

had not accrued further charges in that time. Thus, the court remanded the case back to the juvenile court to assess the juvenile's present dangerousness.

Discussion

This legal opinion calls attention to two important matters. First, individuals may be adjudicated NCST for a variety of reasons. Accordingly, as in the present case, state laws may not always provide clear directives with respect to competency remediation, attainment, or even dismissal of charges. The Massachusetts Supreme Court highlighted that, in such cases, courts do not have the authority to resolve these gaps in the criminal justice process. Rather, the state legislative body must address process shortcomings through legislation.

Forensic clinicians are uniquely qualified to advocate for such legislation. They are frequently embedded in the criminal justice system by way of expert evaluation and provision of mental health care. Meanwhile, their training and expertise often place them in influential roles as advocates and policy consultants. Accordingly, forensic mental health professionals may be ideally suited to address shortcomings in the criminal justice system as they arise in the judiciary and advocate for legislative measures that can effectively improve the system.

Second, the opinion reasserts previous decisions that physical detention is not necessary to demonstrate impingement on an individual's liberty interest. The court held that liberty can be constrained simply by the presence of indefinitely pending charges. Therefore, state legislatures should be concerned with the process of competency attainment, ensuring that reasonable pathways exist to address the myriad circumstances for which a defendant may be found NCST. But also, they should be attentive to the process of and criteria for dismissal of criminal charges to ensure an appropriate balance of governmental interests and personal liberties.

Permission to Testify Remotely

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Failure to Preserve Error Prevents Certain Arguments Made Upon Appeal in Case of Contested Remote Testimony

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Key words: minor; Confrontation Clause; closed-circuit testimony; failure to preserve error

In *State v. Gomez Medina*, 7 N.W.3d 350 (Iowa 2024), the Iowa Supreme Court held that the district court did not err in allowing a minor who turned 18 on the second day of closed-circuit testimony to continue with her remote testimony.

Facts of the Case

In 2019, Gomez Medina's 15-year-old stepdaughter Dorothy (a pseudonym) reported to her school and a forensic interviewer that she had been sexually abused by Mr. Medina since she was 11 years old. This account was corroborated by Mr. Medina's 11-year-old son Frank (a pseudonym).

In May 2020, prior to the trial, the state of Iowa sought to allow closed-circuit testimony for Dorothy and Frank under Iowa Code § 915.38 (2019), arguing that "closed-circuit testimony is necessary to protect the minor witnesses [Dorothy] and [Frank] from trauma caused by in person testimony" (*Medina*, p 352). Mr. Medina objected. In a subsequent pretrial hearing, Dorothy's guardian *ad litem* and therapist testified that in-person testimony would cause Dorothy further trauma, with the latter also testifying that Dorothy had depression, anxiety, and posttraumatic stress disorder (PTSD). In August 2021, the district court permitted Dorothy to testify *via* closed-circuit testimony to prevent further trauma and because testifying in Mr. Medina's presence would impair her ability to communicate; the request for Frank was denied because the court did not find a compelling reason.

In October 2021, the six-day trial began, with Dorothy testifying *via* closed-circuit testimony on the third day. Her testimony did not finish on this day. The following day, Dorothy turned 18 years old and returned to complete her testimony remotely. Prior to Dorothy starting her second day of testimony, Mr. Medina objected to Dorothy testifying *via* closed-circuit television on the grounds that she was no longer a minor. The district court disagreed noting that "§ 915.38(1)(c) permits closed-circuit testimony for a victim or witness with a mental illness, regardless of that person's age" (*Medina*, p 353). The court concluded that Dorothy would experience

additional trauma to her underlying mental illness with in-person testimony. With the court's permission, the now adult Dorothy resumed her closed-circuit testimony. Mr. Medina was subsequently found guilty and sentenced to 67 years in prison.

On appeal, Mr. Medina raised three arguments. Primarily, he argued that "allowing Dorothy to testify *via* closed-circuit television violated both Iowa Code § 915.38(1) and the Confrontation Clause of the United States Constitution. *See* U.S. Const. amend VI ('in all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him')" (*Medina*, p 353).

The Iowa Court of Appeals affirmed the ruling, explaining that no constitutional violation occurred when Dorothy was a minor. Likewise, the court held that, after she turned 18, Dorothy met the requirements for closed-circuit testimony under Iowa Code § 915.38 (1)(c). Mr. Medina's argument for a Confrontation Clause violation also failed. Mr. Medina appealed.

Ruling and Reasoning

The Iowa Supreme Court unanimously affirmed the district court's ruling, noting that Mr. Medina "failed to preserve error on his Confrontation Clause argument concerning Dorothy's testimony after she turned 18" (*Medina*, p 354). The Iowa Supreme Court reviewed the transcript of the district court proceedings of events prior to Dorothy beginning her second day of testimony, when the district court discussed whether Dorothy would still be allowed to testify *via* closed circuit as an 18 year old. The court found that the district court and both sides had the opportunity to question Dorothy about her medications and mental health. The district court noted that unexpected delays at trial had caused Dorothy's testimony to extend into a second day, even though the pretrial order had only contemplated her closed-circuit testimony as a minor. Further, the district court had determined that Dorothy had a documented mental illness of PTSD and depression, which would cause Dorothy trauma beyond the expected "nervousness and excitement" of normal testimony, "regardless of her age" (*Medina*, p 355), specifically while testifying in front of Mr. Medina. The district court had eventually allowed Dorothy to testify *via* closed circuit.

