

decision of the district court to deny *habeas* relief was affirmed.

Discussion

This case brings up concerns that are important in the practice of forensic psychiatry. *Cox v. Del Papa* demonstrates that a trial court is not required to order *sua sponte* (i.e., on its own initiative) a hearing to ensure that a *Miranda* waiver was knowing and intelligent, simply because a defendant's competence to stand trial has been questioned.

The original intent of *Miranda v. Arizona*, 384 U.S. 436 (1966), was to emphasize that procedural safeguards are necessary to protect a defendant's Fifth Amendment privilege against self-incrimination while in custody and being interrogated. To find that a person has properly waived *Miranda* rights, it must be determined that the individual has done so knowingly, intelligently, and voluntarily. Thus, competence to waive *Miranda* rights encompasses both a cognitive and volitional prong. In *Cox*, the court of appeals limited their analysis to the cognitive prong but did not explicitly differentiate knowingly (the capacity to understand that rights are being waived) from intelligently (understanding the significance of the rights being waived). However, it is apparent that both components were considered in their decision.

An assessment of competency is both time-specific and situation-specific. The individual's lack of competence in one area does not show that he lacks competence in others. If more than one type of competence is questioned, each competency must be separately assessed. The U.S. Supreme Court has recently recognized that mental illness may impair certain capabilities, but not others, during criminal proceedings. In *Indiana v. Edwards*, 554 U.S. 164 (2008), for example, the Court differentiated between competency to stand trial with assistance of counsel and competency to represent oneself at trial.

Had Mr. Cox successfully argued his case, it would be conceivable that forensic psychiatrists conducting evaluations of competency to stand trial would also be required to evaluate concurrently the validity of a defendant's waiver of *Miranda* rights. Evaluations of competency to waive *Miranda* rights involve retrospective assessments of both the defendant's "mental state at the time of the interrogation" and whether interactions with law enforcement were overly coercive. This evaluation is in contrast to that of a defendant's present ability to provide rational assistance to

counsel and understand court proceedings. In *Cox*, the Ninth Circuit's decision affirmed that psychiatrists need not pair these two very different competency evaluations unless explicitly requested to do so. The decision reinforces the importance of forensic psychiatrists' clarifying the specific questions that they are being asked to address before conducting competency evaluations.

Disclosures of financial or other conflicts of interest: None.

Legal Rights for Members of the Armed Forces

Annemarie Casesa, MD
Fellow in Forensic Psychiatry

D. Clay Kelly, MD
Associate Professor

Forensic Division
Department of Psychiatry and Neurology
Tulane University School of Medicine
New Orleans, LA

"Full and Fair Consideration" the Correct Standard for Federal Civilian Court Review of Armed Forces Member's Petitions for Habeas Corpus and Evidentiary Hearings to Consider Issue of Competency to Stand Trial

In the case of *Armann v. McKean*, 549 F.3d 279 (3d Cir. 2008), the Third Circuit Court of Appeals considered what legal standard should be used when a federal civilian court reviews a *habeas corpus* petition of an armed service member convicted in the military courts. In this case, the district court ruled that the military courts did not adjudicate the service member's mental incompetency claim "on the merits" under 28 U.S.C. § 2254 (d), and as a result, he was entitled to a *de novo* evidentiary hearing. After granting the Government's Petition for Permission to Appeal, the Third Circuit reversed the decision of the district court, holding that the correct standard for such review was the "full and fair consideration" standard set forth in the United States Supreme Court Case of *Burns v. Wilson*, 346 U.S. 137 (1953).

Facts of the Case

In October 1998, Kurtis Armann, a private in the U.S. Army, attempted to shoot and kill Private Toni Bell. Dressed all in black and armed with a makeshift rifle equipped with a scope, Private Armann waited

for Private Bell near the gate where she stood guard. Although he aimed to shoot Private Bell in the head, the bullet struck her neck. Pvt. Armann was charged with attempted premeditated murder with a firearm, conspiracy to commit premeditated murder, violating a lawful general regulation by wrongfully possessing a firearm with a silencer, and wrongfully using marijuana, as delineated in the Uniform Code of Military Justice (U.C.M.J.). He was detained at the Mannheim Confinement Facility in Germany.

