

situations and the role of mental health professionals in crisis situations.

Admissibility of Mental State Evidence Without an Insanity Defense

Meagan McKenna, PsyD
Forensic Psychology Fellow

Jacob Chavez, PsyD, LP, ABPP
Forensic Psychology Fellowship
Director & Forensic Psychologist

Forensic Psychology Department
Direct Care and Treatment Forensic Services
MN Department of Human Services
St. Peter, Minnesota

Colorado Supreme Court Rules That Evidence of a Criminal Defendant's Mental Illness May Be Introduced in Absence of Insanity Plea in Some Cases

DOI:10.29158/JAAPL.220020-21

Key words: insanity; mental state evidence; self-defense; admissibility; expert testimony

In *People v. Moore*, 485 P.3d 1088 (Colo. 2021), the Colorado Supreme Court ruled that the trial court erred in permitting a defendant who had not entered an insanity plea to introduce evidence probative of insanity. But evidence of less-severe mental illness may be admissible, absent an insanity plea, if it otherwise conforms to the statutory requirements and the rules of evidence. The state supreme court ruled that lower court judges should distinguish between the two.

Facts of the Case

On March 21, 2019, Aundre Moore and an acquaintance drove to a local establishment for drinks. After parking, a second vehicle entered the lot and stopped in front of Mr. Moore's vehicle. A male known to Mr. Moore exited this car and approached the driver's side of Mr. Moore's vehicle. After an apparent argument, Mr. Moore shot the acquaintance in the head, resulting in his death. Mr. Moore was charged with first degree murder and other crimes. He planned to assert a self-defense strategy at trial, claiming the victim was a gang member known for carrying a firearm, exited his car, approached

yelling and aggressively posturing, was observed reaching into his vehicle prior to approaching, and that Mr. Moore repeatedly instructed him to stop. Mr. Moore planned to present evidence regarding how his mental state contributed to his subjective belief that he was in imminent danger and needed to use deadly force.

To support this claim, Mr. Moore retained a psychologist, Dr. Jane Wells. A state-hired forensic psychiatrist, Dr. Leah Brar, also conducted an examination. Dr. Wells outlined Mr. Moore's history of trauma related to gun violence, highlighting he was previously shot, and people close to him had died from gun violence. She indicated Mr. Moore had previously been psychiatrically hospitalized and diagnosed with delusional psychosis and bipolar disorder. She said he did not meet full criteria for posttraumatic stress disorder and rather diagnosed him with another specified trauma related disorder and bipolar I disorder. Dr. Wells opined Mr. Moore's mental state contributed to his impressions of the incident, as he had distorted thinking with "psychotic qualities," (*Moore*, p 1094) experienced trauma-related paranoia and hypervigilance, and had an elevated mood at the time, which rose to the level of a mental disease.

Dr. Brar diagnosed Mr. Moore with the same trauma-related disorder, an unspecified bipolar disorder, and several substance related disorders. But, Dr. Brar opined Mr. Moore did not experience a serious mental disorder that significantly impaired reality testing at the time of the offense, instead suggesting his difficulties were "likely secondary to the voluntary ingestion of substances" (*Moore*, p 1094). Dr. Brar further asserted the intoxication and trauma-related symptoms likely did affect his judgment at the time, despite not meeting the severity of a mental disease under Colorado's standard.

The prosecution objected to the presentation of mental state information pursuant to Colo. Rev. Stat. § 16-8-107(3)(a) (2020), arguing that such information "is relevant to the issue of insanity" (*Moore*, p 1094), which Mr. Moore declined to pursue. The Colorado District Court denied the state's motion, indicating Mr. Moore's objective in offering the mental condition evidence was to support his self-defense claim, not prove insanity. The district court ruled it would allow all expert testimony, without an insanity plea, as long as the testimony conformed to other relevant rules of evidence (specifically Colo. R. Evid.).

The prosecution appealed to the Supreme Court of Colorado, which granted *certiorari*.

Ruling and Reasoning

The Colorado Supreme Court ruled that evidence probative of insanity must be excluded if a defendant does not pursue this defense, regardless of the purpose for presenting such information. But, mental state evidence not probative of insanity is allowed as long as it aligns with other relevant rules of evidence. The court analyzed the arguments through statutory interpretation, referencing the plain language of statutes defining insanity while outlining the limits of admissible evidence “relevant to the issue of sanity” (Colo. Rev. Stat. § 16-8-101.5 (2020)). Under Colorado law, defendants are considered insane when they, at the time of the act, possess such a “diseased or defective mind . . . as to be incapable of distinguishing right from wrong. . . [or] that prevented the person from forming a culpable mental state that is an essential element of a crime charged” (Colo. Rev. Stat. § 16-8-101.5).

A threshold question is whether the defendant has a mental disease or defect. The statute defines a qualifying mental disease or defect as “only those severely abnormal mental conditions that grossly and demonstrably impair a person's perception or understanding of reality” (Colo. Rev. Stat. § 16-8-101.5) and do not stem from voluntary consumption of substances. Evidenced relevant to insanity is information germane to the question at hand that would significantly influence an opinion in either direction. The court suggested it is the trial court’s responsibility to analyze the proffered evidence, “line by line if necessary” (*Moore*, p 1093) to determine if the data are relevant to insanity.

The court said that Mr. Moore’s intention to offer testimony relevant to his mental state should not result in an automatic exclusion of all information. Instead, the lower court must examine the proposed evidence and identify what information is relevant to a self-defense claim, while not imparting on insanity. Although Mr. Moore indicated his purpose in presenting mental state evidence was to support his self-defense claim, the court emphasized the intent is immaterial and rather the content of the information as it relates to sanity should be the focus. Within this framework, a defendant has several options to admit mental state evidence without pursuing an insanity defense. If the court finds none of the proffered

testimony relevant to sanity, all evidence may be admitted. If all of the evidence is relevant to sanity, the defendant may only present this information by entering an insanity plea. If portions of the proffered testimony are relevant to sanity, while some are not, the defendant must choose to either enter an insanity plea, or withdraw the specific mental condition evidence which is probative of insanity.

