shooting of Mrs. Teel, the appellate court affirmed the district court's summary judgment.

Discussion

This case centers on the determination of what constitutes an "objectively reasonable" degree of force to detain an individual with a mental illness and the need for police training in crisis response. A study in 2018 indicated that approximately 25 percent of the civilians who were killed by the police exhibited signs of mental illness. Additionally, people with mental illness were more likely to be armed with a knife than a firearm, and the killing was likely to happen in their homes (Saleh AZ, Appelbaum PS, Liu X, *et al*. Deaths of people with mental illness during interactions with law enforcement. Int'l J L & Psychiatry. 2018 May–June; 58:110–6).

In recent years, initiatives have been developed to improve police interactions with people with mental illness. The Crisis Intervention Team (CIT) curriculum for police officers has been utilized with measurable positive effects. Although there is limited evidence of a reduction in shooting fatalities, officers have reported feeling less threatened and more prepared to successfully manage encounters with people with mental illness after completing CIT training (Hassell KD. The impact of crisis intervention team training for police. Int J Police Sci Manag. 2020; 22(2):159–70). Given these gains, researchers have urged community experts to assist with ongoing efforts (Lavoie JAA, Alvarez N, Kandil Y. Developing community co-designed scenario-based training for police mental health crisis response . . . J Police Crim Psychol. 2022; 37 (3):587–601).

Munetz and Bonfine have opined in an American Medical Association Ethics Journal Viewpoint article that CIT program leadership must include psychiatrists throughout every programming stage, urging psychiatrist involvement in training officers, developing curriculum, guiding postcrisis intervention, consulting with officers, and helping CIT colleagues navigate traumatic experiences (Munetz MR, Bonfine N. Crisis intervention team program leadership must include psychiatrists. AMA J Ethics. 2022 Feb; 24(2):154–9). Although we cannot know whether the outcome would have differed if Deputy Lozada had undergone CIT training, other officers who have completed the training have demonstrated improved self-efficacy and improved de-escalation skills (Compton MT, Krishan S, Broussard B, *et al*. Modeling the effects of crisis intervention team (CIT) training for police officers . . . Int'l J L & Psychiatry. 2022 Jul–Aug; 83:101814). This has translated into lower rates of involuntary hospitalization and higher rates of voluntary treatment (Hassell KD. The impact of crisis intervention team training for police. Int J Police Sci Manag. 2020; 22(2):159–70).

Providing officers with the necessary tools to help manage mental health crises has proven to be a beneficial use of time and resources. This case highlights the need for crisis training for officers. It illuminates a growing need for psychiatrists to utilize their specialized skills to collaborate with officers and advocate for the populations they treat.

Federal Firearms Prohibitions for Unlawful Substance Use or Substance Use Disorder

Michael O. Mensah, MD, MHS, MPH
Fellow in Forensic Psychiatry

Traci Cipriano, JD, PhD
Assistant Clinical Professor of Psychiatry
Law and Psychiatry Division

Department of Psychiatry
Yale University School of Medicine
New Haven, Connecticut

Substance Use Analogized to Mental Illness to Find Historical Precedent for Firearm Prohibition

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Key words: firearms; Second Amendment; gun violence; intoxication; suicide; risk

In *United States v. Veasley*, 98 F.4th 906 (8th Cir. 2024), the Eighth Circuit Court of Appeals upheld the federal prohibition on possession of firearms by certain substance-using individuals.

Facts of the Case

In November 2020, Devonte Veasley was indicted for possessing a firearm while using or addicted to a controlled substance (18 U.S.C. § 922(g)(3) (2020)). In May 2022, he pleaded guilty in the U.S. District Court for the Southern District of Iowa.

A month later, the U.S. Supreme Court issued its ruling in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), implementing a two-

part test for constitutionality based on "text and historical understanding." The Court ruled a law is unconstitutional if it prohibits conduct plainly covered by the Second Amendment and is not consistent with the United States' historical tradition of firearm regulation.