In a pretrial hearing, the Military Judge ordered a Sanity Board to evaluate Pvt. Armann's mental health, over the objection of his counsel, who stated that the judge had "no basis to question Private Armann's ability to assist in his defense or. . . appreciate the ongoing proceedings." After reviewing Pvt. Armann's outpatient records, other medical records, and documents relating to the charges, the Sanity Board opined that he had "sufficient mental capacity to understand the nature of the proceedings and to conduct his own defense, or cooperate intelligently in his own defense." They also addressed the matter of criminal responsibility, stating that at the time of the alleged offense, Pvt. Armann was not experiencing a "severe mental disease or defect."

On March 19, 1999, Pvt. Armann pleaded guilty to all four charges in military court. Before accepting his plea, the Military Judge attempted to ensure its voluntariness. The judge inquired into Pvt. Armann's understanding of the allegations against him and advised him that he was waiving certain legal rights by pleading guilty. After accepting the plea, the judge held a sentencing hearing, where he issued Pvt. Armann a dishonorable discharge and sentenced him to 38 years in prison, reduced to 35 years as part of a plea agreement. On the days before and of his guilty plea (March 18 and 19, respectively), Pvt. Armann had migraine headaches, and medical logs indicated that he received Seconal, Fiorinal, Fioricet, Compazine, Midrin, Phenergan, and Elavil. The trial judge accepting the plea did not inquire about whether Pvt. Armann had been taking medications, and his attorney did not raise the potential issue of competency on that day.

On July 19, 2000, Mr. Armann's counsel filed an appeal with the Army Court of Criminal Appeals (ACCA), arguing that Mr. Armann's conviction for possession of a firearm be set aside. Counsel alleged that the Military Judge erroneously attached a particular exhibit, did not accept into evidence the rele-

vant military regulations, and gave Mr. Armann a disproportionately long sentence in light of his personal history. Mr. Armann personally raised two additional issues: that he was not criminally responsible for his alleged crimes and that he should not have been sentenced separately for the charges of attempted murder and conspiracy. On April 24, 2001, the ACCA stated that after taking into account the entire record as well as the issues raised by Mr. Armann, they affirmed the ruling of the court-martial.

On May 22, 2001, Mr. Armann filed a petition for review in the United States Court of Appeals for the Armed Forces (CAAF), and on October 11, 2001, submitted a supplement in support of that petition. In his supplement, he argued the same points made in his appeal to the ACCA, but also asserted that on the day of his court-martial and sentencing hearings, he had been heavily medicated and was not competent to stand trial. In addition to his petition for review, Mr. Armann filed a petition for a new trial, stating that new evidence had come out about Accutane, a medication he had taken in the past. Mr. Armann also filed motions to attach 18 different exhibits to his petition for a new trial. On January 7, 2002, the CAAF granted his motion to attach one of these exhibits, which included his arguments in regard to his competency to stand trial. On July 24, 2002, the CAAF granted his petition for review, in which they affirmed the decision of the ACCA, but denied his petition for a new trial. The CAAF did not issue an explanation of their ruling.

On April 22, 2004, Mr. Armann filed a writ of *habeas corpus* in the United States District Court for the Western District of Pennsylvania, arguing that he was not competent on the day he pleaded guilty and was sentenced. On December 29, 2005, Mr. Armann filed a motion for an evidentiary hearing, alleging that the medications given to him by the Mannheim officials on the day of his plea and sentencing rendered him incompetent to stand trial. On March 14, 2006, the Magistrate Judge, to whom the district court had assigned the case, granted Mr. Armann's motion for an evidentiary hearing. After determining that not all of the CAAF documents had been provided for the Magistrate Judge's review, the district court remanded the case to the Magistrate Judge, and once again, the Magistrate Judge granted the motion. The government appealed the decision to the Third Circuit, who reversed the district court's ruling.

