

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

DOI:10.29158/JAAPL.3823L4-19

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-

ation was ordered by the district court and completed in February 2016. The same expert opined that Mr. McLaren's behavior was suggestive of a personality disorder characterized by borderline, antisocial, and narcissistic traits, and that although these traits could result in poor insight and judgment and distorted thinking, he was not psychotic and did not have a mental illness or deficiency impairing his competency. After Mr. McLaren was again found competent to proceed, his attorney was excused. Mr. McLaren was offered time for an independent competency evaluation but declined because he did not think it would "do any good." The newly appointed attorney did not withdraw the NGMI plea, and after a five-day jury trial in April 2016, Mr. McLaren was found guilty on all charges and sentenced to consecutive prison terms totaling no less than 68 years.

Mr. McLaren appealed to the Supreme Court of Wyoming, claiming that the trial court violated his due process rights because it did not suspend the proceedings and order a third competency evaluation when he "demonstrated a pattern of decompensation" during the trial (*McLaren*, p 1209). Mr. McLaren also claimed that his due process rights were violated when the court allowed his defense counsel to proceed with the NGMI plea after Mr. McLaren repeatedly objected to the plea and expressed dissatisfaction with his defense counsel for continuing to go forward with it.

#### Ruling and Reasoning

In considering Mr. McLaren's first claim, that a third competency evaluation should have been ordered, the court held that a third competency evaluation was not warranted. This was based on the observation that there had not been any change in Mr. McLaren's behavior from his prior competency evaluations to indicate a need for a new assessment. The court quoted *Fletcher v. State*, 245 P.3d 327 (Wyo. 2010):

There is no right to a continual succession of competency hearings in the absence of some new factor, and the Wyoming Rules of Criminal Procedure do not place a duty on the trial judge to hold hearing after hearing in the absence of some appearance of change in the defendant's condition since the ruling on competency was originally made (*Fletcher*, p 336).

In consideration of Mr. McLaren's second claim, that his attorney should not have continued with an NGMI plea after he objected to it, the court agreed with Mr. McLaren. Recognizing that a plea of

NGMI is not without potentially serious negative consequences, the court emphasized Rule 1.2(a) (2014) of the Wyoming Rules of Professional Conduct for Attorneys at Law, which states, "In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered . . ." Furthermore, most jurisdictions do not allow a defense counsel to impose an insanity defense against the defendant's objection. "When a competent defendant wishes to plead not guilty rather than not guilty by reason of insanity, and clearly understands the consequences of his choice, then the counsel must acquiesce to the wishes of his competent client" (*State v. Lowenfield*, 495 So. 2d 1245 (La. 1985), p 1252). The court thereby concluded that Mr. McLaren's due process rights to enter a voluntary plea were violated, reversed the district court ruling, and remanded the case for a new trial.

#### Discussion

This case highlights the difficult challenge that severe personality disorders present to the criminal justice system. A particularly difficult aspect of the assessment of competency in the setting of severe personality disorders is making the distinction between willingness and ability to assist in one's defense, which requires reflection on how much of an individual's difficult thought and behavior patterns are attributable to a personality disorder. Another important distinction to make is whether a defendant's decisions are irrational (and therefore suggestive of incompetence) or simply foolish (a legally permissible characteristic).

Although persistent interpersonal disruptions and marked affective instability could cause a defendant to have difficulty working collaboratively with his attorney (as illustrated in this case by Mr. McLaren's repeated rejections of his attorney's advice followed by accusations that the counsel was not acting in his best interest), could a forensic expert reasonably conclude that such individuals are therefore not competent to stand trial? Even if an expert were to reach such a conclusion, it would be difficult to state that there is a substantial probability the individual could be restored to competency within the short time allotted by courts for restoration, as there are no quick fixes for lifelong personality constructs. The relative refractoriness to treatment of personality disorders also underlies a societal benefit to courts finding per-

sonality-disordered defendants competent; that is, a finding of not competent and not restorable means individuals with severe personality disorders would never be tried and therefore could continue to pose a significant risk to the community.

Another relevant factor for a forensic examiner to consider related to this case is the statutory exclusion of self-induced intoxication as the cause for mental deficiency in NGMI pleas. Examiners are tasked with considering the difficult distinction between psychosis occurring in the context of intoxication, which most jurisdictions would not entertain in an NGMI plea, and persisting psychotic disorder triggered by substance use, which arguably could qualify for an NGMI plea. Although the DSM-5 may be the best guide in making such a distinction, there is plenty of room in its definitions for reasonable interpretation. For example, while the “with perceptual disturbances” specifier for stimulant intoxication specifically indicates that hallucinations occur with intact reality testing, the diagnostic note for substance-induced psychosis is more ambiguous, explaining that the diagnosis should only be made instead of substance intoxication when delusions and/or hallucinations predominate in the clinical picture.

## **Parens Patriae Liability Prevented by Governmental Immunity**

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### **Government Does Not Owe a Special Duty to Protect Citizen About Whom Report of Aberrant Behavior Was Made to Police**

DOI:10.29158/JAAPL.3823L5-19

In *McLaughlin v. City of Martinsburg*, 2017 W. Va. LEXIS 638 (W. Va. 2017), the Supreme Court of Appeals of West Virginia held that there was no evidence of police negligence for failure to take Peter

James McLaughlin into custody after emergency dispatchers received a report that he exhibited abnormal behavior at a local restaurant. The appeals court affirmed there was no evidence of a “special duty” doctrine owed by the state in the case of Mr. McLaughlin when police did not observe signs of mental distress after he was discharged from a psychiatric hospital.

#### **Facts of the Case**

Mr. McLaughlin voluntarily admitted himself to a local psychiatric hospital on or about December 22, 2013, in West Virginia. On December 28, 2013, Mr. McLaughlin requested to be discharged. According to his treating physician, he “appeared to be in control of his actions and was alert and completely oriented” (*McLaughlin*, p 2, FN 1). He denied any suicidal, self-harm, or homicidal ideation, nor did he appear to be responding to internal stimuli, and he was subsequently discharged. He started his journey on foot from the hospital to a local restaurant where an employee called police due to concern that Mr. McLaughlin exhibited psychotic behavior. The police arrived and met with Mr. McLaughlin. However, police stated that Mr. McLaughlin did not ask for help related to a mental illness, nor was there an indication of a medical emergency or crisis situation. Thus, he was not taken into police custody. Ms. McLaughlin (who was either Mr. McLaughlin’s wife or former wife at the time of the incident), also called 911 requesting a safety check on Mr. McLaughlin by the police; however, officers were unable to locate him. Later that day, Mr. McLaughlin was struck and killed by a vehicle while walking along a public roadway.

In December 2014, Mr. McLaughlin’s petitioner, Connor McLaughlin (as administrator of Peter McLaughlin’s estate) filed a lawsuit against the City of Martinsburg alleging the city was negligent and that its negligence resulted in Mr. McLaughlin’s death. In January 2016, the estate filed a motion for declaratory judgment contesting the standard responses by police in emergency situations and requesting that the circuit court declare that emergency dispatchers and officers need to treat individuals with a mental illness, bizarre behavior, or drug addiction behavior as a special class of citizen that may benefit from special services. The estate contended that the prevailing standard of police interaction was insufficient to protect special citizens and police should provide additional interventions when warranted.