Competence to Refuse an Insanity Defense

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Ninth Circuit Rules It Is a Violation of the Sixth Amendment for Counsel to Present an Insanity Defense Against the Will of the Defendant

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Key words: insanity defense; refusal of insanity defense; competency; Sixth Amendment

In *United States v. Read*, 918 F.3d 712 (9th Cir. 2019), the U.S. Court of Appeals for the Ninth Circuit considered whether the district court committed a reversible error by permitting defense counsel to present a defense of insanity despite the defendant's clear rejection of that defense. The Ninth Circuit ruled that the district court committed a reversible error and reversed the judgment and remanded his case to the lower court.

Facts of the Case

Jonathan Lee Read was serving a sentence for attempted robbery in a federal correction institute. During his incarceration, he stabbed his cellmate 13 times with a homemade knife. When detained, Mr. Read claimed he had no memory of the attack. He was charged with one count each of assault with a deadly weapon with intent to do bodily harm and assault with a deadly weapon resulting in serious bodily injury.

Mr. Read received an evaluation of his competency upon the motion of his appointed counsel. Lesli Johnson, PhD, a forensic psychologist, issued a report diagnosing Mr. Read with schizophrenia and severe cannabis use disorder. Based on Dr. Johnson's report, the court found Mr. Read incompetent to stand trial and ordered him committed for treatment and restoration; four months later he was found competent to stand trial.

Mr. Read's counsel arranged for examination by John R. Walker III, PsyD, to assess his state of mind at the time of the alleged assault. Dr. Walker opined that Mr. Read's psychosis rendered him unable to form criminal intent at the time of his crime.

Mr. Read's counsel filed a Notice of Insanity Defense. In response, the government requested an examination of Mr. Read, which the court granted. Sumandeep Kaur, a doctoral psychology intern, under the supervision of forensic psychologist Angela Walden Weaver, PhD, issued a report concluding that Mr. Read had schizotypal personality disorder and cannabis use disorder, and that Mr. Read was able to appreciate the nature, quality, and wrongfulness of his alleged criminal acts at the time of the alleged offense.

Mr. Read successfully moved to proceed without counsel following a *Faretta* hearing, a process to assess a defendant's ability to forgo his right to counsel "knowingly and intelligently" as defined by *Faretta v. California*, 422 U.S. 806 (1975). At a pretrial conference, he abandoned his insanity defense in favor of a defense based on demonic possession. Mr. Read reported that he would call Dr. Walker, the neuropsychologist who had opined that Mr. Read was insane at the time of the alleged assault, despite his wish to not pursue an insanity defense. The court responded that Dr. Walker's testimony would not be relevant to Mr. Read's defense.

The court asked Mr. Read's standby counsel if he had any concerns about Mr. Read's competence to proceed without counsel, and the concern was raised that Mr. Read did not seem to understand the legal distinction between a defense of insanity and his proposed defense.

As the court considered whether Mr. Read's standby counsel should be reappointed, the standby counsel explained that he would present an insanity defense if reappointed; he noted that the very reason that Mr. Read had wanted to proceed *pro se* in the first place was because he did not want an insanity defense.

Over Mr. Read's objection, the district court reappointed the standby counsel as Mr. Read's attorney. The court noted, "[T]he Constitution permits [judges] to insist upon representation by counsel for those competent enough to stand trial[,] . . . but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves" (*Read*, p 716). The court

found that Mr. Read's "beliefs are bizarre and his representation will be wholly ineffective," because "[h]is anticipated defense, that he is possessed by demons and that other inmates are also possessed, is not a legal defense and is based on his bizarre beliefs" (*Read*, p 716). Despite these comments, at no point did the district court revisit Mr. Read's competency. Mr. Read's counsel unsuccessfully presented an insanity defense at trial, and Mr. Read was convicted and sentenced to concurrent 82-month terms.

Ruling and Reasoning

The Ninth Circuit considered two main questions. First, did the district court err by permitting counsel to present an insanity defense? And, second, did the district court err by appointing counsel?

The Ninth Circuit considered Mr. Read's claim that the district court violated his Sixth Amendment right to present a defense of his own choosing by terminating self-representation and permitting counsel to make an insanity defense. The court ruled that the district court committed a reversible error by permitting defense counsel to present a defense of insanity over a competent defendant's clear rejection of that defense.

The Ninth Circuit acknowledged the difficulty of deciding whether to permit a defendant, deemed both competent to stand trial and to waive his right to counsel, but clearly mentally ill, to eschew a plausible defense of insanity in favor of one based in delusion and certain to fail. Nonetheless, the Ninth Circuit reasoned that Mr. Read's Sixth Amendment rights were violated when the trial judge permitted counsel to present an insanity defense against Mr. Read's clear objection, citing *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018), a case which had not been decided until after Mr. Read filed his opening brief in his appeal. *McCoy* affirmed a defendant's autonomy to determine the objectives of a defense by suggesting that counsel cannot impose an insanity defense on a non-consenting defendant and that an insanity defense is tantamount to a concession of guilt.

