him by the state's medical board. While not expressly relating their reinstatement of the claim against him to his past problems, the recitation of his past medical lapses makes the court's judgment all the more compelling.

Disclosures of financial or other potential conflicts of interest: None.

Claim of Ineffective Assistance of Counsel: Failure to Raise Competence-to-Stand-Trial, Insanity, and Diminished Capacity Defenses

Thomas Hartwig, MD
Fellow in Forensic Psychiatry
Center for Forensic Psychiatry
Saline, MI

Melvin Guyer, PhD, JD
Professor of Psychology
Department of Psychiatry
University of Michigan
Ann Arbor, MI

Defense Attorney's Failure to Raise the Question of Defendant's Competency to Stand Trial or to Mount Insanity or Diminished Capacity Defenses Does Not Constitute Ineffective Assistance of Counsel, Even When the Defendant Subscribes to Bizarre or Irrational Beliefs

In *Robidoux v. O'Brien*, 643 F.3d 334 (1st Cir. 2011), the court denied *habeas corpus* relief to inmate Jacques Robidoux, who was serving a life sentence for first-degree murder. On appeal, Mr. Robidoux claimed ineffective assistance of counsel, arguing that his defense counsel should have raised competency to stand trial, as well as criminal responsibility and diminished capacity as trial defenses.

Facts of the Case

In the years leading up to March 1999, Mr. Robidoux and his wife Karen had been involved in a small religious sect led by Mr. Robidoux's father Roland. In early March, one of Mr. Robidoux's sisters informed the group that she had received a leading, interpreted by the group as a direct instruction from God. According to the leading, Mr. Robidoux and Karen were to stop feeding their infant son, Samuel, all solid food. Instead, Karen was to begin breastfeeding Samuel for 10 minutes from each breast every hour. Mr. Robidoux and the rest of the sect went along with the leading. Over the next 52 days, it became apparent that Samuel was becoming severely malnourished; however, none of the group took him to see a doctor. The Massachusetts Supreme Judicial Court opined that the group had become influenced by the author Carol Balizet and had rejected what they believed were "Satan's seven counterfeit systems," which included medical care and the legal system (*Commonwealth v. Robidoux*, 877 N.E.2d 232 (Mass. 2007)). Instead, Mr. Robidoux called a special meeting of the group in April 1999 and they prayed for Samuel. The next day, he died. In the aftermath of his death, his body was concealed in a casket for several months in the bulkhead of a home. Later, in October 1999, Mr. Robidoux and three other group members buried the casket in a remote area, where it went undiscovered until a member of the group told police where to find it one year later.

In June 2002, Mr. Robidoux was tried for murder. In the trial hearings, he requested to proceed *pro se*, but withdrew his request after being engaged by the trial judge in an extended colloquy. However, the next day he nonetheless submitted a handwritten, *pro se* motion to change his plea. Judge Boudin described the plea as "long, rambling, and (judged by conformity to legal principles) almost incoherent" (*Robidoux*, p 339). Mr. Robidoux's motion was rejected on several grounds. Throughout the remainder of the trial, he was defended by his attorney.

At trial, the defense's main strategy was to dispute the cause of death. The defense called a pediatric forensic pathologist who testified that Samuel might have died of several other causes. However, the state called several witnesses who testified in support of starvation as the cause of death. Mr. Robidoux also testified in the trial. In the closing arguments, the defense argued "that the cause of death remained debatable, and that, given his candor, Mr. Robidoux [is] no hardened criminal" (*Robidoux*, p 337).

The jury convicted Mr. Robidoux of first-degree murder, and he was sentenced to life imprisonment without the possibility of parole. Notably, throughout the trial, and at his insistence, Mr. Robidoux was never examined by a psychologist or a mental health professional. Neither his competency nor criminal responsibility was explicitly raised in the trial. In a later affidavit he stated that he had discussed the possibility of the insanity defense with his lawyer but

"there was simply no way [he] would talk to a doctor or psychotherapist" given his religious beliefs (*Robidoux*, p 337).

