

may not be a substantial and compelling factor in justifying a reduced sentence; the key consideration is the specific culpability in the individual case, which may be a direct function of the offender's youth (but not always). Consistent with this reasoning, the Washington Supreme Court ruled that youthful offenders must demonstrate that they lack culpability for a crime secondary to their youthfulness. In line with the state's standard (Wash. Rev. Code § 9.94A.535(1) (e)), youthful offenders must demonstrate how characteristics of their youthfulness directly affected their decision to commit a crime. In other words, defendants must demonstrate that their youthfulness caused significant impairment in their capacity to appreciate the wrongfulness of their conduct or to conform their conduct to the requirements of the law resulting in a crime, per Washington law. Although the court established in *O'Dell* that expert testimony was not necessary to establish youthfulness, the examination of culpability and its relationship to age and development (among other variables) often falls within the purview of the forensic mental health practitioner.

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## Admissibility of Hearsay Statements in the Direct Examination of an Expert Witness

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**Supreme Judicial Court of Massachusetts Upheld Trial Court Decision Not to Permit Defense Expert Witness to Testify on Direct Examination About Defendant's Hearsay Statements**

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In *Commonwealth v. Piantedosi*, 87 N.E.3d 549 (Mass. 2017), the Supreme Judicial Court of Massa-

chusetts reviewed the case of a defendant who challenged the trial court judge's decision to exclude expert witness testimony based on hearsay and the instructions made to the jury about the consequences of a verdict of not guilty by reason of insanity (NGRI). The defendant was found guilty of murder in the first degree in a jury trial. The court ruled that the trial court did not err in excluding the defendant's hearsay statements because they were not introduced in evidence. The court ruled that the jury instruction on NGRI was not in error where the trial court judge had already remedied any misstatement about this.

### Facts of the Case

Christopher Piantedosi and Kristen Pulisciano were involved in an 18-year relationship and had a teenage daughter together. They were living together in Burlington, Massachusetts, until April 2012, when Mr. Piantedosi moved into his parents' house due to relationship problems with Ms. Pulisciano. On May 3, 2012, Mr. Piantedosi picked up his daughter around 5 pm and went to the house in Burlington. He, his ex-partner, and daughter conversed without incident. Mr. Piantedosi later got into an argument with Ms. Pulisciano; eventually he stabbed her to death. The stabbing was caught on video because their daughter had a video chat open on her tablet device at the time of the offense. Mr. Piantedosi admitted to the act of killing his former partner, but raised a criminal responsibility defense.

Prior to the index offense, Mr. Piantedosi underwent psychiatric hospitalization for several days after making self-inflicted injuries to his arms. He was diagnosed with depression and prescribed fluoxetine and trazodone. Mr. Piantedosi was discharged from the hospital on May 2, 2012, and his hospital prescriptions were filled upon discharge. He attended a professional school that evening. The defense expert opined that, on May 3, 2012, Mr. Piantedosi did not have the capacity to appreciate the wrongfulness of his conduct and was not able to conform his conduct to the requirements of the law. He testified that Mr. Piantedosi had bipolar disorder, which made him vulnerable to side effects from fluoxetine and trazodone, and that he was likely manic at the time of the offense. He further opined that Mr. Piantedosi experienced involuntary intoxication from fluoxetine and trazodone and from effects of the medica-

tions that included “irritability, rage reactions, hostility, mania, insomnia, racing thoughts and a disinhibition of behavior, impulsivity and trouble concentrating” (*Piantedosi*, p 553). The defense expert testified to statements made by Mr. Piantedosi about experiencing manic-like symptoms in the past such as hyperactivity, elevated mood, and decreased need for sleep. The defense counsel asked the expert about certain statements Mr. Piantedosi had made during interviews. The prosecutor objected to the question to elicit the hearsay testimony on direct examination, and the objection was sustained.

On cross-examination, the prosecution did not challenge the defense expert’s reliance on Mr. Piantedosi’s hearsay statements as a basis for bipolar disorder; therefore, on redirect examination, defense counsel did not elicit the hearsay statements from the defense expert. The prosecution expert disagreed with the conclusion that Mr. Piantedosi was intoxicated by the two medications and with the defense expert’s diagnosis of bipolar disorder. Mr. Piantedosi’s previous medical records and competency-to-stand-trial evaluation (from May 7, 2012) did not support a diagnosis of bipolar disorder. The prosecution expert opined that a mental disease or defect did not drive Mr. Piantedosi to kill Ms. Pulisciano, but that he was driven by feelings of anger, sadness, and rage.

After conviction, Mr. Piantedosi appealed and asserted that the trial court erred in not permitting the defense expert to testify on direct examination to hearsay statements from their interview and allowing the prosecution expert to opine on what drove his behavior on the day of the murder. Mr. Piantedosi also alleged that the court should have instructed the jury as to the consequences of an NGRI verdict.

#### Ruling and Reasoning

The Supreme Judicial Court held that the trial court did not err in refusing the hearsay statements because they were not introduced in evidence, citing *Department of Youth Servs v. A Juvenile*, 499 N.E.2d 812 (Mass. 1986). This rule of limiting direct-examination testimony of an expert witness is a common-law evidentiary rule that operates in both civil and criminal cases. The expert may formulate an opinion based on facts or data not admitted in evidence, but may not testify to the content of that information on direct examination; the intent is to prevent the expert from importing inadmissible

hearsay into trial. The opposing party, however, may inquire about details of the facts or data underlying the expert’s opinion on cross-examination. If the door is opened by the opposing party on cross-examination, the details of information the expert relies on for the opinion can be introduced on redirect examination.

