

extreme emotional distress defense. In *State v. Bishop*, the state supreme court expressed its intent to distance itself from the heat-of-passion analysis previously used in extreme-emotional-distress defenses and to expand the class of cases where the defense could be available. The court concluded that the appellate court erred by narrowing the scope and use of the defense in Ms. White's case. In the appeals court decision, that court introduced the qualifiers "contemporaneous" and a "highly provocative triggering event" as necessary aspects of extreme emotional distress, resulting in Ms. White's loss of self-control. While acknowledging that some sort of triggering event may be necessary, in an earlier case, *State v. Shumway*, 63 P.3d 94 (Utah 2002), the state supreme court determined that the "triggering event" does not have to be close in time to the behavior at issue or be "highly provocative" as it was in a heat-of-passion defense. In Ms. White's case, the Utah Supreme Court was clear that a "contemporaneous" and "highly provocative triggering event" represented "an improper retreat into the realm of 'heat of passion' manslaughter."

Finally, the court disagreed with Ms. White's petition on the question of the point of view by which the circumstances of the crime must be considered for this defense. Ms. White argued that her subjective point of view was most important in answering the question of whether she was under extreme emotional distress. The court disagreed and made clear that a "reasonable person under the existing circumstances" is the proper standard. For this portion of the opinion, the state supreme court agreed with the appeals court.

Discussion

The extreme emotional distress defense is in use in various states, often serving as an affirmative defense in the case of murder and attempted murder, allowing for possible mitigation and reduction in the severity of the crime charged. If used successfully, this defense may diminish charges of murder or attempted murder to manslaughter or attempted manslaughter. This defense must be proved by preponderance of the evidence. The Utah Supreme Court in this decision makes clear that consideration for the behavior and its relationship to extreme emotional distress should be analyzed from the standpoint of an ordinary person in an analogous situation, under circumstances in which the actor reasonably believes

herself to be. The law necessitates that the person be exposed to extremely unusual and overwhelming stress that caused the person to lose self-control, but made clear that the triggering event need not be "contemporaneous." The court noted, "A close temporal tie between provocation and the criminal act was necessary under the 'heat of passion' formulation because manslaughter was not available if there was time for the defendant to 'cool off.' No such requirement exists to assert the extreme emotional distress defense" (*White*, p 828).

This decision by the court illustrates the need to evaluate the subjective and idiosyncratic emotional reactions of a defendant, but it also calls for objective analysis regarding the severity of triggering stressors and how a reasonable person might respond. Cogent medicolegal formulations and education for triers of fact necessitate attention to both elements. A genuine subjective emotional reaction involving extreme distress must pass some objective analysis regarding the degree of precipitating adversity for a viable affirmative defense to exist. Novel or unusual stressors causing extreme behavior will necessitate nuanced analysis, to facilitate legitimate defense opportunities and protect against abuses of this affirmative defense option.

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Protecting the Rights of Defendants in Cases Where the Question of Competency Has Been Raised

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Indiana's Supreme Court Rules That Delays in Proceedings Not Specifically Attributable to a Defendant Count Toward the Time Limit for Dismissal of Charges When the Question of Competency Is Raised

In *Curtis v. State*, 948 N.E.2d 1143 (Ind. 2011), the Supreme Court of Indiana clarified that a speedy-trial claim under Indiana Criminal Rule 4(C) and a speedy-trial claim under the federal or state constitution must be asserted separately and distinctly, and that delays not attributable to the defendant are credited toward the one-year time limit established by the former.

Facts of the Case

In June 2007, Alva Curtis was arrested and charged with residential entry, battery, and criminal mischief. Mr. Curtis was born with a developmental disability and had a fifth or sixth grade education. Although able to dress himself and write his name, Mr. Curtis was unable to read and drew disability payments. The trial court ordered a competency evaluation of Mr. Curtis in February 2009, following several motions filed by the state and Mr. Curtis. Two doctors evaluated Mr. Curtis, with both opining that he was incompetent to proceed and had dementia. One examiner opined that Mr. Curtis was not restorable, while the other noted that it was "unlikely."

Mr. Curtis subsequently filed a motion to dismiss the case in May 2009, arguing that the charges he faced violated his due process right to fundamental fairness, as he was incompetent and unlikely to be restorable. The state argued that this motion was "premature," that there had been no finding that he was unlikely to regain competency, that he had been incarcerated for only a brief time, and that there was "sufficient public interest" in proceeding with the charges.

