

Central to the ethics concerns of forensic work are the principles of truth-telling and respect for persons (Appelbaum PS: Ethics and forensic psychiatry: translating principles into practice. *J Am Acad Psychiatry Law* 36:195–200, 2008). In applying these principles to competency evaluations of individuals suspected of malingering, truth-telling prompts forensic psychiatrists to give honest, supported diagnoses but to also be aware of their own limitations.

In commenting on *United States v. Greer*, 158 F.3d 228 (5th Cir. 1998), Drs. Knoll and Resnick articulated that the assessment of malingering can be difficult, and a label of malingering can be given erroneously (Knoll JL, Resnick PJ: *U.S. v. Greer*. Longer sentences for malingerers. *J Am Acad Psychiatry Law* 27: 621–5, 1999). In light of the significant biasing effects that a diagnosis of malingering may have in the court, the principle of truth-telling calls for evaluators to make a diagnosis when confident and the evidence is present, but to not avoid truthfully stating uncertainty.

The principle of respect for persons also raises concerns for forensic psychiatrists in competency evaluations. In defining respect for persons, Dr. Appelbaum articulates that forensic psychiatrists should “not engage in deception, exploitation or needless invasion of the privacy” of individuals we evaluate (Appelbaum, p 197). Particularly with the knowledge that forensic reports could be used for unintended reasons, respect for persons calls upon forensic psychiatrists to take consideration of the information contained in reports so as to not exploit or needlessly invade privacy.

The principle of respect for persons raises the question of whether evaluatees should be warned that information obtained from the competency assessment could be used for purposes aside from a competency determination, with feigned incompetency affecting sentencing being one such example. Such a determination is not without consequences. Defendants may be more reluctant to engage in evaluations, and a chilling effect on the right to request competency hearings could result.

How to approach these considerations is for each forensic evaluator to decide but the growing number of cases similar to *Nygren* suggests forensic psychiatrists should be thoughtful about the accuracy of their assessments, what information to include in a

statement of non-confidentiality, and the breadth of information to include in their reports.

Competency to Stand Trial of Sovereign Citizens

Tetyana V. Bodnar, MD
Fellow in Forensic Psychiatry

Adrienne M. Saxton, MD
Assistant Professor of Psychiatry

Department of Psychiatry
Case Western Reserve University School of Medicine
Cleveland, Ohio

Adherence to Sovereign Citizen Movement Is Not Evidence of Incompetence to Stand Trial

DOI:10.29158/JAAPL.200088LI-20

Key words: post-trial review; competence to stand trial; sovereign citizen

In *United States v. DiMartino*, 949 F.3d 67 (2d Cir. 2020), the Second Circuit Court of Appeals considered whether the U.S. District Court for the District of Connecticut abused its discretion in denying a posttrial competency hearing to a member of the Sovereign Citizen Movement.

Facts of the Case

Terry DiMartino had been a successful independent insurance agent since the 1980s. Starting in 1996, he either did not file tax returns or filed erroneous tax returns. When the Internal Revenue Service (IRS) attempted to file liens against his property or to garnish his commissions, Mr. DiMartino tried to hinder the IRS’s efforts. For example, he purchased a home through a trust as a means of concealing his ownership of the property. He also sent letters to the IRS in which he stated that the federal government lacked legal or constitutional authority to collect taxes. He threatened IRS agents with legal action. He went so far as to pay his taxes with counterfeit bonds. He was largely successful in his attempts, paying less than 1.5 percent of his \$2.4 million income to the IRS between 2004 and 2013. Mr. DiMartino was ultimately charged in 2014 with one count of corruptly endeavoring to obstruct the

IRS, two counts of filing false tax returns, and five counts of willful failure to file tax returns.

Mr. DiMartino elected to represent himself at trial. At a *Faretta* hearing (following *Faretta v. California*, 422 U.S. 806 (1975)), it was determined that Mr. DiMartino knowingly, voluntarily, and intelligently waived his right to counsel, and he was appointed stand-by counsel. During the *Faretta* hearing, Mr. DiMartino testified that he “was in good health, that his mind was clear, and that he was not under the care of a psychiatrist” (*DiMartino*, p 70).

In the ensuing trial, Mr. DiMartino testified that he did not intend to violate the law. He explained his belief that the IRS and the Department of Justice were private corporations; that he was not subject to the court’s jurisdiction; and that the laws that required him to pay taxes were nonexistent or invalid. Mr. DiMartino’s defense was largely based on theories that are espoused by the Sovereign Citizen movement. Mr. DiMartino’s involvement with the movement was evident as far back as 2007, when he had been observed at a convention of Sovereign Citizens, seeking advice about avoiding paying taxes. The jury ultimately convicted Mr. DiMartino on all counts.

During the presentencing period, Mr. DiMartino retained counsel. The defense counsel submitted a motion seeking the court to order a posttrial competency evaluation accompanied by a report by a psychologist, Dr. Andrew Meisler. This report concluded that Mr. DiMartino had delusional disorder.

A *Daubert* hearing (named after *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)) was held to determine “whether Dr. Meisler’s proffered expert testimony ‘rest[ed] on a reliable foundation and [was] relevant to the task at hand’” (*DiMartino*, p 69, quoting *Daubert*) and whether there was reasonable cause to have a competency hearing. During this hearing, a court-appointed expert, Dr. Howard Zonana, testified about the proper method to diagnose delusional disorder and about his experience with Sovereign Citizens. The motion for a competency hearing was denied after the court ruled that the defense report by Dr. Meisler was “unreliable” (*DiMartino*, p 69).