The court noted that Mr. Medina's defense had in fact raised the concern of both the Iowa Code § 915.38 and Confrontation Clause during the

pretrial motion when discussing Dorothy's testimony as a minor. The Iowa Supreme Court commented that closed-circuit testimony was discussed only in relationship to Dorothy's status as a minor during the pretrial hearing, stating, "it apparently hadn't occurred to anyone that Dorothy might not give her testimony until after she'd turned eighteen." (*Medina*, p 355).

The court noted that, during the trial, Mr. Medina objected to Dorothy's testimony on the second day only under § 915.38, but not under the Confrontation Clause. The court underscored the requirement that a party raise a concern and that the district court rule on it before it could be considered on appeal. The Supreme Court of Iowa noted that it functions to correct errors made by lower courts. If a concern was not raised in a lower court, and the lower court had not ruled on it, they had no error to correct. The court further explained that they were unsure how the district court would have ruled had Mr. Medina's defense brought up the matter of the Confrontation Clause.

The Iowa Supreme Court found that the district court's decision to permit Dorothy to testify remotely was based on evidence presented at the pretrial phase in the testimony of the guardian *ad litem* and Dorothy's therapist. The guardian *ad litem* had testified that Dorothy would be traumatized if testifying in the presence of Mr. Medina and that this would affect her ability to testify truthfully. Similarly, Dorothy's therapist had testified that Dorothy experiences PTSD, anxiety, and depression because of the abuse she had suffered and that closed-circuit testimony would protect her from further trauma. The court ruled that the district court correctly applied Iowa Code Section 915.38 in Dorothy's case by permitting her continued testimony *via* closed-circuit testimony as an adult, given her underlying mental illness. They explained that Iowa Code § 915.38(1)(c) permits a court to allow for closed-circuit testimony of a victim or witness with "mental illness, an intellectual disability, or other developmental disability to be taken . . . regardless of the age of the victim or witness" (*Medina*, p 356).

The Iowa Supreme Court also concluded that the district court correctly denied Frank's request for closed-circuit testimony. They noted that Frank did not present with mental disability to the extent that Dorothy had. The court declined to address Mr. Medina's additional two arguments.

Discussion

In *Maryland v. Craig*, 497 U.S. 836 (Cal. 1990), the U.S. Supreme Court established that sexually abused minors can testify under closed-circuit testimony and still not violate the Confrontation Clause if there are concerns that they will experience trauma by testifying in front of their accuser. In *Medina*, the Supreme Court of Iowa elucidated that even adults could be excused from in-person testimony if there is a possibility that they might be traumatized by testifying in the presence of their accuser.

In *People v. Stritzinger*, 668 P.2d 738 (Cal. 1983), the California Supreme Court had noted that the evidentiary bar for making an exception for a victim or witness to testify in person is high. There, the district court excused the victim from in-person testimony under the Confrontation Clause based solely on the report of the victim's mother. Upon appeal, the California Supreme Court ruled that the testimony of the victim's mother was legally insufficient and that medical testimony was needed to support a mental health diagnosis. In contrast, the district court in *Medina* considered the testimony of Dorothy's therapist and that of the guardian *ad litem* when making their determination on the presence and severity of mental illness for Dorothy and her brother, the potential for further traumatization, and how in-person testimony could affect their ability to testify in court.

Taken together, these decisions illustrate that, although the bar to make an exception to the Confrontation Clause is high, courts have considered the potential of further traumatizing abuse victims in ruling upon such exceptions. Further, courts do not make these exceptions lightly and are required to rely on credible evidence provided by caregivers or health care providers in making exceptions to the right to confront one's accuser.

Police Officer's Use of Force on Person in Mental Health Crisis

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Officers Are Protected by Qualified Immunity When Use of Force Is Objectively Reasonable

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In *Hart v. City of Redwood City*, 99 F.4th 543 (9th Cir. 2024), the Ninth Circuit Court of Appeals considered whether a police officer's use of force against a suicidal individual was objectively unreasonable and violated the standards for qualified immunity. The court ruled that the officer's actions were not objectively unreasonable and did not violate the individual's Fourth Amendment rights. The officer was entitled to qualified immunity.

Facts of the Case

On December 10, 2018, Kristin Hart observed her husband, Kyle Hart, cutting his throat and wrists with a knife. She called 911 to report that he was attempting suicide. When Officers Roman Gomez and Leila Velez arrived, they observed Mrs. Hart in the front yard pleading with them to help her husband, who was in the backyard with a knife. Before approaching Mr. Hart, the officers decided Officer Velez would use her taser and Officer Gomez would use his firearm if necessary. The officers provided slightly different testimonies regarding what occurred next.

Officer Gomez indicated Mr. Hart was facing away from them, holding a knife to his throat. Officer Velez stated he was facing them with the knife held out at shoulder height. Mr. Hart moved toward both officers, despite being instructed twice to "drop the knife" (*Hart*, p 546). Although the officers disagreed about the speed with which Mr. Hart approached, both testified that he quickly got within close range. Officer Velez used her taser, but it was ineffective, as one probe missed Mr. Hart. The officers also provided differing accounts regarding whether Officer Gomez used his firearm at the same time or after the taser was deployed. Regardless, he fired five shots, striking Mr. Hart in the upper torso three times. Medical