employed by his workplace. This practice can represent significant clinical and ethics-related challenges that can be avoided through independent medical evaluation, routinely performed by a forensic psychiatrist. Forensic training in fitness for duty and risk assessment can facilitate the development of appropriate accommodation protocols for maintaining progress with an adequate level of monitoring. Thus, in cases involving the ADA and RA, a forensic evaluation may assist in the balancing of the essential demands of work or school and the reasonable accommodations due an otherwise qualified ill and recovering student or employee.

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Jury Instructions on the Consequences of an Insanity Verdict

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Burden of Proof in an Insanity Defense Is on the Defendant; Punishment Should Not Be a Consideration in a Jury's Determination of Guilt or Innocence; Use of Nontestimonial Statements in Trial Do Not Violate the Sixth Amendment

In *United States v. Brown*, 635 F. App'x 574 (11th Cir. 2015), Korrigan Brown appealed his convictions arguing that the trial court erred by refusing his proposed jury instructions which included consequences of the verdict. The court reasoned that except in certain circumstances, the jury should not be instructed on the consequences of a verdict of not guilty by reason of insanity (NGRI). In the current case, Mr. Brown argued that he fell under this exception.

Facts of the Case

On December 14, 2012, Mr. Brown met with his childhood friend Lamel Lattimore who agreed to drive the car while they committed a robbery. They then met up with Nathan Holmes, who had committed armed robberies with Mr. Brown before. The trio first attempted an armed robbery at a Chevron station in Miami Beach, but had to flee when an employee called the police. The three men tried again at a Wendy's restaurant. As they pulled away with the stolen cash, a witness called 911, and they were apprehended. Both robberies were caught on surveillance video. Mr. Brown was charged with one count of conspiracy to commit robbery, two counts of robbery, and two counts of use of a firearm during a crime of violence.

At the trial, Mr. Brown's witnesses included two mental health experts, both of whom diagnosed bipolar disorder. The government's expert disagreed, noting that, among other things, according to prison medical records, Mr. Brown did not volunteer a history of mental illness during the intake process.

During the trial, Mr. Brown argued that since he had produced "some evidence" to support his insanity defense, the government should have the burden of proving beyond a reasonable doubt that he was not insane when he committed the crimes. He also requested that the jurors be informed of the outcome of their verdict and the mandatory minimum sentence he faced if convicted. Mr. Brown conceded that punishment should not be a consideration in the determination of guilt of a defendant. However, he requested that the jury instructions include language that if he were found guilty, "any punishment, aside from any mandatory minimum, is for the Judge alone to decide later" (*Brown*, p 579), and if he is found not guilty by reason of insanity, "he will be committed to a suitable facility until such time as he is eligible for release" (*Brown*, p 579). The trial court denied these requests, reasoning that the consequences of a verdict should not be a consideration in determining the verdict itself.

Mr. Brown was convicted on all counts and was sentenced to 435 months in prison. He appealed his verdict and argued that the district court had erred by refusing to instruct jurors on the mandatory minimum sentences and the burden of proof for proving insanity. He argued that the testimony of the mental health expert made instructions on the consequence of a guilty verdict necessary, as it was an "exception" to the rule. Mr. Brown also contended that the district court erred in limiting his ability to cross-examine the government's mental

health expert on the expert's use of statements from prison medical records. Mr. Brown asserted that this was a violation of his Sixth Amendment confrontation rights.

Ruling and Reasoning

The Eleventh Circuit affirmed the ruling of the district court. The appeals court noted that the district court did not err in its rejection of Mr. Brown's proposed jury instructions, as they would have been incorrect statements of the law. The court affirmed that it was indeed constitutional to place the burden of proving insanity by clear and convincing evidence on the defendant, and doing so was not a violation of due process, as the prosecution still bore the burden of proving every element of the charged offense. Mr. Brown's proposed instructions would have put the burden of proof on the government to prove sanity, contrary to the plain language of the federal statute and making sanity an element of the charged offenses.

Mr. Brown's request to inform the jurors on the outcome of their verdict was also rejected, and instead the jury was instructed "never [to] consider punishment in any way to decide whether the defendant is guilty" (*Brown*, p 579). If the jury found the defendant guilty, "the punishment is for the judge alone to decide later" (*Brown*, p 579). Of significance, the district court noted that although there could be exceptional situations warranting such instruction to jurors, it would be to clarify an error or misstatement made during the trial. The appeals court noted that, during Mr. Brown's trial, there was no error or statement that would suggest that Mr. Brown would be released or "go free" if he were found not guilty by reason of insanity. Thus, the case did not warrant instructions to clarify such outcome to the jurors. The appeals court referred to federal precedent in *Shannon v. United States*, 512 U.S. 573 (1994), and *United States v. Thigpen*, 4 F.3d 1573 (11th Cir. 1993), to explain the appropriateness of the decision. Further, the appeals court ruled that statements made by Mr. Brown to prison medical personnel were "not testimonial," because they were made to medical and administrative personnel as part of a routine prison intake process and were not made for the purpose of being used later at trial. Thus, Mr. Brown's Sixth Amendment rights had not been violated.

Mr. Brown's subsequent petition for *certiorari* to the U.S. Supreme Court was denied.

Discussion

This case highlights the importance of jury instructions in cases where the insanity defense is being asserted. There is no requirement to instruct the jury on any aspect of the sentence or the consequence of an NGRI verdict under federal law.

State courts vary in their approach to this issue. Although a few states have approved the use of instructions to inform the jurors on the dispositional outcome upon a finding of NGRI, most courts maintain that such instruction can distract the jury from its primary role as the trier of fact.

However, educating jurors about the verdict may be important in states that have both the guilty but mentally ill (GBMI) and the NGRI verdict, not just to avoid confusion for the jury, but also to highlight the difference in the outcomes of the two verdicts. Although both verdicts find that the defendant has mental illness, the GBMI defendant is not relieved of his criminal responsibility for the conduct and faces the same punishment as a sane offender. Further, there is variable access to mental health care for that defendant, unlike a defendant determined to be NGRI. Instructing the jury on dispositional outcomes of its verdict may be reasonable in such situations to avoid jury misperceptions.

Although no errors were made during this case that legally required the instruction Mr. Brown sought, it is not unlikely that jurors had difficulty in understanding the instructions and outcomes of an insanity defense. Research indicates that jurors comprehend only about 30 percent of instructions on the insanity defense. Although there is the fear that a dangerous person might be "set free," evidence indicates that in most jurisdictions, insanity acquittees may spend more time institutionalized than defendants convicted on equivalent charges (Borum R: Empirical research on the insanity defense and attempted reforms: evidence toward informed policy. Law & Hum Behav 23:117–35, 1999). Although the scope of Mr. Brown's desired instruction was beyond what the law would allow, given the complexity of the difficulties, it is not surprising that his attorney would seek to expand the scope of directives provided to the jury.

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