court to force competent defendants to accept counsel only when severe mental illness interferes with their conduct of the proceedings. The court found that this limited circumstance did not apply in Mr. Noetzel's case; therefore, the trial court did not abuse its discretion by allowing Mr. Noetzel to proceed without counsel.

Mr. Noetzel then argued that the court erred in allowing him to continue self-representation without further investigation after he disclosed a past diagnosis of paranoid schizophrenia. The court disagreed and ruled that past diagnoses are relevant to mitigation, while competency depends on current capacity. The court reiterated that further investigation of competence was not required because the record contains no behaviors raising doubts about Mr. Noetzel's competence. Similarly, the court said that another *Faretta* hearing is required only when the court has cause to reconsider its original determination allowing self-representation (referencing *United States v. Nunez*, 137 F. App'x. 214 (11th Cir. 2005)).

Discussion

This case highlights the complexity of psychiatric assessments; it raises the question of whether the mere absence of flagrant symptoms of mental illness in defendants with psychiatric histories is adequate for the determination of competency to plead guilty and to waive their right to counsel. Competency determinations focus on defendants' current thinking, understanding of court proceedings, and the capacity to participate in their defense.

In this case, the court record presents Mr. Noetzel as a reasoned, cooperative, articulate man with clear intent and capacity to plead guilty and represent himself. His court persona stood in stark contrast to the violent behaviors of his crime. The court record identifies none of the symptoms he had previously reported to Dr. Mhatre: no impulsivity, low mood, or bad temper. No one in court questioned whether his request for a speedy trial, permission to enter a guilty plea, and request to represent himself were driven by impulse or low mood. The court record indicates that Mr. Noetzel's reasons for his decisions were not explored. During court proceedings, neither the judge nor the state nor standby defense counsel attorneys expressed any doubts about Mr. Noetzel's guilty plea being "knowing, intelligent, and voluntary."

At the same time, the case reflects courts' efforts to assess competency when there are concerns. Indeed, the trial court ordered a competency evaluation even after it determined Mr. Noetzel was competent. The psychiatrist, under the narrow scope of the competency evaluation, concluded that Mr. Noetzel understood the charges against him, yet also identified psychiatric symptoms and diagnoses. The court, however, focused on his current behavior. He was steadfast in his plea and in his request to represent himself. The motives for his rush to plead, refusal to offer mitigation, and acceptance of responsibility without remorse were not explored by either the doctor or the court, although it was a possibility that Mr. Noetzel's approach was related to what he told the doctor: his prison circumstances made him depressed. His choices about his case also seemed to facilitate his being sentenced to death.

The court continued to observe Mr. Noetzel but ordered no subsequent psychiatric evaluation even though Dr. Mhatre noted that Mr. Noetzel "knows without medication his condition could deteriorate" (*Noetzel*, p 942). The doctor did not have the opportunity to assess his mental status over time. A psychiatric evaluation could uncover what court observations can miss. If, for example, he had been asked about his motives, and acknowledged directly that his goal was to die to escape the depressing life sentence, the court might have had reason to reconsider his competence. Reasonable arguments can be mounted for either opinion, and, therefore, the question deserves consideration. Competency determination is a safeguard of due process, and it must be deliberate, robust, and probing to serve its purpose. Especially in capital cases when defendants represent themselves, the expertise of forensic psychiatrists may be essential to assure that the determination of competency provides that safeguard.

Knowledge Required to Convict in Bail Jumping

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Conviction for Bail Jumping Requires Knowledge of the Requirement of a Subsequent Appearance, Not Knowledge of Specific Court Date

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Key words: bail jumping; failure to appear; knowledge

In *State v. Bergstrom*, 502 P.3d 837 (Wash. 2022), the Supreme Court of Washington considered the knowledge requirements for bail jumping when hospitalization, substance use, and homelessness contributed to the defendant's missing multiple court hearings. The court ruled that the defendant sufficiently knew of the court date, upholding his conviction.

Facts of the Case

Zachary Bergstrom was charged with possession of a controlled substance in September 2017 and was released on bail with conditions, including appearing at all court dates. He subsequently missed three court dates.

On November 3, 2017, Mr. Bergstrom appeared for a pretrial conference and a subsequent pretrial conference was set for January 12, 2018. Mr. Bergstrom failed to appear in court on the January date. During his bail jumping trial, he explained that he was hospitalized on the January court date, but that he had contacted both his lawyer and a bond company after his hospital discharge. A bond surrender was effectuated, and Mr. Bergstrom returned to jail and remained in custody until April 10, 2018, when he was released for a 14-day evaluation period to determine if he should be entered into the drug court. Written conditions of his release required him to present on April 11, 2018 and April 18, 2018 to drug court. When he failed to appear on April 18, 2018, a bench warrant was issued for his arrest.

Per testimony from Mr. Bergstrom, he presented to drug court late on that date and was told that the court would attempt to reschedule. His testimony was corroborated by a judicial assistant's email. Mr. Bergstrom then failed to appear at a May 4, 2018, pretrial conference, which was noted in a February scheduling order. Again, a bench warrant was issued for his arrest. Mr. Bergstrom testified that he "was not aware" of this pretrial date because he was homeless, without a phone, and experiencing substance use, which made it difficult to remain in contact with his attorneys and parole officer. When he was arrested on unrelated charges, the state added three counts of bail jumping to his charge because of the failures to appear outlined above.

