Competence to Stand Trial

The State Must Prove by Clear and Convincing Evidence Each of the Statutory Predicates for Committing a Misdemeanant Defendant for Competency Restoration

In *Born v. Thompson*, 117 P.3d 1098 (Wash. 2005), the Supreme Court of Washington considered an appeal contending that a lower court had erred in holding that the standard of proof necessary to detain an individual under the Revised Code of Washington (Wash. Rev. Code § 10.77.090(1)(d)(i)) for restoration of competency to stand trial is by a preponderance of the evidence.

Facts of the Case

Mark Born was arrested and charged with unlawful conduct after he repeatedly refused to get off a bus after the completion of its route, raised his fist and cocked it back as if to hit the driver, and told the driver to take him where he wanted to go. At arraignment, the district court ordered an evaluation of Mr. Born's competence to stand trial. Subsequently, the court reviewed the evaluation and the police report and concluded that Mr. Born was incompetent and that the pending charge alleged a violent act. Under the Revised Code of Washington (Wash. Rev. Code § 10.77.090(1)(d)(i)), a court may stay a misdemeanor prosecution and commit the defendant for mental health treatment and competency restoration if he is charged with one or more violent acts and has been found incompetent. Accordingly, the court ordered Mr. Born's commitment to a state psychiatric facility.

Mr. Born, though not contesting that he was incompetent, filed a *habeas corpus* petition in superior court, arguing that the facts had not sufficiently supported the trial court's determination that he had been charged with a violent act. The superior court held that under either a preponderance-of-the-evidence standard or a clear-and-convincing-evidence standard, the pending charge alleged a violent act.

Mr. Born appealed to the Washington Court of Appeals. This court, holding that the standard of proof is by a preponderance of the evidence and that the evidence established that Mr. Born was charged with a violent act, affirmed the superior court's denial of the writ. Mr. Born, arguing that the standard of proof the state must meet is proof by clear and convincing evidence, then appealed to the Supreme Court of Washington.

Ruling and Reasoning

Determining the standard of proof that applies to civil commitment is a due process inquiry that requires a court to balance the interests at stake and consider the risk of an erroneous decision (e.g., *Mathews v. Eldridge*, 424 U.S. 319 (1976)). Applying the *Mathews* test to the Revised Code of Washington (Wash. Rev. Code § 10.77.090(1)(d)(i)), the Supreme Court of Washington held that due process requires that proving the prerequisites for committing a misdemeanant defendant for mental health treatment and competency restoration must be by clear and convincing evidence. Moreover, the court determined that, under this standard, the state did not prove that Mr. Born was charged with a violent act.

In applying the balancing test of *Mathews*, the court first considered the individual interests at stake. Under the Revised Code of Washington (Wash. Rev. Code § 10.77.090(1)(d)(i)), an individual charged with a misdemeanor that is a violent act may be committed for up to 29 days. The court, quoting from *Addington v. Texas*, 441 U.S. 418 at 425 (1979), observed that a "commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection," and, further, that commitment for mental health treatment may give rise to adverse social consequences due to stigma associated with civil commitment.

As to the governmental interests involved in this case, the court pointed out that, in enacting the statute, the legislature noted the goal of increasing public safety. The court reasoned that another governmental interest at stake is the interest in prosecution of misdemeanors, an interest that is evident given the statute's purpose of restoring the misdemeanant defendant to competency to stand trial. The court observed that the first interest, that of public safety, must be considered in light of the fact that the potential penalties for a misdemeanor are relatively light. Thus, the court reasoned that detention for treatment and restoration of competency under the Revised Code of Washington (Wash. Rev. Code § 10.77.090(1)(d)(i)) may have little effect in providing for public safety. Moreover, the court pointed

out that when an individual poses a danger to the public as a result of mental illness, the state can already seek involuntary commitment under another statute. As to the governmental interest in prosecuting misdemeanors, the court observed that the U.S. Supreme Court stated in regard to restoring a defendant to competency through administration of antipsychotic medications that "[t]he Government's interest in bringing to trial an individual accused of a serious crime is important" (*Sell v. United States*, 539 U.S. 166 at 180 (2003)). The Supreme Court of Washington noted that implicit in this statement is the premise that the relative importance of governmental interest in prosecuting those charged with crimes correlates to the seriousness of the crime. Because the government does not have the same interest in prosecuting misdemeanant defendants as it does in prosecuting defendants charged with felonies, the court reasoned that the preponderance standard does not strike the proper balance in the case of those charged with misdemeanors and that "[t]he individual liberty interest at stake here weighs more heavily in balance than the governmental interests in public safety and prosecution of misdemeanors" (*Born v. Thompson*, p 1102).

Regarding the risk of an erroneous decision, the court noted that, in Washington, once an individual is found incompetent to stand trial, all that is required for commitment in the case of a misdemeanor is that there be a pending charge against the defendant for a violent act. This, the court noted, promotes a significant risk of an erroneous deprivation of liberty.

Thus, the court determined that, given the level of risk of an erroneous deprivation of liberty and given that the individual interests weigh heavily against the governmental interests, the clear-and-convincing standard of proof must apply with regard to the Revised Code of Washington (Wash. Rev. Code § 10.77.090(1)(d)(i)). Also, the court noted that a determination of future dangerousness equivalent to that required for civil commitment or commitment as an insanity acquittee under Washington law was not required in competency proceedings, although an opinion regarding a defendant's dangerousness is required.

