

lowing maximum commitment. However, in such a case, if the defendant is again found incompetent, he cannot be recommitted for restoration because he had already been committed for the maximum duration allowed under state law.

## Improper Application of Self-Induced Intoxication

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### Refusal of Medications Not Equivalent to Self-Induced Intoxication

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In *State v. Eager*, 398 P.3d 756 (Haw. 2017), the Supreme Court of Hawai'i found that the lower courts did not properly apply the Hawai'i Revised Statute (Haw. Rev. Stat.) § 702–230 (1993), which defines self-induced intoxication as “intoxication caused by substances which the defendant knowingly introduces into the defendant’s body, the tendency of which to cause intoxication the defendant knows or ought to know.” Samuel Eager was psychotic at the time he assaulted a man and claimed a mental state defense. Because he had stopped taking his psychotropic medications three days earlier, his psychosis was interpreted as self-induced intoxication by the circuit court and later by the intermediate court of appeals (ICA). The Supreme Court of Hawai'i ruled that the lower courts did not conform to the statute and therefore erred in denying Mr. Eager’s defense of lack of penal responsibility based on mental disease.

#### Facts of the Case

On January 29, 2013, Mr. Eager assaulted 79-year-old Hua Zhao Liang at a bus stop. A witness observed the incident and called 911. Mr. Liang was treated for a major skin laceration on his forehead that required stitches, a facial bone fracture, and a serious concussion. Police officers testified that Mr. Eager was “compliant” at the time of his arrest.

Mr. Eager filed a motion for an HRS §704–404 (Supp., 2008) examination for fitness to proceed to trial and penal responsibility. The court assigned a three-member panel of examiners: Dr. Leonard Jacobs, Dr. Duke Wagner, and Dr. Olaf Gitter. Medical records from Queen’s Medical Center and Oahu Community Correctional Center (OCCC) showed that Mr. Eager had been treated at Queen’s January 8 to 10 and 26 to 27, 2013, and that he was seen at OCCC after the assault. He tested positive for marijuana during his January 26 admission. He was prescribed zolpidem, meloxicam, and acetaminophen/oxycodone, but said he did not take them after discharge. He had smoked marijuana prior to the assault.

Dr. Gitter, a psychologist, testified that the records from Queen’s and OCCC showed that Mr. Eager “exhibited signs of mental illness, including an acute manic episode, auditory and visual hallucinations and bipolar disorder” (*Eager*, p 759). He testified that he did not believe that marijuana caused the manic episodes. He opined that Mr. Eager was psychotic at the time of the assault and that the psychosis “substantially impaired” his “cognitive and volitional capacities” (*Eager*, p 759). The finding of psychosis was based on Mr. Eager’s report that he asked Mr. Liang if he believed in Jesus and then assaulted him to get rid of demons.

Dr. Jacobs, a psychiatrist, testified that Mr. Eager’s judgment was impaired due to “a combination of self-induced prescription drug withdrawal and marijuana use” (*Eager*, p 759). He diagnosed him with a “personality disorder and somatic symptom disorder with predominant pain, persistent and severe” (*Eager*, p 759). He testified that discontinuing zolpidem would cause insomnia, agitation, and discomfort, and that stopping acetaminophen/oxycodone could cause severe withdrawal. He opined that Mr. Eager’s psychosis at the time of the assault rendered him incapable of appreciating the wrongfulness of his actions.

Dr. Wagner, a psychologist, testified that Mr. Eager suffered from “posttraumatic stress disorder and cannabis abuse versus dependence” (*Eager*, p 760). Dr. Wagner testified that Mr. Eager said he assaulted Mr. Liang because Mr. Liang told him that he did not believe in Jesus and laughed. Dr. Wagner testified that there was insufficient evidence to conclude that Mr. Eager’s psychosis was severe enough to render him incapable of appreciating the wrongfulness

of his actions or unable to control his actions. The state asked Dr. Wagner if Dr. Jacobs' report influenced his opinion; Dr. Wagner testified that it gave additional information about the medications but did not change his final opinion regarding penal responsibility. Two of the questions asked of Dr. Wagner by the state were disallowed by the court because they were about Dr. Jacobs' credibility.

Mr. Eager did not testify. The state did not dispute during closing arguments that Mr. Eager was psychotic at the time of the assault, but instead argued that the psychosis was self-induced as a result of his failure to take his medications. The state also argued that Mr. Eager was criminally responsible because his behavior was caused by voluntary withdrawal from prescription medications and by marijuana use. The defense focused largely on Dr. Gitter's testimony that the psychosis was not marijuana-induced. The circuit court determined that Mr. Eager was guilty of assault in the second degree and sentenced him to five years incarceration. In the ICA appeal, Mr. Eager claimed that because Dr. Wagner considered Dr. Jacobs' opinion, the latter's opinion and credibility were improperly bolstered, thus resulting in an unfair trial. He also argued that the five-year sentence was an abuse of the court's discretion because there were significant mitigating factors that supported probation instead of incarceration. The ICA determined that both arguments were without merit, affirming the circuit court. The case was then appealed to the Supreme Court of Hawai'i.

#### Ruling and Reasoning

The Supreme Court of Hawai'i cited plain error review in finding that the circuit court did not follow the statute defining self-induced intoxication and thus erred in the conclusion that Mr. Eager's intentional failure to take his medication was the basis for his self-induced intoxication. The argument regarding improper bolstering of an expert was found to be without merit. The court vacated the ICA's judgment and remanded the case back to circuit court.