The Ninth Circuit also reasoned that the defendant retains "ultimate authority to make certain fundamental decisions regarding the case, as to whether to plead guilty, waive a jury, testify in his or her own behalf, or take an appeal" (*Read*, p 720, citing *Jones v. Barnes*, 463 U.S. 745 (1983)). The government argued there is no right to refuse an insanity defense beyond the *McCoy* right to maintain factual innocence. The Ninth Circuit disagreed, stating that pleading insanity has grave personal implications beyond its functional equivalence to a guilty plea, including depriving the defendant of the choice to avoid contradicting his own deeply-held personal belief that he is sane, as well as risking confinement in an institution and the social stigma associated with an assertion or adjudication of insanity.

The court also considered whether the district court erred by reappointing counsel. Mr. Read argued that the district court should not have revoked his *pro se* status on the basis of *Indiana v. Edwards*, 554 U.S. 164 (2008). The Ninth Circuit disagreed, stating the district court used the proper standard with *Edwards* and did not abuse its discretion by reappointing counsel.

Discussion

The Sixth Amendment clearly articulates the due process rights of criminal defendants, including the right to proceed *pro se* and to assistance of counsel. On the first matter, *Indiana v. Edwards* established that trial competency is a lower bar than that required to proceed *pro se*, a decision that settled the matter for the Ninth Circuit. Regarding assistance of counsel, the historical paternalism of the judicial system toward those afflicted by mental illness is reflected in cases such as *Whalem v. United States*, 346 F.2d 812 (D.C. Cir 1965). *Read* deviates from *Whalem*, which justified use of the insanity defense over a defendant's objection because of society's interests in avoiding the conviction of a morally blameless person; instead, *Read* aligns more with the decision in *Frendak v. United States*, 408 A.2d 364 (D.C. 1979).

In *Frendak*, the question centered on a trial court imposing an insanity defense against a defendant's will, while in *Read*, it was the defense counsel doing so. Both courts found that a defendant can competently refuse to raise an insanity defense, despite the presence of mental illness and the defendant's sanity at the time of the crime being in question. It is noteworthy that in *Read* the court enforced an insanity defense bolstered by the report of a forensic expert.

The Ninth Circuit noted several reasons behind their decision in *Read*, similar to those noted in *Frendak*, including that a defendant may wish to

avoid the stigma associated with a mental disorder as well as an emphasis on the defendant's retaining ultimate authority to make fundamental decisions regarding the case and bear the consequences of any such decision.

Read builds upon *Frendak* in emphasizing an individual's freedom to reject the insanity plea, establishing that defense counsel practicing in the Ninth Circuit may need to formally assess a defendant's capacity to reject an insanity defense before overriding the client's wishes. In such instances, it is highly likely that forensic experts will be relied upon to provide opinions on this specific question of capacity.

Community Caretaking as an Exception to Warrantless Residential Entry

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Warrantless Residential Entry Not Allowed in Non-Exigent Crisis Situations

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In *People v. Ovieda*, 446 P.3d 262 (Cal. 2019), Willie Ovieda argued that evidence found in his home during a warrantless entry should be suppressed at trial. The trial court denied this motion, citing the "community caretaking" exception to the warrant requirement as delineated in *People v. Ray*, 981 P.2d 928 (Cal. 1999); the state Court of Appeal affirmed the judgment. The Supreme Court of California reversed the judgment of the lower courts, holding that the community caretaking exception was not in fact a recognized exception to the residential warrant requirement.

Facts of the Case

In June 2015, police officers responded to the home of Mr. Ovieda after family members reported that he was suicidal and had access to a firearm. Upon arrival, police met with Trevor Case, a friend of Mr. Ovieda who had been present when Mr. Ovieda made suicidal statements. Mr. Case explained to the police that Mr. Ovieda had a history of suicidal ideation and attempts, and he had access to guns in his home. Mr. Case described that, earlier in the day, he, his wife (Amber Woellert), and Mr. Ovieda had been inside when Mr. Ovieda began making suicidal statements and attempted to get access to his firearms. Mr. Case said he prevented Mr. Ovieda from doing so by collecting the firearms and moving them to the garage. Given Mr. Case's concern for Mr. Ovieda, he contacted Mr. Ovieda's family, who in turn made a report to police.

Mr. Ovieda eventually left the residence voluntarily alongside Ms. Woellert and was subsequently handcuffed and searched. Police officers then conducted a "'protective sweep to secure the premises'" (*Ovieda*, p 266, citing the trial court's hearing on the defendant's suppression motion). Upon entry into the home, officers smelled marijuana and found paraphernalia related to "marijuana cultivation and concentrated cannabis production" (*Ovieda*, p 266). They also found ammunition for a weapon, a gun case, scales, and an industrial drying oven, prompting them to call for additional police to respond to the scene. No search warrant was obtained. Mr. Ovieda was charged with manufacturing a controlled substance, importing an assault weapon, and possessing a silencer and a short-barreled rifle.

Mr. Ovieda motioned to suppress the evidence found in the warrantless search of his home. The prosecution argued the search was justified under the community caretaking exception. That is, "circumstances short of a perceived emergency may justify a warrantless entry" into a private residence, such that police could ensure neither people nor property inside the residence needed protecting (*Ray*, p 934). Officers Corbett and Garcia testified at the suppression hearing. Officer Corbett testified that he "felt duty bound to secure the premises and make sure there were no people inside that were injured or in need of assistance" (*Ovieda*, p 266). Yet, on cross-examination, he conceded that Mr. Case had informed police that only he, Ms. Woellert, and Mr. Ovieda had been in the house at the time and that the