

The ruling appears to reflect the court's concern with what it perceives to be the inadequate civil system of care for the mentally ill. This raises troubling questions of the creation of a slippery slope for the care and management of the mentally ill within the legal system—namely, the use of discretionary criminal sentencing to accomplish a *de facto* civil commitment.

The case and decision stand in stark contrast to concerns recently expressed by mental health professionals at the perception of increasing pressures by overwhelmed government systems to utilize jails and prisons as quasi-mental health facilities. The court's decision here seems consistent with other recent court decisions that allow the introduction of a defendant's mental illness to be used as an aggravating condition, as for example in the capital sentencing phase of a trial (for example, *People v. Smith*, 107 P.3d 229 (Cal. 2005)). Such a use of mental illness could appear to raise 14th amendment equal protection issues.

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Criminal Responsibility and Intent

Tenth Circuit Overruled District Court Finding That Insanity Defense Is Not Available for General-Intent Crime, and Expert Testimony Was Relevant

In *U.S. v. Allen*, 449 F.3d 1121 (10th Cir. 2006), the U.S. Court of Appeals for the Tenth Circuit reversed the decision of the U.S. District Court for the Eastern District of Oklahoma and held that evidence of insanity could be admitted at trial for a general-intent crime.

Facts of the Case

Bobby Scott Allen was indicted on a single count of felon in possession of a firearm. Allen had a

lengthy history of mental illness and was evaluated for competency and criminal responsibility by a psychologist employed by the United States Bureau of Prisons. The psychologist initially opined that the defendant was mentally ill but both competent and responsible. Prosecution, defense, and the magistrate judge all agreed that the report was not clear, and they jointly asked the psychologist to prepare a supplemental report to address competency and criminal responsibility. After conducting additional interviews with Allen and his family, the psychologist submitted a revised report, opining that Allen was competent to stand trial but unable to appreciate the wrongfulness of his alleged offense. In view of this opinion the parties entered into a stipulation asking the court to find Allen not guilty by reason of insanity. The court held a hearing on the stipulation at which time the judge expressed doubt about following the recommendation. He eventually rejected the proposed stipulation, and cited *U.S. v. Brown*, 326 F.3d 1143 (10th Cir. 2003), to hold that “psychological evidence is limited to specific-intent crimes.”

At trial, the prosecution moved to exclude the psychologist's testimony, citing *Brown*, saying, “Any testimony regarding a defendant's state of mind to negate a specific *mens rea* would be irrelevant in a general intent crime.” The court granted the prosecution motion without permitting the defendant to respond. In a subsequent motion to reconsider, defense counsel contended that *Brown* was irrelevant to the case since the issue in *Brown* (to which the state of mind testimony was directed) was intent, not insanity.

The trial judge disallowed the testimony of the psychologist, explaining that individuals who have prior convictions do not always realize that when they purchase a firearm they have broken the law. Thus, the judge compared the insanity defense with the phrase, “ignorance of the law is no excuse.” He went on to list additional reasons for barring evidence of insanity, quoting from *Brown*: “Evidence of a defendant's impaired volitional control or inability to reflect on the consequences of his conduct is not admissible.” He also cited the Insanity Defense Reform Act, 18 U.S.C. § 17, as “barring the introduction of evidence of a defendant's mental disease or defect to demonstrate that a defendant lacked substantial capacity to control his actions or reflect upon the consequences or nature of his action.”

Following the judge's exclusion of the psychologist's testimony, the parties entered into a plea agreement, wherein Allen pled guilty to the single count against him while reserving the right to bring an appeal from the district court's evidentiary rulings.

Ruling

The United States Court of Appeals for the Tenth Circuit determined that the district court erred both in finding that the insanity defense could not be presented to the jury and in holding that the proffered expert testimony was irrelevant in the prosecution of the general-intent crime. They reversed the district court's decision and remanded the case for further proceedings consistent with their own ruling.

Reasoning

The court of appeals based much of its reasoning on the fact that insanity is an affirmative defense and thus does not need to negate an element of the prosecution's case such as general or specific intent. The court noted that their decision was consistent with their holding in *Brown*, since the barred state of mind testimony in *Brown* had no bearing on criminal responsibility. What *Brown* held was that evidence of mental illness that falls short of establishing insanity could only be used to refute *mens rea* in specific-intent, not general-intent, crimes. Allen's counsel was not attempting to refute *mens rea* but to present an affirmative insanity defense.

Discussion

The central issue in this case is the availability of the insanity defense for general-intent crimes. The district court judge erred in holding that an insanity defense could only be raised in a specific-intent crime. He cited *U.S. v. Brown*, but that decision did not address the insanity defense. Rather, *Brown* dealt with the use of mental health testimony information to refute *mens rea*. The *Brown* court (the same appeals court that heard *Allen*) ruled that mental health information could be used only to refute *mens rea* in specific-intent crimes. It made no ruling on the affirmative defense use of state-of-mind testimony to advance an insanity defense.

Black's Law Dictionary defines specific intent as "the intent to accomplish the precise criminal act that one is later charged with. At common-law these crimes included robbery, assault, larceny, burglary, forgery, false pretenses, embezzlement, solicitation and conspiracy."

A general-intent crime is defined as "the state of mind required for the commission of certain common-law crimes, not requiring a specific intent or imposing strict liability. . . . General intent crimes usually take the form of recklessness or negligence" (Black's Law Dictionary [ed 7], St. Paul, MN: West Group, 1999).

The appeals court does a commendable job of balancing competing interests. One interest is to avoid allowing prosecutors to choose general-intent charges to preclude the use of an insanity defense. The competing interest is a defense strategy of using mental health evidence to refute *mens rea* in cases that do not meet a threshold for an insanity defense. This issue was recently addressed in the decision in *Clark v. Arizona*, 126 S. Ct. 2709 (2006), where the U.S. Supreme Court upheld the ruling that the defendant, Clark, could not present evidence of his mental illness to negate *mens rea* because his illness fell short of meeting the requirements for insanity in Arizona.

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Implications for the Peer Review Process

Appellate Court Requires Disclosure of Peer Review Records to Office of Protection and Advocacy

During its investigation into the deaths of two patients with disabilities who were residing in state-administered hospitals, the Connecticut Office of Protection and Advocacy for Persons with Disability (OPA) requested that the Connecticut Department of Mental Health and Addictions Services (DMHAS) grant access to peer review records. DMHAS denied the request, citing Connecticut law. The U.S. District Court for the District of Connecticut entered a declaratory judg-