

## Weighing Expert Witness Testimony in Civil Commitment Release Hearings for Sexually Dangerous Individuals

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### Fourth Circuit Affirms That District Court Did Not Abuse Its Discretion in Favoring One Expert Opinion over Another during Release Proceedings

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**Key words:** sexually dangerous persons; expert testimony; expert opinions; Adam Walsh Act; conditional release

In *United States v. Shea*, 989 F.3d 271 (4th Cir. 2021), Kevin Shea appealed the decision of the District Court for the Eastern District of North Carolina that he suffered from a serious mental illness or mental disorder and would remain a sexually dangerous person if released without conditions and, therefore, could be released only with conditions. The district court relied on Mr. Shea's extensive history of sexual misconduct and the testimony of the government's expert witnesses. Mr. Shea contended that the court erred in finding that his discharge should be subject to conditions; he relied mainly on the testimony of his own expert witnesses to support his claim. The Fourth Circuit affirmed the decision of the district court, ruling that the district court did not clearly err in finding that Mr. Shea would be sexually dangerous to others without the conditions.

#### Facts of the Case

Mr. Shea was 64 years old at the time of the Fourth Circuit ruling and had an extensive history of sexual misconduct dating back to 1978. He was convicted for child-pornography offenses in 2000 and was sentenced to 150-months imprisonment. In July 2011, while Mr. Shea was in federal custody for his

convictions from 2000, the government filed for a certificate under the Adam Walsh Child Protection and Safety Act (18 U.S.C.S. § 4248 (2006)) (the Walsh Act), asserting that Mr. Shea was a sexually dangerous person and subject to civil commitment following his prison sentence. Following a hearing, the government failed to establish the requirements for a civil commitment. Mr. Shea completed his prison sentence in 2012 and began a five-year period of supervised release. About one year after his release, he was found to have violated the terms of the supervised release because he picked up a teenager and allegedly solicited him for sex. The court revoked Mr. Shea's supervised release, and he was sentenced to 27 months' imprisonment followed by 33 months' supervised release.

While Mr. Shea was serving his 27-month sentence, the government again filed to civilly commit him as a sexually dangerous person. This time, Mr. Shea consented to the commitment. On March 30, 2015, Mr. Shea was committed to the custody of the Attorney General and was sent to FCI Butner, a federal prison and treatment facility in North Carolina. On February 1, 2019, Mr. Shea filed a motion pursuant to 18 U.S.C. § 4547(h) (2006), seeking his discharge from custody on the grounds that, based on the reports of two experts, he no longer met the criteria for civil commitment. After the district court ordered a hearing, the government filed a certificate from the warden of Butner pursuant to 18 U.S.C. § 4248(e) (2006) that described that Mr. Shea would not be sexually dangerous to others if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment. The warden certified that the prescribed regimen "designed by Mr. Shea's treatment team as well as the United States Probation Office" to be imposed as conditions of release was "appropriate" (*Shea*, p 274). On September 13, 2019, a hearing took place where Mr. Shea did not challenge the substance of the prescribed regimen and focused only on whether he should be released with the government's proposed conditions or with no conditions at all. Mr. Shea presented testimony of two experts and the government presented testimony of two experts.

The district court found that Mr. Shea would remain a sexually dangerous person within the meaning of the Walsh Act if released without conditions and, therefore, that he could be released only with conditions. The court "found the testimony of the [government's] medical professionals very compelling" (*Shea*, p 275), giving their testimony more weight than

the expert testimony presented by Mr. Shea's witnesses. The court found the proposed conditions of release to be appropriate and not necessarily permanent. The court formally entered its order on September 13, 2019, and Mr. Shea appealed the decision, contending that the court erred in finding that his discharge should be subject to conditions, claiming that he was "no longer sexually dangerous" as supported by the testimony of his expert witnesses.

#### Ruling and Reasoning

The Fourth Circuit Court of Appeals affirmed the district court's ruling. The appellate court examined the standards of review for weighing competing expert opinions. Expert opinion is not fact that can be found as true or false; rather, it is the role of the district court's factfinding, whether by judge or jury, to find the ultimate facts. Given the district court's advantage in hearing and weighing evidence, the appellate court deferred to the district court's factfinding, and those findings were subject to appellate review under the clear error standard. Relying on the precedent in *United States v. Hall*, 664 F.3d 456 (4th Cir. 2012), the court defined a lower court ruling as clearly erroneous when the appellate court is "left with the definite and firm conviction that a mistake has been committed" (*Hall*, p 462). The appellate court also noted that, in reviewing under the clear error standard, it can consider whether the factfinder abused its discretion in favoring one expert opinion over another. If an appellate court finds such abuse, it can conclude that the ensuing factual finding was clearly erroneous. The factfinder cannot conclude that an expert opinion is true or false. Rather, it must determine the weight to give the opinion by considering whether it is "plausible, coherent, and internally consistent" (*United States v. Wooden*, 887 F.3d 591 (4th Cir. 2018), p 603), and "not contradicted by extrinsic evidence" (*United States v. Caporale*, 701 F.3d 128 (4th Cir. 2012), p 142).

The Fourth Circuit, after reviewing the expert testimony presented by Mr. Shea's expert witnesses and the government's expert witnesses, ruled that the district court did not abuse its discretion in finding the opinions of the government's expert witnesses more compelling. The court also noted that the government's experts' testimony better responded to Mr.

Shea's demonstrated conduct and circumstances than did Mr. Shea's experts' opinions. Therefore, the Fourth Circuit concluded that the district court did not abuse its discretion in favoring the government's expert testimony over Mr. Shea's expert testimony and the district court's finding based on those opinions was not clearly erroneous.

#### Discussion

The decision in *United States v. Shea* highlights the importance of the factfinder's discretion in determining the weight of expert testimony once it has been admitted as relevant and reliable. If the expert testimony is plausible, coherent, internally consistent, and not contradicted by extrinsic evidence, the weight of the expert opinion is at the discretion of the factfinder and can only be rejected upon appeal if it is found to be clearly erroneous, that is, when the appellate court is "left with the definite and firm conviction that a mistake has been committed" (*Hall*, p 462).

Another important piece to consider about this case is that it involved the release of a civilly committed sexually dangerous individual under the Adam Walsh Act. This situation presents a complex set of concerns regarding psychiatric diagnoses, risk assessment, and volitional impairment. The factfinder relies on the expert testimony to help understand and decide on these concerns to adequately serve the safety interests of the public and to facilitate the treatment of sexually dangerous persons and, thus, provide them a path to good citizenship.

## Private Entities as State Actors in Civil Commitment Procedure

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