When reviewing the expert opinions in the present case, the court said that the trial court must look at the expert materials and determine if there are statements probative of insanity. If there are no statements probative of insanity, the court may admit the entire report. In some cases, only a portion of the report may be admitted. The trial court ultimately has the onus to redact sanity-related information in such cases, and defendants are expected to abide by those redactions. The court vacated the district court’s ruling and remanded for further proceedings.

Discussion

In *People v. Moore*, the Supreme Court of Colorado held mental state evidence can be introduced in some cases in which the defendant is not seeking an insanity defense if, and only if, the proffered evidence is not probative of insanity. In Colorado, information pertaining to mental illness at the time of the offense, can be utilized in line with a self-defense strategy in some cases. Expert opinions will be considered by the trial court in their totality, as some proffered testimony may be relevant to insanity and inadmissible while some may not. A particular distinction discussed by the court was whether a defendant’s mental disease or defect was considered severely abnormal to the point of significantly impairing one’s ability to understand or perceive reality. In cases where the mental disease or defect does not rise to such a level, mental health evidence related to self-defense may be admitted because it does not include a required condition for insanity.

The onus of determining relevancy and whether the proposed opinions impart on the question of sanity, is rightfully left to the trial judge. In many jurisdictions, introduction of mental health evidence is not allowed unless the defendant pursues an insanity defense. Yet, in Colorado, ramifications of the present holding indicate an individual can present mental state evidence in this narrow legal strategy. These conclusions may be of particular import for experts conducting evaluations in Colorado. Specifically, an expert may be called to testify regarding a

defendant's mental health as it relates to self-defense and that evidence may be admissible, as long as the data do not enter the realm of insanity. This holding highlights the importance for experts to clearly articulate the severity of impairment, and the relationship, or lack thereof, to insanity.

Expert Testimony on Settled Insanity

Elizabeth Egbert, PsyD
Fellow in Forensic Psychology

Brie Pileggi-Valleen, PsyD
Supervising Forensic Psychologist

*Forensic Psychology Department
 Direct Care and Treatment Forensic Services
 MN Department of Human Services
 St. Peter, Minnesota*

Expert Testimony on Permanent Psychosis Resulting from a Defendant's Substance Use is Permitted When It is Relevant to a Criminal Responsibility Defense

DOI:10.29158/JAAPL.220020L1-21

Key words: settled insanity; substance-induced psychosis; complete defense; voluntary intoxication; mental health defense

In *State v. Abion*, 478 P.3d 270 (Haw. 2020) the Supreme Court of Hawaii considered whether the lower courts erred in prohibiting expert testimony regarding settled insanity as part of a criminal responsibility defense. The court ruled that the defendant had the right to present a complete defense, and the expert's testimony should have been permitted.

Facts of the Case

On January 11, 2016, a gas station employee saw Ramoncito Abion lying nearby on the sidewalk talking to himself. After she asked Mr. Abion to leave, he hit her in the back of the head with a hammer. During questioning by a police officer, Mr. Abion admitted he hit "the lady" with a hammer but asserted that she swept dust into his face and struck him first. He also produced the hammer from his backpack. At the time he gave the statement, it was noted that Mr. Abion was cooperative and did not appear intoxicated. But, the officer noted him to be

"really animated," displaying bizarre behavior, and experiencing auditory and visual hallucinations, and was unusually suspicious.

Mr. Abion was arrested and charged with second degree assault. He then requested a competency to proceed evaluation, as well as an evaluation to determine whether he was experiencing a physical or mental disease, defect, or disorder at the time of the offense. He was evaluated by three examiners, all of whom found him competent. Two of the examiners opined his cognitive and volitional capacities were not substantially impaired because of mental illness. The third examiner, Dr. Martin Blinder, determined that because Mr. Abion had permanent psychosis resulting from his methamphetamine use, he may be entitled to a mental health defense.

At a pretrial hearing, Dr. Blinder testified Mr. Abion would not have developed psychosis but for his use of methamphetamine. Dr. Blinder said that "protracted use of methamphetamines causes permanent brain damage. . . its effects apparent long after an individual has been free of the drug" (*Abion*, p 274). Dr. Blinder opined that were it not for Mr. Abion's psychosis, he would not have engaged in the attack. The State filed a motion of inadmissibility of Dr. Blinder's testimony, arguing it was irrelevant as intoxication is not a mental disease or defect. Ultimately the circuit court granted the State's motion for inadmissibility. They cited *State v. Young*, 999 P.2d 230 (Haw. 2000), which determined that drug-induced mental illness was self-induced intoxication, and therefore, under Haw. Rev. Stat. § 702-230 (2015), Mr. Abion was not eligible for a mental health defense. Thus, Dr. Blinder's testimony was considered irrelevant.

Mr. Abion's trial occurred on March 19, 2018. He did not call witnesses, and he did not testify. His defense counsel argued that Mr. Abion was "unable to conform his actions to societal norms, as indicated by testimony he was talking and laughing to himself despite [the officer's] report indicating that he was not intoxicated" (*Abion*, p 277). Mr. Abion was convicted of assault in the second degree and sentenced to five years imprisonment. He appealed, and the circuit court affirmed his conviction and sentencing. He then appealed to the Supreme Court of Hawaii.

Ruling and Reasoning

The Supreme Court of Hawaii ruled that the lower courts erred in precluding Dr. Blinder's testimony