Finally, in light of the necessity for clear and convincing evidence, the court agreed with Mr. Born's contention that the facts did not establish that he was charged with a violent act. The court pointed out that an incompetent defendant may not be able to assist in challenging the state's claims about the alleged conduct. Further, the fact that Mr. Born, among other things, cocked his fist does not clearly and convincingly lead to the inference that Mr. Born intended to strike the driver, nor was there evidence that showed clearly and convincingly that he was within reach to carry out any "threatened" behavior.

Discussion

This case illustrates the balancing acts courts have to perform in applying the *Mathews* test to ensure procedural due process safeguards. In *Addington*, the U.S. Supreme Court, applying the *Mathews* test, held that a clear-and-convincing standard of proof applies to indefinite involuntary civil commitment proceedings. Using the same test, the Supreme Court of Washington, which had previously determined that the preponderance standard satisfies due process for a 14-day involuntary commitment (*In re LaBelle*, 728 P.2d 138 (Wash. 1986)) but that the clear-and-convincing standard is required for a 90-day civil commitment (*Dunner v. McLaughlin*, 676 P.2d 444 (Wash. 1984)), determined that, for the Revised Code of Washington (Wash. Rev. Code § 10.77.090(1)(d)(i)), wherein there is significant risk of erroneous deprivation of liberty and the individual interests weigh heavily against those of the government, the standard should be clear-and-convincing evidence.

More remarkably, this case highlights potential pitfalls in determining what offenses are serious enough to require involuntary commitment for competency restoration. Further, it highlights the unique position of mandated inpatient competency restoration with regard to the balancing test it raises between deprivation of liberty and protection of public safety. Whereas *Sell*, in addressing the question of forced medication for competency restoration, concerns itself in part with "serious" but "nonviolent" offenses, this case to a certain extent attempts to tease out "What is serious?" and "What is violent?" albeit in the context of involuntary commitment for competence restoration as opposed to forced medication *per se*. Especially in light of *Sell*, courts will need to continue weighing on a case-by-case basis the balance between governmental interests and individual interests in competency restoration. In doing so, perhaps a consensus will eventually emerge regarding what

exactly is a "serious" enough offense to warrant infringing on individual interests.

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Battered-Child Syndrome

Admissibility of Expert Testimony on "Syndrome Evidence" Properly Determined Through Application of Minnesota Rule of Evidence 702, Not the Frye-Mack Standard

State v. MacLennan (702 N.W.2d 219 (Minn. 2005)) is a Minnesota Supreme Court case that was decided on August 18, 2005. The defendant was convicted in the Stearns County District Court of the first-degree murder of his father and was sentenced to life in prison. Mr. MacLennan claimed that he killed his father in self-defense and asked the district court to admit expert testimony regarding battered-child syndrome to demonstrate his state of mind at the time of the shooting. The court excluded the testimony. The defendant appealed, arguing: (1) the court denied him the right to present a complete defense by excluding expert testimony on battered-child syndrome in support of his claim of self-defense; and (2) the state committed prosecutorial misconduct during its closing argument. This review will focus on the question of admissibility of the expert testimony, as this is the more relevant mental health issue.

Facts of the Case

In the late evening of January 13, 2005, Jason MacLennan shot his father, Kenneth MacLennan, six times with a .22-caliber rifle. Mr. MacLennan testified that he was fearful of his father and shot him in self-defense. His best friend, Matt Moeller, testified that he and Mr. MacLennan had devised a plan to kill Kenneth MacLennan.

Before trial, Mr. MacLennan made an offer of proof to demonstrate the basis of his claim that his father severely emotionally abused him. This included potential testimony from his family, friends, and neighbors. These individuals were willing to testify that Kenneth MacLennan physically and sexually abused Mr. MacLennan's mother before she died of cancer in 1999. They were also willing to testify that Mr. MacLennan was neglected by his father who left him alone to serve as his mother's primary caretaker when she was ill. The proffered testimony on the relationship between Mr. MacLennan and his father focused primarily on Mr. MacLennan's fear of his father and his father's bad temper.

Mr. MacLennan also sought to offer expert testimony on battered-child syndrome, which the district court determined would need to be presented at a *Frye-Mack* hearing (described below) before trial, because it presented a novel scientific theory in Minnesota. At the *Frye-Mack* hearing, Dr. Michael Arambula testified that the term battered-child syndrome has evolved to encompass the psychological symptoms suffered by children who have been battered. He testified that few children who suffer from this syndrome actually attack their abusers, but that when they do, the attack usually involves excessive force because the child is unable to control his or her emotions. Two psychiatrists rebutted this testimony. Dr. Carl Malmquist said that in the psychiatric community, battered-child syndrome "is not, at this point, well tested and confirmed enough to gain credibility that there is such an accepted syndrome" (*State v. MacLennan*, p 227). The other psychiatrist's testimony was consistent with Dr. Malmquist's testimony.

The district court concluded that Mr. MacLennan did not meet the burden under the *Frye-Mack* standard. Under the *Frye-Mack* standard, a novel scientific theory may be admitted if it has: (1) general acceptance in the relevant scientific community; and (2) foundational reliability. This decision was based on the failure of Dr. Arambula's testimony to demonstrate general acceptance of battered-child syndrome, and the insufficiency of evidence offered to demonstrate that Mr. MacLennan suffered from severe emotional abuse. The court allowed testimony on the relationship between Jason and his father. At trial, Mr. MacLennan testified that his father was verbally abusive and distant. He said that his father burned his arm with a cigarette once when he caught him smoking and also testified that his father once threatened him with a knife during an argument. Family and friends testified that Mr. MacLennan was afraid of his father, but never expressed intent to kill