

tion is administered to all new employees and the information is kept separate and confidential.

The ADA also prohibits medical examinations inquiring about the employee's health once the employee has started working, unless such examinations are job related and consistent with business necessity. According to the EEOC, the following factors should be taken into account to determine whether the test is a medical examination: (1) whether the test is administered by a health care professional; (2) whether the test is interpreted by a health care professional; (3) whether the test is designed to reveal an impairment of physical or mental health; (4) whether the test is invasive; (5) whether the test measures an employee's performance of a task or measures his/her physiological responses to performing a task; (6) whether the test is normally given in a medical setting; and (7) whether medical equipment is used. Any one of the above may be sufficient to determine that the test is a medical examination.

This case reflects the fact that the EEOC and the courts have increased their scrutiny of personality tests in the workplace. Employers may wish to determine if tests they use to elicit personality traits may in fact elicit information regarding an applicant's possible mental illness. It will also be helpful for employees to ensure that any personality tests are job related and measure the applicant's ability to perform the job.

Abdi Tinwalla, MD
Fellow

J. Richard Ciccone, MD
Professor of Psychiatry
Director
Psychiatry and Law Program
University of Rochester Medical Center
Rochester, NY

Mental Illness and *Miranda* Rights

How Should the Court Deal With a Confession Made Spontaneously by a Mentally Ill Individual?

In *Commonwealth v. Hilton*, 823 N.E.2d 383 (Mass. 2005), the Supreme Judicial Court of Massachusetts upheld a lower court finding that a mildly re-

tarded and mentally ill defendant was not competent to waive her *Miranda* rights. The court also held that the information that the defendant volunteered to a court officer about her involvement in the crime was admissible; however, subsequent statements made in response to questions were properly suppressed.

Facts of the Case

On February 24, 1999, at approximately 11 p.m., the Lynn, Massachusetts, fire department responded to a fire at a three-family dwelling. Five people were killed in the fire. Charles Loayza's girlfriend Kristina Sutherland and their two children lived in the building. Earlier that day, Mr. Loayza had argued with Ms. Sutherland and threatened to set fire to the building. Two months earlier, Mr. Loayza had set fire to a wreath on the door of his girlfriend's apartment.

The Lynn police went to Mr. Loayza's house and told his mother, Kathleen Hilton, that they were investigating a fire and looking for Mr. Loayza. Hilton told them that her son had become upset that evening after speaking with Ms. Sutherland, with whom he had recently broken up, and had left for work at 7:30 p.m.

Sergeant Cronin requested that Ms. Hilton come to the police station for further questioning about her son. She voluntarily went to the police station where she was interviewed for approximately one-half hour. Later the next day, police found and arrested Mr. Loayza. He provided an alibi that the police were able to confirm. The police received information that Ms. Hilton had a history of fire-setting behavior and the investigation shifted focus from Mr. Loayza to Ms. Hilton.

Three days after the fire, on February 27, 1999, Sergeant Cronin returned to Ms. Hilton's apartment and asked her to go to the police station to provide an additional statement. At the station, Cronin gave Ms. Hilton her *Miranda* warnings. The defendant said that she understood the warnings and signed the appropriate form. Ms. Hilton was not informed that she was a suspect in the arson. The interview proceeded and Ms. Hilton repeated essentially the same facts that she had stated in her earlier interviews. The officers suggested that perhaps she had set the fire. She denied it and added she had no idea who set the fire.

After a brief break, Ms. Hilton was upset. The officers used a sympathetic tone, encouraging her to "just tell them exactly what happened." The defen-

dant then reported that she was the one responsible for setting the fire.

Two days later, March 1, 1999, the defendant was arraigned in the Lynn division of the district court. The court officer, Susan Marrin, had several responsibilities, including the transportation of detainees between holding cells and the courtroom and reporting criminal activity that she became aware of in and around the courtroom to her supervisor. After the defendant's arraignment, the court officer was escorting Ms. Hilton back to the holding area. On the way, Ms. Hilton said to Ms. Marrin, "I hope he forgives me." Ms. Marrin said, "Excuse me?" Ms. Hilton answered, "My son, I hope he forgives me. I could have killed my grandchildren." At that point Ms. Marrin proceeded to ask the defendant questions that elicited a confession to the arson. Ms. Marrin reported this information to a Lynn police officer.

Ruling

The Supreme Judicial Court of Massachusetts found that, based on her mental retardation and mental illness, the lower court had correctly ruled that Ms. Hilton was unable to waive her *Miranda* rights. The spontaneous statements that Ms. Hilton made to the court officer were not subject to suppression, but Ms. Hilton's responses to questions were properly suppressed.

Discussion

In *Miranda v. Arizona*, 384 U.S. 436 (1966), the U.S. Supreme Court found that the police, before beginning a custodial interrogation are required to inform suspects of their right to remain silent, their right to counsel, and that anything that they say can be used as evidence against them. These "*Miranda* rights" may be waived. The waiver, to be valid, must be a knowing, intelligent, and voluntary waiver. The district court subsequently noted that expert testimony described Ms. Hilton as mentally retarded with schizophrenia and schizotypal personality disorder. In *Hilton*, the court found that the defendant, as a result of her mental illness lacked the capacity to waive her *Miranda* rights knowingly, intelligently, and voluntarily.

She had been given her *Miranda* rights before the interrogation became custodial; however, she lacked the capacity to understand her legal rights and the ramifications of the voluntary confession she gave to the police after her interrogation became custodial. The court was also asked to suppress the statements that the defendant, an individual with mental infirmities, spontaneously made to the court officer who was transporting

her to the holding area. The issues of voluntariness of a confession given by a mentally ill individual was at the heart of the U.S. Supreme Court's decision in *Colorado v. Connelly*, 479 U.S. 157 (1986). On August 1983, Mr. Connelly approached a Denver police officer and stated that he had come all the way from Boston to confess a murder. Connelly was taken to police headquarters where he openly detailed his story to the police and subsequently pointed out the exact location of the murder. The next day, Mr. Connelly was sent to a state hospital for an evaluation. He was found to have a psychosis. A psychiatrist opined that the psychosis interfered with his ability to make rational choices and motivated his confession. The trial court suppressed Mr. Connelly's initial statement and custodial confession because they were "involuntary," notwithstanding the fact that the police had done nothing wrong or coercive in securing the confession.

The U.S. Supreme Court held that coercive police activity is a necessary predicate to finding that a confession is not voluntary within the meaning of the Due Process Clause. The Court, rejecting the assertion that Mr. Connelly's mental condition alone resulted in an "involuntary confession," found that taking Mr. Connelly's statements and admission into evidence had not deprived him of due process of law. The court noted that although a defendant's mental condition may be a "significant" factor in the voluntariness of a confession, it does not justify a conclusion that his mental condition by itself and absent police coercion or intimidation, results in a statement that should be suppressed.

Consistent with *Colorado v. Connelly*, the court in *Hilton* held that, although the court officer was clearly a law enforcement agent for Sixth Amendment purposes, counsel's presence was not required for Ms. Hilton's spontaneous admissions to the officer to be admissible. Answers to questions that followed her spontaneous admission were suppressed.

Angela M. Vuotto, DO
Fellow

J. Richard Ciccone, MD
Professor of Psychiatry
Director
Psychiatry and Law Program
University of Rochester Medical Center
Rochester, NY