

Jury Instruction on Insanity Defense

Przemyslaw Kapalczynski, MD
Fellow in Forensic Psychiatry

Stephen Noffsinger, MD
Associate Professor of Psychiatry

Department of Psychiatry
University Hospitals of Cleveland Case Medical Center
Case Western Reserve University
Cleveland, OH

When Presented With Sufficient Evidence Supporting the Possibility of Insanity, the Trial Court Must Instruct the Jury to Consider the Insanity Defense

Stephen Long was charged in United States District Court with 79 felonies. An insanity defense was presented, but the trial court refused to instruct the jury on it, and Mr. Long was convicted on all counts. He appealed, arguing that the district court's refusal to instruct the jury on the insanity defense constituted reversible error. In *United States v. Long*, 562 F.3d 325 (5th Cir. 2009), the United States Court of Appeals, Fifth Circuit, considered whether the defendant was entitled to a jury determination of insanity.

Facts of the Case

Mr. Long was charged with 38 counts of threatening to use a weapon of mass destruction, 37 counts of mailing threatening communications, and four counts of transmitting threats by wire. In 2002, he mailed threatening letters containing white powder (later determined to be harmless) to 200 persons in Louisiana. The letters caused widespread panic, because they made references to al Qaeda, bombs, antibiotics used to treat anthrax, and anarchy. He was arrested after threatening e-mails were traced to his computer. He explained that he was testing the government's readiness to respond to terrorist threats; teaching people to protect and pay attention to their children; showing that criminals frequently go free; and demonstrating that chaos is easy to create.

Mr. Long pleaded insanity under the federal insanity standard. He testified about visual hallucina-

tions and voices that told him to mail the letters to expose the weakness of "the system." His mother corroborated his psychosis.

Psychologist F. T. Friedberg testified that Mr. Long had schizotypal personality disorder, "the most severe Axis II illness, which causes bizarre ideation, paranoid mentation, and psychotic episodes during which a patient loses contact with reality."

The prosecution asserted that his mental illness was not "severe" (being an Axis II disorder) and that he was able to appreciate the nature, quality, and wrongfulness of his acts, since he attempted to conceal his identity, avoid detection, and destroy evidence.

The trial court denied Mr. Long's request to instruct the jury on the insanity defense, and the prosecution's expert was not called to testify. Mr. Long was convicted on all counts. He appealed, arguing that the court's refusal to instruct the jury on the insanity defense constituted reversible error.

Ruling

In a two-to-one ruling, the Fifth Circuit Court of Appeals found that Mr. Long presented sufficient evidence for the trial court to instruct the jury to determine whether he was legally insane. His conviction was reversed, and the matter was remanded to the trial court for further proceedings.

Reasoning

The Fifth Circuit Court of Appeals relied on its precedents in *United States v. Eff*, 524 F.3d 712 (5th Cir. 2008) and *United States v. Dixon*, 185 F.3d 393 (5th Cir. 1999):

1. A jury instruction on the insanity defense is required when the evidence would allow a reasonable jury to find that insanity has been shown with convincing clarity. 2. A court may withhold the insanity instruction if it concludes that the relationship between a defendant's mental illness history and his criminal conduct has not been explained or examined in any meaningful way, but . . . we must construe the evidence, and all inferences . . . mostly favorable to the defendant [*Long*, p 331].

Put another way, to instruct the jury on the insanity defense, the trial court must initially determine whether a reasonable juror could conclude that there is a high probability that the defendant was legally insane at the time of the offense.

The court of appeals found that the term "convincing clarity" used in *Dixon* equated with "clear

and convincing evidence,” not, as the prosecution asserted, a higher standard.

The prosecution contended that Mr. Long’s mental illness was not “severe” and that his conduct indicated that he knew the wrongfulness of his actions at the time of the offense. The prosecution asserted that a reasonable juror would reject the insanity defense, and therefore no jury instruction on insanity was warranted. The prosecution disputed that Mr. Long’s mental illness was severe because it was not long-standing; the diagnosis was not made shortly before and after the offense; he was not medicated for his illness after the offense; he was able to hold a job; he did not report hearing voices; and his illness was not characterized by auditory hallucinations.

The court of appeals differentiated between the clinical and legal definitions of severe mental disease. It concluded that the expert’s role is to testify to the clinical severity of the defendant’s illness, but not to define the legal concept of severity for the court. If particular diagnostic classifications (such as Axis I disorders) were categorically considered severe, the expert’s testimony would inappropriately displace the role of the court and jury in insanity adjudications.

The court concluded that Mr. Long’s Axis II schizotypal personality disorder did not necessarily preclude an insanity instruction to the jury. Rather, Mr. Long’s symptoms and their impact on his behavior were material, and Dr. Friedberg’s testimony was relevant in establishing the severity of Mr. Long’s symptoms. The court of appeals rejected the contention that Mr. Long’s illness could not be construed as severe, reasoning that duration should not be a requirement for classification as a severe mental illness. The illness need not be diagnosed near the time of the offense. Defendants who have no access to mental health services should not be deprived of the insanity defense. The court also concluded that defendants cannot be excluded from the insanity defense because they are not on medication or because of their employment status. Lastly, the court noted that a defendant need not report all symptoms to the expert; due to paranoia, some defendants may not report symptoms.

The court of appeals also concluded that Mr. Long’s efforts to avoid detection did not rule out the possibility of an insanity defense. He was mo-

tivated by a well-meaning, albeit delusional, belief that he had to alert the government to its weaknesses. Mr. Long made statements that his actions were “for the betterment of mankind or God.” The court noted, “the insanity defense is not limited to defendants who, because of their illness, are completely ineffectual in pursuing their bizarre intentions.”

Finally, the court of appeals concluded that there was evidence to show a possible link between Mr. Long’s mental illness and his criminal conduct, sufficient to justify a jury instruction on the insanity defense. Specifically, Mr. Long was delusional and hallucinating at the time of the offense.

Dissent

The dissent argued that the evidence did not establish a high probability that Mr. Long’s illness prevented him from appreciating the nature and quality or wrongfulness of his behavior, pointing to Dr. Friedberg’s testimony that people with schizotypal personality are generally able to appreciate the nature and wrongfulness of their acts.

Discussion

This case highlights several aspects of insanity defense rulings with practical implications. Courts and expert witnesses struggle with defining what constitutes a severe mental disease or defect for the purposes of adjudicating insanity. They also struggle with defining what constitutes sufficient evidence for a judge to instruct the jury on insanity. Finally, the case underscores the differences between legal and clinical definitions of mental illness.

In this case, the Fifth Circuit Court of Appeals differentiated between the threshold for considering the insanity defense and actually being adjudicated as legally insane. For a court to instruct the jury on the insanity defense, the defendant must, by clear and convincing evidence, show only that a reasonable juror could conclude that the defendant was legally insane at the time of the crime. In contrast, to be adjudicated as legally insane, the defendant must show, by clear and convincing evidence, that as a result of a severe mental disease or defect, he was unable to appreciate the nature and quality or wrongfulness of his acts.

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