Haw. Rev. Stat. §704–404(3) requires that experts' diagnoses and opinions about the physical and mental well-being of a defendant are independent from other examiners. Haw. Rev. Stat. §704–404(4)(f) states that after all reports are submitted, the examiners may discuss them without any restrictions. Experts are allowed to testify within their areas of expertise, but not about the credibil-

ity of other witnesses. Testimony may indirectly support or contradict the credibility of another witness. Dr. Wagner, a psychologist, testified that his report differed from Dr. Jacobs' because Dr. Jacobs was a psychiatrist. He did not opine on Dr. Jacobs' truthfulness or psychiatric skills. The court did not allow him to testify on the accuracy of Dr. Jacobs' report or whether he agreed with it. Mr. Eager's argument that he had an unfair trial on the basis of improper expert bolstering was therefore unfounded.

Haw. Rev. Stat. §704–400 (1993) states that an individual is not responsible for conduct if, at the time of the act, he or she "lacked substantial capacity either to appreciate the wrongfulness of the conduct or to conform conduct to the requirements of the law" due to physical or mental disease, disorder, or defect. Haw. Rev. Stat. §702–230 states that self-induced intoxication is not a defense under Haw. Rev. Stat. §704–400 except under certain circumstances; non-self-induced intoxication and pathological intoxication (grossly excessive intoxication secondary to a physical abnormality, unknown to the person) are admissible defenses. This statute is intended to prevent defendants from becoming voluntarily intoxicated, committing a crime, and then using self-induced intoxication as a defense. Self-induced intoxication requires a defendant to have knowingly and willingly introduced a substance into his or her body; failure to take prescription medication does not equate to introducing a substance into the body. While acknowledging that the failure to take medication did not equate to the introduction of a substance into the body, the state argued that Mr. Eager's volitional refusal of his medications and smoking marijuana led to his psychosis and that he should therefore be held criminally responsible. This claim had no basis in Haw. Rev. Stat. §702–230, and the state did not provide any other support for this argument.

#### Discussion

*State v. Eager* emphasizes the definition of self-induced intoxication in Hawai'i as a volitional act, done knowingly and with intention. Refusal to take medications prescribed to treat an illness does not typically cause the illness and does not equate to self-induced intoxication. For example, schizophrenia may worsen when a patient stops taking an antipsychotic, but failure to take the antipsychotic does not cause the schizophrenia. However, self-induced in-

toxication may result in or contribute to a mental illness.

## Competency Evaluations and NGMI Pleas in the Setting of Severe Personality Disorders

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**The Court Is Not Required to Order Additional Competency Evaluations Without Information to Suggest That a Defendant Is Newly Unfit to Proceed, and an NGMI Defense May Not Proceed Against a Client's Will**

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In *McLaren v. State*, 407 P.3d 1200 (Wyo. 2017), the Supreme Court of Wyoming found that the district court did not violate the defendant's due process rights when it did not order a third competency evaluation in the setting of the defendant's ongoing disruptive and odd behavior. However, the court concluded that the defendant's due process rights were violated when his defense counsel was allowed to proceed with a not guilty by reason of mental illness (NGMI) defense after the defendant expressed his desire to withdraw the plea.

### Facts of the Case

In March 2014, Steven D. McLaren was arrested and charged with attempted second-degree murder, strangulation of a household member, two counts of aggravated assault, and kidnapping after he attacked his girlfriend because he believed she had been attempting to harm or kill one of his exotic Savannah kittens. His behavior and driving during the incident were described as erratic. He threatened to kill the victim because she "needed to pay for [her] sins" (*McLaren*, p 1202). Mr. McLaren testified that he

had injected a quarter to a third of a gram of methamphetamine before noticing the cat was sick. He reported that he was having visual hallucinations of a devil woman in the truck during the incident, that he had been having hallucinations since the previous night, and that he had been experiencing insomnia for days leading up to it.

In June 2014, Mr. McLaren underwent his first competency evaluation, which was ordered by the circuit court after his defense counsel stated that he did "not appear to have the ability to assist counsel in his defense" (*McLaren*, p 1204). The expert psychologist offered preliminary diagnoses of unspecified dissociative disorder, major depressive disorder, substance abuse, and rule out severe borderline personality disorder, and she opined that Mr. McLaren was competent to proceed. In November 2014, he changed his plea to NGMI, and an NGMI evaluation was completed by the same expert in February 2015. The expert opined that he was "going in and out of a [methamphetamine-induced psychotic episode] around and at the time of the alleged offenses" (*McLaren*, p 1205). However, the expert did not find a strong link between the psychosis and his "capacity to determine right from wrong and conform his conduct to the requirements of the law" (*McLaren*, p 1205). She also remarked that "even if [his] capacities were compromised to a substantial degree, he would still not qualify for the NGMI defense given that his mental state was self-induced by drugs" (*McLaren*, p 1205). Mr. McLaren subsequently changed his mind several times about wanting an independent NGMI evaluation (one was apparently conducted, which concurred with the first opinion), wanting to represent himself, and wanting a different attorney. This resulted in his attorney's motion to withdraw as counsel on several occasions because their working relationship was "breaking down" (*McLaren*, p 1206). Mr. McLaren also continued to persevere on his financial losses related to his cats and to display hostile and inappropriate behavior in court and during his psychiatric evaluations.

In December 2015, Mr. McLaren objected to the NGMI plea, stating that his attorney was not "functioning in my best interest," and requested to fire him (*McLaren*, p 1214). In consideration of how Mr. McLaren's concerns might impact his ability to assist in his defense, as well as how his courtroom outbursts might influence a jury, a second competency evalu-