

that he was unable to act with criminal intent, despite two witnesses who identified alcohol on his breath. (*Phillips v. State*, 989 P.2d 1017).

In conclusion, the facts of this case call into question the practice of dismissing evidence that may inform the jury's ability to make inferences about criminal intent. The Tenth Circuit's ruling sets a precedent to protect against a slippery slope that could lead to a partial loss of the legal protections granted to individuals with mental illness through a degradation of permissible psychiatric evidence. With the relationships among traumatic events, substance use, and violent behavior receiving increased attention in both academic and applied psychological settings, this ruling may have considerable impact, as our legal system attempts to adapt to a more advanced etiological understanding of violent and aggressive behavior.

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## Unwillingness Versus Inability to Assist in One's Own Defense in Assessments of Competency to Stand Trial

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### Opposing Viewpoints Regarding a Defendant's Beliefs or Delusions in a Hearing for Competency to Stand Trial

In *State v. Hill*, 228 P.3d 1027 (Kan. 2010), the Kansas Supreme Court reviewed the appeal of Nathaniel L. Hill, who argued that the trial court erred in finding him competent to stand trial, because the evidence presented demonstrated that he was unable to assist in his own defense.

#### *Facts of the Case*

Nathaniel Hill, a drug supplier for April Milholland and her boyfriend Sam Yanofsky, was convicted of capital murder in their deaths. Mr. Hill reported

that Mr. Yanofsky owed him \$2,000 for marijuana, and he agreed to meet Mr. Yanofsky and Ms. Milholland at the house of Mr. Hill's friend, Sylvester Jones. Mr. Hill gave several different accounts of events that night. In his final version, he indicated that Mr. Yanofsky and Ms. Milholland arrived at Sylvester Jones' house and consumed alcohol and cocaine. Later, Mr. Yanofsky tackled him and began strangling him. He reported that Mr. Jones slid him a gun; as he grabbed it, Mr. Yanofsky struck his hand, causing the gun to discharge accidentally into Mr. Yanofsky.

In October 2003, Mr. Hill's attorneys asked Dr. George Athey, a clinical and neuropsychologist, to evaluate their client regarding his competence to proceed to trial. After that examination, Dr. Athey reported that Mr. Hill understood the legal process but was unable to assist his attorneys in his defense. He noted that Mr. Hill "believed his attorneys were hiding information from him, lying to him, brainwashing him, and threatening him" (*Hill*, pp 1033–1034). The defense then filed a motion for a competency-to-stand-trial evaluation.

The district court judge granted the motion and sent Mr. Hill to Larned State Security Hospital, where Mr. Hill was held for 51 days. The report of the treatment team that evaluated him at Larned stated that Mr. Hill "is capable of appropriately conducting himself in all aspects of the current legal proceedings" (*Hill*, p 1034). The report also said that although "disappointed in the performance of his attorney . . . his disappointment does not appear to be a sufficient obstacle that would prevent him from working successfully with his attorney" (*Hill*, p 1034). The team found he met the criteria for competency to stand trial.

Dr. Athey and Dr. William Logan, a psychiatrist, testified for the defense at the competency hearing, both opining that Mr. Hill was not competent. Dr. Patrick Pompfrey, a psychologist on the Larned treatment team, appeared for the state. He testified that although Mr. Hill was not satisfied with the performance of his attorneys, he was competent to assist his lawyers in his defense. The district court judge ruled that the defense had not met its burden of proving incompetence. However, a ruling of competence was deferred until Mr. Hill could be treated with medication and the effects could be evaluated.

The district court judge ordered that Mr. Hill be evaluated for medication by Dr. V. J. Reddy in September 2004. He reported that Mr. Hill exhibited some illogical thinking and paranoia with his attorneys and prescribed risperidone. When the competency hearing was held the following month, no additional experts were called, and the court ruled Mr. Hill competent, finding that Mr. Hill's disagreement with his attorneys' advice did not constitute an inability to assist in his defense.

The following January, the defense filed a motion for a new competency hearing and presented two additional experts. Both experts testified that Mr. Hill displayed delusional thinking, such as believing that biblical verses pertained specifically to his case and that charges against him would be dropped due to the content of these verses. Both experts indicated that Mr. Hill would be unlikely to be able to assist in his defense. At the end of this hearing, the court read aloud a letter that Mr. Hill had sent to the judge. In this letter Mr. Hill stated, "I am not incompetent to stand trial" and "not paranoid of my lawyers," but he "didn't want to work along with them at the time" (*Hill*, p 1036). In response to questioning from the district court judge, Mr. Hill stated that he did not agree with his attorneys' desire to pursue a plea bargain, and, although he understood that it was against the judgment of his attorneys, he wanted to go to trial. He reported that by taking a plea he would be proven guilty, and only by going to trial could he be found not guilty. The district court judge denied the defense motion for a new competency hearing, noting that the belief that biblical references were personally directed was not necessarily delusional and that Mr. Hill's choices regarding his defense strategy appeared to be made rationally.

In Montgomery County District Court, Mr. Hill was found guilty of capital murder, first-degree murder, possession of marijuana with intent to sell, possession of drug paraphernalia, and failure to purchase a drug tax stamp. He was ultimately sentenced to life without the possibility of parole in October 2008. The defense appealed to the Kansas Supreme Court on five assertions, including that the trial court abused its discretion in finding Mr. Hill competent to stand trial and that, because he was unable to assist in his defense, he was deprived of the benefit of the potential affirmative defense of voluntary intoxication and diminished capacity.

