

Competence to Stand Trial and Ability to Waive Constitutional Rights

Eric Huttenbach, MD, JD
Resident in General Adult Psychiatry

Debra A. Pinals, MD
Associate Professor of Psychiatry
Director, Forensic Education

Law and Psychiatry Program
Department of Psychiatry
University of Massachusetts Medical School
Worcester, MA

Rights Against Searches May Be Considered Voluntarily Waived in the Absence of Evidence of Police Coercion or Contradictory Mental Health Evidence

In *United States v. Reynolds*, 646 F.3d 63 (1st Cir. 2011), the United States Court of Appeals for the First Circuit considered whether the District Court for Maine erred in denying a motion to suppress and in convicting Bony Reynolds on two gun possession charges. On appeal, she argued that her mental infirmity prevented voluntary waiver of her Fourth Amendment right against searches. After being found competent to stand trial, Ms. Reynolds, against the advice of her counsel, made admissions of gun possession that were later used against her. A motion to suppress gun evidence was denied. The court of appeals affirmed the district court's denial.

Facts of the Case

On May 2, 2006, police were called to a private residence. A man told police that he had a houseguest, Bony Reynolds. He wanted Ms. Reynolds to leave, and he informed officers that she had two firearms. The officers knocked on her door. A voice inside said, "Come in." The officers found Ms. Reynolds lying on the bed and asked if she possessed guns. She answered in the affirmative and pointed behind her. An officer walked toward the headboard, opened a compartment, and removed the guns.

Ms. Reynolds had been involuntarily committed to a mental hospital one month prior. Because of the federal prohibition of gun possession by persons committed to a psychiatric hospital under 18 U.S.C. § 922(g)(4)(2005), officers seized the weapons and

left. On December 11, 2007, a federal grand jury indicted Ms. Reynolds on two charges related to firearms. After an arrest and arraignment, there were repeated violations of her conditions of release, and a failure to appear at a motion hearing.

The government moved under 18 U.S.C. § 4241 (2006) to determine competence to stand trial. A subsequent psychological evaluation found that although Ms. Reynolds could understand the nature of the criminal proceedings, she was unlikely to make the informed decisions necessary to assist properly in her defense. She was found incompetent to stand trial. Neither party filed any objections. On July 30, 2008, the district court ordered her committed for psychiatric treatment at the Federal Medical Center, Carswell, Texas.

On February 2, 2009, the district court received a letter with a forensic evaluation that concluded that Ms. Reynolds was competent to stand trial. The district court ordered a second competence hearing. At a conference before the hearing, Ms. Reynolds' counsel stated that he had met with her on several occasions and that she was "in good shape."

During the second competence hearing, the district court questioned Ms. Reynolds as to her understanding of the proceedings. She replied that she knew "exactly" the proceedings and that she and her lawyer had discussed her case. She conferred with her lawyer many times.

Ms. Reynolds admitted to the facts of the case on record. Both her attorney and the court interrupted her and warned her not to talk about the case. Against advice, she stated that she obtained the guns from her mother's house, because a neighbor, who was a felon, had put them there. She noted that the serial numbers were scratched off and maintained that she planned to surrender them.

After Ms. Reynolds spoke in court, the district court accepted the forensic report without objection. The court then found that in view of the report and through observation of Ms. Reynolds during the hearing that she was competent to stand trial. Neither party objected.

Ms. Reynolds filed a motion to suppress the firearms. She argued that she did not consent to a search. She did not make her mental state at the time of seizure a factor to consider. Although the court noted that her commitment to a mental facility a month prior was a factor that weighed against voluntariness, the parties did not raise the issue or provide the court

guidance. Therefore, the court found that mental illness did not defeat the voluntariness of the waiver. The motion was denied.

Shortly thereafter, Ms. Reynolds entered a plea agreement with the assistance of a newly appointed counsel. On July 24, 2009, there was a change-of-plea hearing. The court asked her many questions to confirm her understanding of the proceedings and found her competent to proceed with the plea.

However, the hearing changed course and became a trial-scheduling conference when Ms. Reynolds stated that she did not believe she was guilty; she had wanted to speed up the proceedings so she could “get out of jail” more quickly. The court could not accept her plea based on her statements.

Ms. Reynolds elected to have a bench trial in district court. The court confirmed that she understood her right to a jury trial, that she had discussed the advantages and disadvantages with her counsel, and that she had voluntarily signed the waiver.

At the bench trial, the transcript from the second competency hearings was admitted into evidence without objection. This transcript contained her previous statements in which she admitted possessing the guns and knowing that serial numbers had been removed. The court found Ms. Reynolds guilty of two criminal charges and sentenced her to prison.

Ruling and Reasoning

Ms. Reynolds appealed her conviction, but the court of appeals affirmed the district court’s denial of her motion to suppress and affirmed her conviction.

Ms. Reynolds claimed error in finding her competent to stand trial. She argued that her behavior and comments during the competence hearing indicate that she was not competent. Further, she argued that the district court should have required the forensic evaluators to testify and be subject to cross-examination. She raised these issues for the first time on appeal.

The court of appeals held that there was no error in finding Ms. Reynolds competent to stand trial. Several lines of evidence favored that finding, including an “unobjected-to” forensic evaluation. Her own attorney deemed her fit. She frequently had voiced understanding of the proceedings; she had conferred multiple times with her attorney. The court of appeals noted that she may have hurt her own case with ill-advised comments and admissions. However, competent individuals can and do make similar

mistakes. In response to charges of failing to cross-examine experts, the court of appeals noted, “As we explained in *United States v. Muriel-Cruz*, 412 F.3d at 14, the district court does not have an independent duty to summon and cross-examine the experts who determine that a defendant has regained competence” (*Reynolds*, 646 F.3d at 73).