Mr. Veasley's appeal to the Eighth Circuit claimed the lower court should have dismissed his charge or allowed withdrawal of his guilty plea following the *Bruen* decision. He asserted that § 922(g)(3) is facially unconstitutional, meaning it is unconstitutional in all contexts and not just as applied in the specific circumstances of his case, relying on *United States v. Seay*, 620F.3d 919 (8th Cir. 2010).

Ruling and Reasoning

The U.S. Court of Appeals for the Eighth Circuit affirmed the district court's judgment, thus rejecting Mr. Veasley's challenge to the constitutionality of § 922(g)(3). The court focused on both the second step of the *Bruen* test, which requires consistency with the historical tradition of United States firearm regulation, and the court's directive to find a "well-established and representative historical analog," what the court calls reasoning by analogy, if no such tradition exists (*Bruen*, p 30).

The *Veasley* court's reasoning began by addressing the penalty for violating § 922(g)(3): up to 15 years or more in prison for repeat offenders. Citing *Seay*, the court said that the constitutionality of § 922(g)(3) was up for *de novo* review; its review considered the Second Amendment and the *Bruen* "two-part test." Under the first criterion, the law in question must prohibit conduct covered by the Second Amendment. The second criterion requires the law in question to be consistent with previous "historical understanding" of firearm regulation. If no historical understanding exists, *Bruen* instructs courts to "reason by analogy."

The *Veasley* court then considered whether § 922 (g)(3) is consistent with the historical tradition of firearm regulation by examining the historical regulation of "intoxicating substances." The court found some historical precedent for regulating use of firearms while intoxicated but found no precedent regarding possession while intoxicated. Moreover, the court did not consider § 922(g)(3) to qualify as historical precedent because its passage in 1968 was deemed too recent. It concluded that gun dispossession for intoxication "is a modern solution to a centuries old problem" (*Veasley*, p 912).

The court went on to state that, because modern and historical drug use are too dissimilar for their respective laws to be compared, it must use the "reasoning by analogy" recommended by *Bruen*. It analogized recreational drug intoxication to mental illness. The court argued that, in some cases, recreational drug intoxication and mental illness both induce deficits in attention and working memory. The court concluded, "[T]hat the analogy. . . works for some, and that the mentally ill sometimes lost their guns, means that § 922(g)(3) cannot be facially unconstitutional" (*Veasley*, p 913). The court also cited historical analogies between intoxication and mental illness. For example, Dr. Benjamin Rush, signatory of the Declaration of Independence and founder of the American Psychiatric Association, described drunkenness as a "temporary fit of madness."

The court's analogy between drug intoxication and mental illness motivated its search for historical precedent for § 922(g)(3) in 17th and 18th century laws pertaining to people who appeared to have mental illness. The court referenced legal views on mental illness, intoxication, and firearm possession found in 17th and 18th century writings as well as 17th century treatment of persons with mental illness who were viewed as dangerous. For instance, people with mental illness who were also deemed dangerous were barred from possessing firearms. It also noted that psychiatric hospitals were used to confine anyone who was deemed "dangerous or disturbing to others" in the 18th century (Dershowitz A. The origins of preventive confinement in Anglo-American law–part II . . . U Cin L Rev. 1974 Jan; 43:781–846, p 788).

The court further inferred associations among drug use, dangerousness, and mental illness via reasoning by analogy with laws placing limits on gun possession. The opinion referenced several 18th and 19th century laws in Massachusetts and Kentucky that barred gun ownership by people who "terrorized" the public. The court reasoned that "some drug users and addicts fall within a class of people who historically have had limits placed on their right to bear arms" (*Veasley*, p 918). Similarly, colonial era laws were intended to restrict access to firearms by people considered "risky" or dangerous, and historically, gun rights were curtailed in some people who used or were addicted to illegal substances. Therefore, § 922(g)(3) is facially constitutional because there is precedent for disarming some people for intoxication, and so the Eighth Circuit affirmed the lower court's judgment.