Mr. Robidoux appealed his conviction to the Massachusetts Supreme Judicial Court, where the conviction was upheld (*Commonwealth v. Robidoux*, 877 N.E.2d 232 (Mass. 2007)). Subsequently, his petition for *habeas corpus* relief was denied by the Federal District Court (*Robidoux v. O'Brien*, 2010 U.S. Dist. LEXIS 12349 (D. Mass. 2010)). Mr. Robidoux appealed this denial to the First Circuit Court of Appeals.

Ruling and Reasoning

The United States First Circuit Court of Appeals affirmed the denial of Mr. Robidoux's petition for *habeas corpus* relief. As to whether ineffective assistance was provided in failing to request a competency evaluation, the court noted that under both Massachusetts and federal law, there is an obligation to raise a defendant's competency if there are "substantial indications" that a defendant may not be competent to stand trial. The court cited *Cooper v. Oklahoma*, 517 U.S. 348 (1996), and *Drope v. Missouri*, 420 U.S. 162 (1975), in noting that competency requires "that the defendant understand the nature of the proceedings against him and that he be able to cooperate with counsel in his defense" (*Robidoux*, p 339). The court further set forth the level of understanding that is required, noting that it refers to "the essentials—for example, the charges, basic procedure, possible defenses," but does not require "legal sophistication" (*Robidoux*, p 339). In analyzing whether the question of Mr. Robidoux's competency should have been raised, the court stated " here is only a single piece of direct evidence to suggest that Mr. Robidoux might not have understood what he was told" (*Robidoux*, p 339), referring to the handwritten *pro se* motion that Mr. Robidoux initially filed and then withdrew. However, the court concluded that the withdrawn motion was not a substantial indication that Mr. Robidoux was not competent to stand trial. In considering Mr. Robidoux's competency, the court also relied on evidence from the course of the trial itself, stating that "Robidoux proved in court to be intelligent and articulate in colloquies with the judge and as a witness" (*Robidoux*, p 340). The court noted that the trial record indicated that Mr. Robidoux seemed to understand the proceedings and was able to cooperate with his attorney.

As to defense counsel's failure to press an insanity defense, the court noted that, "unless incompetent, Robidoux was entitled to decline to assert the defense and to refuse any psychiatric examination to support it" (*Robidoux*, p 341). The court noted that he had refused to be examined by doctors and concluded that his refusal to be examined would have been likely to lead the trial judge to bar any expert testimony in support of the insanity defense; therefore, the court narrowed its inquiry to whether counsel was deficient in not attempting to assert the insanity defense without any supporting expert testimony. According to the court, "insanity is normally rooted in some recognized mental illness. Nothing indicated that Robidoux had ever been so diagnosed or even cleanly fit into a standard, recognized category of mental illness" (*Robidoux*, p 341). The court went on to note that extreme religious beliefs are rarely treated "as representing insanity" (*Robidoux*, p 341).

The court compared the case before it to *Wilson v. Gaetz*, 608 F. 3d 347 (7th Cir. 2010), a case in which the defendant was "a paranoid schizophrenic who refused to leave home under the delusion that there was a vast religious conspiracy against him and killed his employer" (*Wilson*, p 354). In that case, Judge Posner held that counsel had been deficient in not pursuing an insanity defense. In the current case, the court found several differences between the two cases, of which apparently the most important was that Mr. Robidoux had no previously known history of mental illness. The court also cited *Lundgren v. Mitchell*, 440 F.3d 754 (6th Cir. 2006), as "discussing 'deific decree insanity defense cases and concluding that the defense almost never works'" (*Robidoux*, p 342).

Finally, the court considered whether Mr. Robidoux's counsel unreasonably failed to argue diminished capacity. The court commented that although there is no diminished-capacity defense in Massachusetts, the defense may offer evidence bearing on the defendant's ability to form intent to commit the crime. The court considered a diary entry in which Mr. Robidoux had indicated having knowledge that his son was getting worse but believing that if his son died, he would be resurrected after death. In the court's view, these facts would not negate intent.

