt through Mr. Bailey's testimony and other corroborating physical evidence.

Justice Josephine Hart offered the only dissenting opinion. She disagreed with the majority on each point of the ruling and opined that the circuit court abused its discretion. She argued that the conviction should be reversed and remanded for a new trial.

Discussion

There are numerous methods by which to impeach a witness, such as bringing forward the witness' prior inconsistent statements, prior criminal history, bias against a party, or interest in a specific outcome. One's mental health history (including substance use disorders) may be admissible if it is directly relevant to the witness' ability to perceive and recall events and testify accurately. A witness' substance use is likely to be admissible because substances often affect those abilities. In this case, evidence of the witness' mental illness and the impact on her testimonial capacity was not examined because of Arkansas' Rule 503. Although the defense tried to equate a history of mental illness with an inability to provide accurate testimony, a mental health history does not inherently make a witness' testimony unreliable or untruthful. In this case, Ms. Jackson's testimony aligned with that of the other witnesses. Thus, her mental health did not necessarily affect her ability to provide reliable, accurate testimony.

This case raises an important question for trial witnesses who have mental health histories: will their health information remain private when they are called to testify in court? The possibility that witnesses' private health information may not remain private can be one of myriad reasons witnesses may be reluctant to testify in court. The

ruling in this case upheld a witness' right to privacy and maintained that witnesses have the privilege to deny disclosure of their private health records.

Relevant but Prejudicial Evidence in Expert Testimony Cross-Examination

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Prejudicial Error to Introduce an Arrest Warrant From an Unrelated Case to Impeach an Expert Witness

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In *In re Campbell*, 830 S.E.2d 14 (S.C. 2019), a sex offender who had been civilly committed under the South Carolina Sexually Violent Predator (SVP) Act appealed his commitment to the South Carolina Supreme Court. The South Carolina Supreme Court reversed and remanded because prejudicial evidence was used to cross-examine an expert witness.

Facts of the Case

Kenneth Campbell was serving sentences for criminal sexual conduct with a minor in the first degree and committing a lewd act on a child under the age of 16. Prior to the completion of these sentences, the state filed a petition pursuant to the SVP Act seeking Mr. Campbell's civil commitment for long-term control, care, and treatment. South Carolina law defines an SVP as "a person who (a) has been convicted of a sexually violent offense; and (b) suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment" (S.C. Code Ann. § 44-48-30(1) (2018)).