#### *Ruling and Reasoning*

The Kansas Supreme Court relied on *State v. Kleyapas*, 40 P.3d 139 (Kan. 2001) to determine whether the trial court abused its discretion in finding Mr. Hill competent. According to that case, determination of whether the trial court abused its discretion is made by assessing whether a reasonable person could conceivably assume the view upheld by the trial court.

In the appeal, Mr. Hill argued that he should have been found incompetent due to evidence indicating he did not have a rational understanding of the charges made against him and that he was unable to assist in his defense. Defense counsel argued that Mr. Hill refused to consult with his attorneys and refused to consider any plea bargains. They reported his understanding of proceedings to be irrational, as he believed that biblical passages indicated that his trial would be dismissed.

The Kansas Supreme Court affirmed the trial court's judgment. It found that given the competing evidence proffered by the prosecution's witnesses, "it [could not] be said that no reasonable person would have found the defendant competent" (*Hill*, p 1048), and the trial judge had acted within his discretion in finding Mr. Hill competent.

#### *Discussion*

This case highlights several complex concerns regarding competency to stand trial. First, the case provides a framework to examine a defendant's inability versus unwillingness "to make or assist in making his defense" (Kan. Stat. Ann. § 22-3301 (2004)). Of special interest is the question of whether a defendant's choice to rely on religious faith over the advice of attorneys is suggestive of incompetence. Is there a point at which religious beliefs regarding divine intervention in one's legal situation can be seen as interfering with a rational understanding of the proceedings? Second, how much weight should be given to a defendant's own statements regarding his competence? Finally, when competing evidence is offered regarding competence, what are the implications of having the potentially incompetent defendant bear the burden of proving, by a preponderance of the evidence, that he is not competent, especially if he is not willing or able to accept assistance from his attorney?

The defense experts concluded that Mr. Hill had displayed delusional and paranoid thinking and that

it was unlikely that he would be able to assist in his defense. In contrast, experts from a state hospital indicated that although Mr. Hill was not in agreement with his attorneys' legal advice, it did not preclude him from assisting in his defense if he so chose. These opposing viewpoints emphasize the difficulties faced when applying complex psychiatric constructs to concrete legal standards. The trial court judge, in forming his opinion, opined that although an individual may believe that portions of the Bible refer specifically to him, it does not necessarily indicate that he is delusional.

The supreme court indicated that Mr. Hill's interaction with the trial judge reinforced its conclusion that he was capable of assisting in his own defense. While Mr. Hill's written and oral statements may have provided evidence of his ability to appreciate the nature and purpose of the proceedings against him, self-report of competence or ability to assist in one's defense may do little more than lead to face-value assumptions. In fact, in this case, the defense argued that Mr. Hill's letter provided evidence of his inability to cooperate, as the judge had previously directed the defendant not to write directly to the court.

Complexities such as these may place the forensic psychiatrist in a precarious situation. While there may be no concrete solution, some considerations may be taken into account. When a finding of not competent to stand trial is considered, a formal assessment of malingering may be useful; there was no mention of such a consideration in Mr. Hill's case. In addition, when the question of unwillingness versus inability to assist arises, particular care should be taken to attempt to understand the defendant's reasoning. That is, an individual's answers should not simply be accepted at face value. Rather, diligence in trying to understand the logic and rationale behind these answers should drive the assessor's conclusions. Further, it is worth bearing in mind that an individual's rational understanding of the nature and purpose of proceedings should not unduly influence conclusions regarding his ability to assist.

This case raises the inherent difficulties in applying complex clinical data and analysis to dichotomous legal decisions. Assessments are often conducted in contexts where there is no unassailable answer as to an individual's competence to stand trial. When, on appeal, the abuse of discretion stan-

dard is applied, it becomes difficult to demonstrate that no reasonable person would have arrived at a particular conclusion, given the available data.

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## **Burden of Proof in Establishing Mental Retardation in Capital Cases**

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### **The Standard of Beyond a Reasonable Doubt for Establishing Mental Retardation in Capital Cases Is Unconstitutional Under the Eighth Amendment**

In *Hill v. Schofield*, 608 F.3d 1272 (11th Cir. 2010), the defendant appealed the decision by the U.S. District Court for the Middle District of Georgia denying the *habeas* petition that challenged his death sentence. The district court did grant appealability of the Georgia Supreme Court's decision to uphold the state statutory requirement that mental retardation must be proved beyond a reasonable doubt for exemption from the death penalty. Mr. Hill claimed that the statutory standard was in violation of the constitutional ban on cruel and unusual punishment, as established by *Atkins v. Virginia*, 536 U.S. 304 (2002).

#### *Facts of the Case*

In 1991, Warren Lee Hill was convicted and sentenced to death for the 1990 murder of his prison cellmate. Both his conviction and his sentence were affirmed on direct appeal in 1993, and *certiorari* was denied by the Supreme Court in 1994. Subsequently, Mr. Hill initiated a *habeas* petition, arguing that mental retardation exempted him from execution. The state *habeas* court found that the evidence that he was mentally retarded was credible and granted his writ to conduct a jury trial in which the preponderance-of-evidence standard was to be applied.