Discussion

The facts of this case, at first blush, appear to raise doubts as to Mr. Robidoux's competency. However, in its decision, the First Circuit noted the low bar for

finding competency and concluded that an "incoherent" *pro se* motion, alone, is not enough to require a formal evaluation of competency.

It is well settled that a competent defendant has the right to refuse to pursue an insanity defense. However, Mr. Robidoux had explicitly refused to receive a mental health evaluation, but had not necessarily refused to offer an insanity defense. The court examined whether Mr. Robidoux's lawyer should have attempted to raise the insanity defense without expert assistance. The court concluded that counsel had not been deficient, given the particular facts of the case, which it found unsupportive of an insanity defense. Notable was that Mr. Robidoux had no mental health history. The court also stated, citing *Lundgren v. Mitchell*, that "deific decree" defenses are rarely successful. In their analysis, the court implied that if the facts of the case had been different, such an obligation might have existed.

The court's analysis of diminished capacity is particularly of interest, as the court recognized that it is not considered a defense in Massachusetts, but nonetheless obliged itself to examine whether Mr. Robidoux's counsel had been deficient in not pursuing it. In justifying this, the court apparently felt that diminished capacity is not dissimilar from a defense based on inability to form intent. However, it ultimately rejected this argument based on the facts of the case, in particular a diary entry by Mr. Robidoux that could be interpreted as indicating that he did have the ability to form intent.

In summary, in this case, the First Circuit Court was confronted with three points of major importance at the intersection of mental health and the law. The court's analysis and holdings will inform our understanding of these issues.

Disclosures of financial or other potential conflicts of interest: None.

Admission of Brain Imaging in Criminal Proceedings

Joshua Biddle, BA
Medical Student

John Chamberlain, MD
Associate Clinical Professor of Psychiatry
Program in Psychiatry and the Law
Department of Psychiatry
University of California San Francisco
San Francisco, CA

Different Standards Regarding the Admissibility of Scientific Expert Testimony During the Guilt and Penalty Phases of a Capital Trial

In the case of *United States v. Montgomery*, 635 F.3d 1074 (8th Cir. 2011), a federal jury convicted Lisa Montgomery of kidnapping resulting in death. Upon recommendation by the jury, the district court sentenced her to death. She appealed, arguing that the trial court committed errors in excluding neuroimaging evidence. The Eighth Circuit Court of Appeals examined the standards for admission of positron emission tomography (PET) and magnetic resonance imaging (MRI) evidence during both the guilt and penalty phases of the trial.

Facts of the Case

Mrs. Montgomery and Bobbie Jo Stinnett met in April 2004 through an online message board dedicated to dog breeding. Ms. Stinnett became pregnant in the spring of 2004 and shared the news with her virtual community. Around this time, Mrs. Montgomery also reported being pregnant. However, she was unable to become pregnant due to a sterilization procedure that she had undergone more than a decade before. Mrs. Montgomery contacted Ms. Stinnett in December 2004 when she was eight months pregnant. They arranged a meeting for the following day. Mrs. Montgomery drove to Ms. Stinnett's farm. She brought a kitchen knife and a white cord and attacked Ms. Stinnett.

Mrs. Montgomery strangled Ms. Stinnett with the cord, eventually killing her, and, opening the abdomen with the knife, she removed the fetus from the body and departed with the infant. She drove to another location, called her husband, and told him she had delivered the child at a clinic. The next day law enforcement officers arrived at her home, and she confessed to killing Ms. Stinnett.

Mrs. Montgomery was charged with violating 18 U.S.C. § 1201 (a)(1) (2003), kidnapping resulting in death. She intended to assert an insanity defense and to present evidence regarding mental defect or disease. It was without dispute that she had PTSD, borderline personality disorder, and depression. However, defense and government experts disagreed as to whether she carried a diagnosis of pseudocyesis.