Ms. Reynolds also appealed the denial of her motion to suppress, asserting that her gesture toward the headboard did not signify a sort of implied consent and that her consent to the search was not voluntary because of her underlying “mental infirmities.” Since the claim was never brought before appeal, the court of appeals applied a plain-error review, stating that mental status is certainly a factor in considering voluntariness; however, it is only one of many factors to balance. Ms. Reynolds failed to inform or provide guidance concerning her mental illness. Although mental status at the time of the incident was a factor, it alone did not demonstrate involuntariness. Thus, all factors taken together, there was no error.

Finally, Ms. Reynolds asserted on appeal that her jury trial waiver was not knowingly and voluntarily executed. She argued that her mental incompetence prevented her from appreciating her right to jury trial. This claim was brought up for the first time on appeal. The trial court had repeatedly re-evaluated Ms. Reynolds’ ability to participate. Using a plain-error review, the court of appeals again found no error.

Discussion

This case highlights the difficulty in appealing mental competence. On appeal, a defendant’s position can be adversarial toward her earlier legal positions, but the decision to change positions is problematic. At the trial court level, Ms. Reynolds did not contest her competence. Therefore, her lawyer did not raise objections or preserve arguments on appeal. Thus, there was a less favorable standard of review. Rather than a review under a clearly erroneous standard, the court of appeals used the narrower plain-error review. Therefore, Ms. Reynolds had a difficult task in winning on appeal.

With fluctuating mental capacity, it can be a difficult task to evaluate a defendant’s ability to waive rights in retrospect. However, a finding at trial of being incompetent might not invalidate an earlier voluntary waiver to search. Even if mental illness is being evaluated relevant to different decisions and

different time points, the court, and therefore the forensic evaluator, must look to mental status at the time of the waiver when involved in these retrospective reviews.

Although not discussed in this case, the facts illustrate that previous involuntary psychiatric commitment can terminate an individual's right to possess firearms. Given the ongoing policy debate concerning mental illness and Second Amendment rights, this case provides a helpful delineation of the potential impact and legal case complexities of firearms restrictions for one individual and the justice system.

Disclosures of financial or other potential conflicts of interest: None.

Expert Opinions Based on Inadmissible Evidence

Tess M. S. Neal, PhD
Forensic Psychology Resident
Law and Psychiatry Program
Department of Psychiatry

Kenneth L. Appelbaum, MD
Clinical Professor of Psychiatry
Director Correctional Mental Health Policy and Research
Center for Health Policy and Research
University of Massachusetts Medical School
Worcester, MA

Experts May Not Form Opinions Based on Inadmissible Self-Incriminating Statements or Out-of-Court Accusations Consisting of Unreliable Hearsay, Nor May They Introduce Hearsay Facts, Even if Reliable, Through Their Testimony

The Supreme Court of Nebraska held that in sexually dangerous person commitment proceedings, experts must base their opinions on admissible evidence in *In re Interest of A.M., Jr.*, 797 N.W.2d 233 (Neb. 2011). At issue was whether the experts could testify to potentially involuntary self-incriminating statements made by the defendant and out-of-court accusations made by alleged witnesses, as contained in police reports or presentence reports. The court held that self-incriminating statements could be relied on by experts only if the statements were voluntarily made by the defendant. The court also held that because an expert's opinion is only as reliable as the evidence on which it is based, the underlying facts contained in any hearsay evidence must be suffi-

ciently reliable to meet due process requirements. Further, even if the hearsay is reliable enough to be used by the expert in forming an opinion, the underlying hearsay-based facts or statements cannot be introduced to the trier of fact by the expert. That is, experts in Nebraska can testify to their opinions, but cannot divulge hearsay-related elements that form the basis for the opinion.

Facts of the Case

Mr. A.M., Jr, was convicted of first-degree sexual assault in 1993 for being over 19 and having sex with a 15-year-old girl, violating Neb. Rev. Stat. § 28-319 (1989). He was sentenced to 10 to 30 years of prison. Shortly before his scheduled release in September 2008, the state filed a petition with the Mental Health Board alleging that Mr. M. was a dangerous sex offender who should be civilly committed. He repeatedly objected to state motions seeking various sources of information, especially statements, documents, or other evidence stemming from a vacated 1992 third-degree sexual assault conviction. The conviction was vacated in 2003 after the district court concluded that the county court had failed to ensure that Mr. M.'s plea agreement was voluntary. This vacated conviction became a flashpoint of the current case. After the 1992 conviction, Mr. M. made incriminating statements during a presentence investigation and during court-ordered treatment, evidence on which the state's experts in the 2008 civil commitment proceeding relied.

The state called three experts to testify. Mr. M. refused to meet with all three evaluators, and they therefore relied on records of his conviction, his behavior in prison, and other collateral sources, including his statements during the 1992 presentence investigation and subsequent court-ordered treatment. Each expert reported that relying on records and external sources was an accepted practice among mental health professionals, but two of them conceded that their opinions were contingent on the truth of the underlying facts. Mr. M. made "countless" objections to the admission of the underlying facts. However, the board allowed the testimony after the state argued that it had offered Mr. M.'s statements not for substantive purposes but merely so the board could see how the experts arrived at their opinions. The three psychologists agreed that Mr. M. had a mental health diagnosis of pedophilia, sexually at-