Ruling and Reasoning

In deciding what scope of review a federal district court should apply when analyzing a service member's *habeas corpus* petition, the Third Circuit cited *Burns v. Wilson* as the relevant case law. In *Burns v. Wilson*, the Supreme Court held that the standard for such review is "full and fair consideration," which they intended to mean "no more than hearing the petitioner out." The Third Circuit explained that regardless of the rationale in favor of applying a different standard, "it is solely the prerogative of the Supreme Court to depart from its precedents" (*Armann*, p 291). Since the Supreme Court has not abandoned the *Burns* decision, the Third Circuit opines that it is the definitive standard in this case. The decision in *Burns v. Wilson* showed a greater deference to the decisions made in military courts than those of civil courts, and thus only an overt constitutional violation would justify the federal court granting review.

After deciding the appropriate standard for review, the Third Circuit considered Mr. Armann's assertion that the military courts did not consider his competency claim. The Third Circuit cited their ruling in *U.S. ex. Re. Thompson v. Parker*, 399 F.2d 774 (3d Cir. 1968), where they held that the Court of Military Appeals' one-sentence denial of a petition for review, which was accompanied by an extensive brief by the appellant regarding the alleged constitutional violation, satisfied the requirement for full and fair consideration set forth in *Burns*. The Third Circuit pointed out that, although the government failed to address the incompetency claim in detail, it did not ignore it.

Discussion

This case reiterates that decisions made in military courts are subject to a narrower scope of review, affording them greater deference than civil courts. As a result, Mr. Armann's claim of incompetency would be subject to review in federal court only if the military courts manifestly refused to consider the claim. Per *Burns*, the Third Circuit asserted that "Military law, like state law, is a jurisprudence which exists separate and apart from the law which governs in our federal judicial establishment" (*Burns*, p 140).

Still, this level of deference could leave significant competency issues in Mr. Armann's case unexamined. The potential that the medications received by him on the day of his plea affected the voluntariness

of his plea seems significant. Yet, the Third Circuit only mentions it in passing. Although many of the issues he raises in his various appeals seem to lack merit (e.g., the "likely" psychotomimetic effects of Accutane, which he asserts caused him to be insane at the time of his unlawful behavior), the possibility that he may have been oversedated when he pleaded guilty seems a live issue indeed.

Disclosures of financial or other conflicts of interest: None.

Death Penalty and Mentally Ill Defendants

Franklin J. Bordenave, MD
Fellow in Forensic Psychiatry

D. Clay Kelly, MD
Associate Professor

Forensic Division
Department of Psychiatry and Neurology
Tulane University School of Medicine
New Orleans, LA

Two State Supreme Courts Hold That Mental Illness Is Not a Per Se Bar to Execution

In *Power v. State of Florida*, 992 So.2d 218 (Fla. 2008), and *Hall v. Brannan*, 670 S.E.2d 871 (Ga. 2008), the Supreme Courts of Florida and Georgia each reaffirmed and held that the mere presence of mental illness does not provide one with an Eighth Amendment exemption for execution.

Facts of the Case in Power v. State of Florida

Robert Beeler Power was convicted of first-degree murder, sexual battery, kidnapping of a child under the age of 13, armed burglary of a dwelling, and armed robbery on June 2, 1990. He was subsequently sentenced to death. He made claims of error in both the guilt and penalty phases of his trial. The Supreme Court of Florida affirmed his convictions and sentences. In November 1998, he filed a post-conviction motion, but the Supreme Court of Florida affirmed the denial for postconviction relief and denied a petition for writ of *habeas corpus*. He filed another postconviction motion containing four constitutional challenges to Florida's death penalty scheme in December 2006. The circuit court summarily denied all of his challenges. He appealed the