The trial court then denied Mr. Curtis' motion to dismiss but noted that he would never become competent. Mr. Curtis next filed a motion to dismiss and be released under Indiana Criminal Rule 4(C), which "provides that a defendant may not be held to answer a criminal charge for greater than one year unless the delay is caused by the defendant, emergency, or court congestion" (*Curtis*, p 1148). The trial court denied this motion and again noted that he would never become competent. Mr. Curtis filed an interlocutory appeal that was granted; his appellate brief raised concern regarding his constitutional

speedy-trial, due process and Indiana Criminal Rule 4(C) claims. The court of appeals found that his right to due process had been violated and reversed and remanded, with instructions to dismiss the charges. The case was transferred to the Indiana Supreme Court.

Ruling and Reasoning

The court addressed three points in its reasoning: the right to a speedy trial as guaranteed by the United States and Indiana Constitutions, due process, and Indiana Criminal Rule 4(C).

Regarding Mr. Curtis' claim that his right to a speedy trial had been violated, the court noted that Mr. Curtis raised it for the first time on appeal and therefore had forfeited his constitutional speedy-trial claim. The court ruled that under Indiana Appellate Rule 14(B), claims that were properly raised in the trial court are available on interlocutory appeal and that the converse was also true. Claims that were not properly presented to the trial court are unavailable on interlocutory appeal.

The Indiana Supreme Court noted that the court of appeals had agreed with Mr. Curtis' argument that the charges against him violated his Fourteenth Amendment rights to fundamental fairness and due process. The court described its prior ruling in *State v. Davis*, 898 N.E.2d 281 (Ind. 2008), in which the court identified violations of due process rights including that Charlene Davis' pretrial confinement had extended the maximum sentence a trial court could impose and the state had presented no argument that its interests outweighed Ms. Davis' liberty interest. In Mr. Curtis' case, the court ruled that there was no due process violation, as he had not been involuntarily committed and because there had been no finding that he would never be restored to competency.

The court addressed Mr. Curtis' claim that his rights under Indiana Criminal Rule 4(C) had been violated by analyzing the timeline involved in the case to parse out responsibility for the delays in the case's progress. The court noted that 799 days passed from the date Mr. Curtis was charged until he filed the motion to dismiss under Indiana Criminal Rule 4(C). The question at hand involved how many of those days were attributable to him and how many should be charged to the state. The state argued that 571 of those days should have been charged to him under the notion that delays subsequent to the state's

initial motion for a competency evaluation were due to his actions. The court disagreed, noting that in regard to the state's motion for Mr. Curtis to receive a competency evaluation, the trial court initially declined to rule on the motion without explanation and then issued a continuance of its own accord. The court noted that while further delays in the proceedings were indeed attributable to him, the 365-day limit imposed under Indiana Criminal Rule 4(C) had already been reached.

The court ruled that Mr. Curtis was entitled to dismissal under Indiana Criminal Rule 4(C). The judgment of the trial court was reversed and remanded with instructions to drop his charges.

Discussion

In its landmark decision *Jackson v. Indiana*, 406 U.S. 715 (1972), the U.S. Supreme Court held that a state violated due process in involuntarily committing a criminal defendant for an indefinite period solely on the basis of being permanently incompetent to stand trial. The Indiana Supreme Court subsequently ruled, in *Indiana v. Davis*, that it was a violation of the due process clause of the 14th Amend-

ment to hold criminal charges over the head of an incompetent defendant when it was apparent that the defendant would never be able to stand trial.

Both *Jackson* and *Davis* address the balance of the state's interest with that of the defendant's liberty interests. While *Jackson* addressed the question of indefinite commitment for an individual permanently incompetent to stand trial, *Davis* clarified whether the state could continue to hold criminal charges over the head of a defendant who is likely to be permanently incompetent to proceed.

In *Curtis v. Indiana*, the defendant was not found permanently incompetent to proceed. However, the court ruled that there are still limits regarding the state's holding criminal charges over such a defendant. A speedy-trial provision, outlined in Indiana Criminal Rule 4(C), served as grounds for dismissal of charges, even absent a finding regarding the defendant's competence. This case is important in further protecting the rights of individuals in proceedings where competency is the question.

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