Without the hearsay statements, Mr. Piantedosi was still able to raise an insanity defense. He could use evidence such as his previous medical records from four facilities and from a prior competency-to-stand-trial evaluation as well as statements from his father and his classmates about his mental state around the time of the killing.

The court ruled that the prosecution’s expert did not improperly testify on Mr. Piantedosi’s motivation. A qualified expert does not need to phrase opinions in legal terms. To the contrary, testimony in pure medical or psychological terms may even be preferred, and the expert may be best equipped to use these terms. The court held that the prosecution expert did not usurp the jury’s role as the sole factfinder and did not offer an opinion on whether the defendant was guilty. The expert witness did not say that Mr. Piantedosi was criminally responsible for Ms. Pulisciano’s death and therefore had not testified as to the ultimate question. The expert was permitted to testify that anger, sadness, and rage (i.e., not mental illness) motivated the killing. An expert is allowed to provide an opinion that approaches the ultimate question.

During her testimony, the prosecution’s expert made an incorrect statement about the legal standard for an NGRI defense in Massachusetts. The judge interrupted the expert midsentence and informed the jury of the correct legal standard prior to deliberation. Therefore, the Supreme Judicial Court ruled that this did not cause a miscarriage of justice.

Massachusetts courts in *Commonwealth v. Chapelle*, 40 N.E.3d 1031 (Mass. 2015), modified jury instructions on homicide in 2015. While the previous jury instruction was not required to mention the specific time periods for potential civil commitment after a defendant was found NGRI, the new jury instruction informs the jury that “there is no limit to the number of such renewed orders of commitments as long as the defendant continues to be mentally ill and dangerous; if these conditions do continue, the defendant may remain committed for the duration of his [or her] life” (*Piantedosi*, p 560, citing *Chapelle*, p 1045). The court concluded that the trial judge

acted properly in giving the then-governing jury instruction in 2012 and did not create a substantial likelihood of a miscarriage of justice.

The Supreme Judicial Court of Massachusetts affirmed the ruling of the trial court and declined to grant relief to Mr. Piantedosi.

**Discussion**

Hearsay can present a complicated set of legal challenges that may not be clear to expert witnesses. As reports of other persons' statements, hearsay is generally excluded as evidence at trial, although there are exceptions. An expert with scientific, technical, or other specialized knowledge can help the trier of fact understand the evidence or determine a fact in question. An expert witness must follow the rules about admissibility of hearsay and is not allowed to introduce hearsay statements that are not in evidence at trial. Otherwise, this could become a route to relay hearsay evidence to the trier of fact. An expert witness is allowed to provide an opinion and the information the opinion is based upon; however, that information must be in evidence. On direct examination, an expert can say, for example, "In forming my opinion, I relied on the following information. . ." without divulging the hearsay evidence. Or an expert may just state an opinion, and give the reasons for it, without even first testifying to the underlying facts or data. The counsel of the opposing party is then afforded an opportunity on cross-examination to question the basis of expert opinion and challenge use of hearsay in forming an opinion. If it is revealed that hearsay evidence is indeed used, counsel is afforded an opportunity to clarify this question in redirect examination. If the counsel of the opposing party does not challenge the basis of an expert opinion, hearsay that can potentially be used to form an expert opinion will never be introduced at trial. Although the admissibility of hearsay statements is a legal concern and not a medical one, it underscores the importance of communication between the expert witness and the retaining attorney, so the expert has a clear and reasonable understanding of the limitations of testimony. Likewise, the expert witness and retaining attorney should clarify the applicable legal standard for the question the expert is hired to answer.

The ultimate question of whether a defendant is guilty or criminally responsible is reserved only for the trier of fact (i.e., judge or jury). Courts do not allow expert witnesses to usurp the role of the trier of

fact as a sole factfinder. In *Piantedosi*, the Supreme Judicial Court of Massachusetts allowed the expert witness to provide an opinion that approached the ultimate question. Such an opinion may further help the trier of fact to understand the evidence or fact at hand. In addition, mental health experts are allowed to use medical or psychological terms in their testimony. In this case, the court permitted mental health experts large leeway in the scope of their opinion.

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## Dangerousness Standards for Sex Offender Civil Commitment

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### **The Fourth Circuit Court of Appeals Considers Whether to Affirm a Federal District Court Ruling Allowing the Release of a Sex Offender from Civil Commitment**

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In *United States v. Wooden*, 887 F.3d 591 (4th Cir. 2018), the government appealed a ruling to the Fourth Circuit Court of Appeals, arguing that the federal district court erred in finding that Walter Wooden, a previously convicted sex offender, did not suffer from pedophilia and thus lacked a qualifying mental disorder under the Adam Walsh Child Safety and Protection Act of 2006, 42 U.S.C. § 16901 (2006). Additionally, the government argued that the federal district court erred when it ruled that statutory construction prohibited imposing conditions of release on Mr. Wooden.

**Facts of the Case**

In 1972 and 1973, Mr. Wooden, then 16 years old, was thrice adjudicated delinquent for the com-