committing another sexual offense, the latter of which was the matter of interest to the court when determining whether Mr. Squire should be determined an SVP.

Cases such as this require a balancing of the individual's right to liberty and the state's interest in protecting the public from a sexually violent individual. In this case, actual behavior in the community was given more weight than predicted risk of recidivism. Forensic clinicians involved in these cases are presented with the challenge of providing the best available information regarding future risk and of clearly presenting the limits of these estimates. In conducting SVP evaluations, especially in jurisdictions like Virginia, evaluators may use risk assessment instruments, but may also need to explore demonstrable behavior in the community and contextual variables that can place the person at more or less risk for sexually violent reoffending.

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Jury Instructions in a Case With a Defense of Not Guilty by Reason of Insanity

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No Requirement to Instruct a Jury That a Defendant Found Not Criminally Responsible Would Be Likely to Be Placed in a Secure Treatment Facility

In *State v. Okie*, 987 A.2d 495 (Me. 2010), John Okie appealed his conviction for murder, arguing that the court improperly instructed the jury regarding the defense of not criminally responsible by reason of insanity, because the jury was not informed as to the consequences of such a verdict. He also appealed his conviction claiming that, during closing arguments, the prosecutor misstated the law regarding the proof needed to support an insanity defense.

Facts of the Case

On July 10, 2007, John Okie went to the home of his friend, Alexandra Mills, where the two engaged in sexual relations. A short time later, Mr. Okie attacked and killed Ms. Mills. Six days later, after a heated argument, Mr. Okie attacked and killed his father. He was indicted in Superior Court for the intentional and knowing murder of his father and the depraved-indifference murder of Ms. Mills.

During the trial in December 2008, Mr. Okie requested that the jury be informed "that a person found not criminally responsible by reason of insanity would be institutionalized by the Commissioner of the Department of Health and Human Services, and that certain criteria must be met, with court oversight, before that person could be discharged from the institution" (*Okie*, p 496). The court denied the request.

Mr. Okie also argued that the prosecutor's statements during her closing argument misstated the law of insanity and requested a curative statement to the jury. This request was also denied. The prosecutor stated that an "insanity verdict requires a showing (1) of 'public insanity,' (2) that the defendant suffered hallucinations and delusions, and (3) that only the 'worst of the worst' or 'crazy of the crazy' are eligible for an insanity verdict" (*Okie*, p 497).

Ruling and Reasoning

The Supreme Judicial Court of Maine ruled that the trial court did not err in refusing Mr. Okie's request detailing the consequences of a not criminally responsible verdict as part of the jury instructions. The court noted that jury instructions, as a whole, should accurately and fairly inform the jury of the law. The denial of a jury instruction is reviewed and can be vacated, if it is demonstrated (by the appellant) that the denied instruction "1) stated the law correctly, 2) was generated by the evidence in the case, 3) was not misleading or confusing, 4) was not sufficiently covered in the instructions the court gave" (*State v. Barretto*, 953 A.2d 1138 (Me. 2008), p 1140). Further, the court noted that it was not appropriate to inform the jury of the consequences of the verdict, citing, among other things, historical precedent (*State v. Park*, 193 A.2d 1 (Me. 1963)), which is consistent with federal law (*Shannon v. United States*, 512 U.S. 573 (1994)). In its ruling, the Supreme Judicial Court of Maine highlighted the differences between the function of the judge and jury. In Maine, the jury is charged only with finding facts and determining guilt on that basis, making the consequences of the verdict "technically irrelevant." The court noted that in Maine judges are responsible for imposing sentences, not the jury.

Mr. Okie noted that jurors have a basic understanding that if a defendant is found guilty, he will be sentenced to time in prison. However, in the case of a verdict of not criminally responsible, jurors do not have the same understanding of the consequences, which is tantamount to juror misunderstanding. Mr. Okie argued that as a result of this misunderstanding, jurors may find a defendant guilty rather than let someone who is potentially dangerous go free. However, the court noted that there are little empirical data to support his arguments, citing the Supreme Court of the United States that "there is no reason to assume that jurors believe that defendants found [not criminally responsible by reason of insanity] are immediately set free" (*Shannon*, n. 10). Therefore, they ruled that the trial court did not err in denying Mr. Okie's request regarding jury instructions.

Mr. Okie also argued that that the prosecutor misstated the law when she stated that an insanity verdict requires a "showing of 1) 'public insanity,' 2) that the defendant suffered hallucinations and delusions, and 3) that only the 'worst of the worst' or 'crazy of the crazy' are eligible for an insanity verdict" (*Okie*, p 500). The court noted that, while the phrases used are colloquial, they are consistent with the principles of the Maine statute, specifically the section that holds that the insanity verdict is applicable to serious mental illness that compromises the ability to determine right from wrong. Mr. Okie also challenged that "public insanity" was a requirement. His defense was to persuade the jury that he did not always display overt symptoms of his mental illness. However, the court noted that the prosecutor made a single reference to "public insanity" within the context of her closing arguments. The term "public insanity" was first used by Dr. Robinson, Mr. Okie's forensic psychology expert, who testified that some individuals (i.e., Mr. Okie) who are grossly psychotic do not obviously display symptoms of their mental illness. His testimony was contradicted by Dr. Leblanc, the state's forensic expert, who stated that it was implausible that an individual who was grossly psychotic would not manifest symptoms. During closing arguments, Mr. Okie's counsel argued that Mr. Okie's mental illness was covert, but demonstrable, and refuted the point made by the prosecutor regarding public insanity. The jury was instructed that statements made by the attorneys are not evidence; evidence consists of facts entered during the trial through testimony or exhibits. Given the context of the statements made by the prosecutor, the court found that there was no error by the trial court in denying Mr. Okie's request for a curative statement.

Discussion

In this case, the Maine Supreme Judicial Court found, consistent with state and federal precedent, that it was not appropriate for the jury to be instructed as to the outcome when a defendant is found not criminally responsible by reason of insanity. The court relied, in part, on the absence of empirical data or other persuasive evidence to indicate that juries believe that individuals who are found not guilty by reason of insanity are simply set free, which would constitute a fundamental misunderstanding. The court commented that should new data emerge regarding jurors' beliefs about the disposition in insanity cases, jury instructions may change.

When referencing the *Shannon* decision, the Maine court indicated that more than 20 states provide information regarding the consequences of a verdict of not guilty by reason of insanity. However, in most of these states, the jury is afforded a role in sentencing. Although none of these jurisdictions allows the jury to decide on disposition in insanity verdicts, the Maine court highlighted this difference to make a general point about the relevance of dispositional information to juries.

An issue mentioned in *Shannon* worth highlighting is that the disposition of a verdict of not guilty by reason of insanity is not always hospitalization. *Shannon* was a federal case, and in the federal system, a defendant found not guilty by reason of insanity is held in custody during a 40-day evaluation period. At the end of the evaluation period, the court then determines whether the defendant should be civilly committed. In Massachusetts, for example (Mass. Gen. Laws ch. 123, § 16(a) (1992), published 1971, amended 1992), the statute provides only that a judge may order the acquittee hospitalized for a 40-day period of observation to determine the need for commitment. In those jurisdictions where holding an acquittee for evaluation is not mandated, it would be difficult for the court to make an accurate account to the jury of the probable disposition, should a defendant be found not guilty by reason of insanity.

The court also found that when examining statements made by attorneys in the course of a trial, the context is essential to consider. The prosecutor's statements were not regarded as prejudicial, as they generally comported to the statutory definition of criminal responsibility and refuted the defense strategy.

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