During the jury trial, the state produced scheduling orders and release orders signed by Mr. Bergstrom, which indicated that he was required to appear for all court dates and failure to do so could result in a warrant for his arrest. The release order also indicated that court times might change. Mr. Bergstrom was acquitted of the underlying charge at his jury trial, but he was found guilty of all three bail jumping charges under Wash. Rev. Code § 9A.76.170 (2001), which was in effect at the time of his missed court appearances.

Mr. Bergstrom appealed, arguing that the jury instructions omitted an essential element of the crime and the state's evidence that he knew of the required court dates was equivocal. Both sides argued about the knowledge requirement under the statute. The court of appeals agreed with Mr. Bergstrom that the jury instructions to convict him were insufficient because they did not require the state to prove that the defendant was aware of the required court appearances on the dates in question and, therefore, improperly relieved the state of its burden. But the appeals court ruled that the error was nonetheless harmless because there was sufficient evidence that Mr. Bergstrom actually received notice of the three court dates. The state appealed to the extent that the appellate court's ruling changed the requirements for jury instructions on bail jumping elements for all future cases. Mr. Bergstrom renewed his challenges.

Ruling and Reasoning

The Washington Supreme Court ruled that Mr. Bergstrom sufficiently knew of his pending court dates and upheld his conviction. The court first reviewed the meaning of the bail jumping statute. The court acknowledged that, since a 2001 statute amendment, the court of appeals and state supreme court had issued conflicting rulings regarding key elements of bail jumping. The court reviewed the plain language of the bail jumping statute, finding that the legislature intended to require proof that a defendant had received notice to appear in court at a later date. The court rejected the lower court's interpretation because it could lead to consequences that contradicted legislative intent. The state supreme court indicated that the legislature had intended to broaden the knowledge requirement in its 2001 statutory amendment.

The court then reviewed the sufficiency of the jury instructions and found that the conviction instructions properly instructed the jury on the essential elements of bail jumping. Although the court had found error in the lower court's interpretation of the statute, since the jury instructions in Mr. Bergstrom's case were sufficient, the court did not need to address harmless error as applied to Mr. Bergstrom's missed court appearance on May 4.

The court specifically looked at Mr. Bergstrom's failure to appear on April 18, 2018. The court discussed the judiciary's role as being fair and impartial and recognized that people may have difficulty accessing the courts. The court accepted that Mr. Bergstrom experienced homelessness and substance use, which was noted by the lower court to have contributed to his offense. The court also recognized that a 2020 amendment to the bail jumping statute provided an avenue to quash such charges, but Mr. Bergstrom did not have the benefit of the amendment based on the timing of his offenses. The court, although expressing sympathy with Mr. Bergstrom's situation, said that his struggles "do not undercut the State's evidence that Mr. Bergstrom knew of each of the three court dates" (*Bergstrom*, p 849). The court reversed, in part, on the statutory interpretation and affirmed the sufficiency of the conviction.

Discussion

Under Washington law, the *Bergstrom* case suggests that individuals can be convicted of bail jumping for failing to appear in court if the state can prove that they, at some point, had knowledge of the requirement of a subsequent appearance. The state is not required to prove that the defendant ever had knowledge of the specific date, nor intentionally failed to appear on the date in question.

Perhaps the real significance of this case for psychiatrists is the implications for people who may have circumstances that challenge their ability to access the courts. People with serious mental illness (SMI) are over-represented in the criminal legal system. Additional factors commonly co-occurring with SMI, such as substance use, housing and financial insecurity, trauma, and hospitalization may further affect one's ability to remember and appear for court dates. The court recognized "the disproportionate effect" of criminalizing failures to appear in court on persons of a lower socioeconomic class. This case illustrates that effect. Despite being acquitted of his original charges, Mr. Bergstrom found himself with three additional charges related to his failures to appear. Had he had stable housing, a reliable phone or mailing address, or had he not been hospitalized or influenced by substance use, his circumstances could have been very different.

Clinicians and policy makers may be in positions to reduce the likelihood and impact of persons failing to appear in court. The court system can take steps to clearly communicate that court dates are mandatory, feature dates prominently in correspondence, and send reminders prior to required appearances. Legislatures can take measures to reduce criminalization for failure to appear. Although not available to Mr. Bergstrom, the Washington State legislature amended the bail jumping statute to allow motions to quash warrants for failure to appear. Mental health clinicians may similarly be in positions to reduce the likelihood of clients' failing to appear in court by inquiring about any pending court dates, assisting with reminders, and helping them access social work, transportation, and legal resources. Through these mechanisms, clinicians and policy makers can help reduce the likelihood and negative effects of failure to appear charges.

Nontestimonial Statements

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Statements Made to a SANE Examiner Are Not Testimonial and Are Admissible in Court

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Key words: testimony; hearsay; SANE examination; Sixth Amendment

In S*tate v. Burke*, 478 P.3d 1096 (Wash. 2021), the Washington Supreme Court considered whether statements made by a victim of sexual assault in a Sexual Assault Nurse Exam (SANE) constituted testimony, implicating the confrontation clause of the Sixth Amendment. The Washington Supreme Court