Discussion

In deciding *Veasley*, the court relied on the *Bruen* decision, which eliminated means-end analysis when considering constitutional challenges to gun legislation. Means-end analysis, which weighs individual rights versus state interests, is a standard approach in judicial reasoning, and it is particularly helpful in cases involving constitutional rights. The post-*Bruen* judicial approach to evaluating constitutionality in these cases instead relies on Second Amendment language and 16th to 18th century history and precedent. There are several problems with this approach, many of which are set forth by Justice Breyer in his dissenting opinion in *Bruen*. Justice Breyer was most concerned with whether "the Court's approach [will now] permit judges to reach the outcomes they prefer and then cloak those outcomes in the language of history" (*Bruen*, p 107). In addition to Justice Breyer's concerns, the text and history approach does not allow for consideration of evolving scientific knowledge.

The *Bruen* decision provided a basis for the *Veasley* court's text and history approach. Instead of looking directly at the history of gun restrictions, the *Veasley* court labeled modern drugs as the "unprecedented" concern that needed to be addressed through analogy with historical precedent. This ignored an unprecedented concern likely more relevant to § 922 (g)(3): risks posed by modern guns. Section 922(g)(3) regulates gun possession, not drug use or persons with mental illness. A logical analogy to historical precedent would consider gun legislation. The *Veasley* court's reasoning instead suggests people with mental illness are dangerous and need to be regulated.

Despite a lack of strong scientific footing (similarity across a few symptoms of intoxication and mental illness does not mean similarity in organic cause), the *Veasley* court equates intoxication with mental illness based on stigmatizing historical descriptions and inhumane treatment of persons with mental illness from centuries ago. Contrary to popular belief, mental illness is not the root cause of most gun violence in the United States (O'Brien E. Changing the narrative . . . Psychiatr Times. 2023; 40(4)). It does, however, provide an overly reductive explanation to the complex challenges of gun violence. And without the ability to introduce scientific evidence, there is a real risk that this stigmatizing judicial approach will persist. In the extreme, tenuous connections made between dangerousness and mental illness may themselves be dangerous in terms of how people with mental illness are perceived and the rights and freedoms they are granted (O'Brien, p 4).

Addressing Mental States in Expert Witness Testimony

Michael Dinh, MD
Fellow in Forensic Psychiatry

James Armontrout, MD
Clinical Associate Professor, Department of Psychiatry and Behavioral Sciences

Stanford University
Palo Alto, California

Expert Witness Testimony That Addresses General Mental States in a Group of People Is Not Impermissible Ultimate Issue Testimony

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Key words: expert witness; testimony; mental state; evidence; ultimate issue

In *Diaz v. United States,* 144 S. Ct. 1727 (2024), the U.S. Supreme Court ruled that expert witness testimony opining that most people in a group have a particular mental state is admissible, even if that mental state is an element of a charged crime. Such testimony is not a direct opinion about the mental state of the defendant and thereby does not violate Federal Rules of Evidence (Fed. R. Evid.) 704(b).

Facts of the Case

Delilah Diaz was stopped at a border checkpoint entering the United States from Mexico, where officers found 54 pounds of methamphetamine hidden in her car. She was charged with importing methamphetamine, a charge which required the government to prove that she "knowingly" transported drugs. Ms. Diaz asserted what is known colloquially as a "blind mule" defense, claiming she was unaware that the drugs were concealed in the car, which belonged to her boyfriend.

The prosecution introduced expert witness testimony from a Homeland Security agent, who testified about common practices of Mexican drug-trafficking organizations, including that cartels "generally do not entrust large quantities of drugs to people who are unaware they are transporting them" (*Diaz*, p 1731). The defense challenged this testimony, arguing it violated Fed. R. Evid. 704(b): which "In a