Mr. DiMartino’s defense appealed the ruling, arguing that the trial court abused its discretion by giving no weight to Dr. Meisler’s report and failing to conduct a competency hearing. The defense cited

certain “red flag behaviors” that Mr. DiMartino demonstrated during the trial that should have warranted an evaluation of mental competence. These behaviors included Mr. DiMartino’s refusal to prepare an accurate tax return prior to sentencing, his reported beliefs that tax laws and his prosecution were illegitimate, his countless inaccurate filings with the court and with the IRS, and the multiple statements that he made about his legal theories.

Ruling and Reasoning

The Second Circuit affirmed the judgment of the district court and ruled that the district court did not abuse discretion in denying a competency hearing. The decision to deny a competency hearing was influenced heavily by the district court assigning no weight to the psychological report proffered by the defense. The district court applied Federal Rule of Evidence 702 (2011) and *Daubert* to determine the “reliability” of the defense’s psychological report.

The court determined that the defense’s psychological report was not reliable because it was not “based on sufficient facts [and] data” (Fed. R. Evid. 702). In writing the report, Dr. Meisler did not read transcripts from much of Mr. DiMartino’s trial and did not obtain collateral information regarding Mr. DiMartino’s asserted beliefs about the government. The court found that Dr. Meisler’s methods were unreliable because he did not consider Mr. DiMartino’s beliefs in the context of the Sovereign Citizen movement. Notably, Dr. Meisler agreed with Dr. Zonana’s testimony that one’s membership in a subculture is an important factor in determining whether one’s beliefs rise to the level of a delusion. Other circuit courts have previously ruled that beliefs aligned with tax-protestor movements are not *per se* evidence of mental incompetence.

Additionally, the district court appropriately relied on its own observations of Mr. DiMartino during the trial in determining whether there was reasonable cause to hold a competency hearing. The government pointed out that in defending himself, Mr. DiMartino demonstrated that he understood the nature and consequences of the proceedings against him. For example, Mr. DiMartino tried to persuade the jury that he lacked *mens rea*; he tried to appear sympathetic to the jury; and he attempted to have the jury nullify the law that he was charged with breaking.

Discussion

This case is important to forensic psychiatrists for two reasons. First, it serves as a reminder to use sound and reliable methods in conducting forensic evaluations, which may include seeking collateral information, using standardized and validated assessments, and formulating diagnoses in a reliable manner. According to *Daubert*, Federal Rule of Evidence 702 should be used as the standard for admitting expert testimony in federal trials. The judge serves as the gatekeeper and may consider factors including whether a theory has been tested, subject to peer review or published in scientific journals, has a known error rate, has general acceptance in the scientific community, and whether standards that govern its operation exist.

Second, in conducting forensic assessments, forensic experts should consider the individuals they are evaluating in the context of any relevant subcultural belief systems. A prominent subculture often seen in the U.S. legal system is the Sovereign Citizen movement. Adherents to this movement were estimated to number approximately 300,000 in 2014, but the movement has been gaining popularity, especially among African American and prison populations (Parker, GF: Competence to stand trial evaluations of Sovereign Citizens: a case series and primer of odd political and legal beliefs. *J Am Acad Psychiatry Law* 42: 338–49, 2014). Although there is not a singular, well-defined belief structure, there are several common themes adopted by adherents. Individuals who adhere to the movement often claim that the existing court system and state and federal governments are corrupt and are designed to deprive people of their individual property rights. Sovereign Citizens often do not seek licenses, pay taxes, or hold a Social Security number. These actions often result in legal actions against them. In court, Sovereign Citizens commonly raise inappropriate objections and file multiple illegitimate motions. They frequently choose to represent themselves and sometimes do not answer questions posed to them by judges, attorneys, or police. Although courts that are unfamiliar with this movement may order psychiatric evaluations of these individuals, adherents to these beliefs are generally not mentally ill and should be considered as espousing a cultural identity. (Although mental illness and subculture ideology can coexist, it is important to not conflate the two.) A Sovereign Citizen's legal views "[do] not evidence confusion on

the [defendant's] part about the legal proceedings against him, but rather [reflect] firmly held, idiosyncratic political beliefs punctuated with a suspicion of the judiciary" (*United States v. Brown*, 669 F.3d 10 (1st Cir. 2012), p 18).

Competence to Waive *Miranda* Rights

Selena R. Magalotti, MD
Fellow in Forensic Psychiatry

Charles W. Luther, MD
Assistant Professor

Department of Psychiatry
Case Western Reserve University School of Medicine
Cleveland, Ohio

***Miranda* Rights May Be Voluntarily Waived When the Accused Refuses Verbal Explanation of Rights by Law Enforcement**

DOI:10.29158/JAAPL.200088L2-20

Key words: *Miranda*; understand warning; voluntarily waive right

In *State v. Parker*, 459 P.3d 793 (Kan. 2020), the Kansas Supreme Court heard a direct appeal from the district court regarding admissibility of statements made after the defendant, Willie Parker, read his *Miranda* rights but refused to sign the waiver and refused to have law enforcement read his rights aloud to him. Mr. Parker argued that the district court should have suppressed the statements because the investigators did not take sufficient steps to ensure his understanding of his rights. Although Mr. Parker showed signs of mental illness, the court ruled that there was no reversible error in the district court's decision not to suppress the statements.

Facts of the Case

Mr. Parker was employed by Michel Ziade as a patient transport driver. On July 28, 2015, Mr. Parker and Mr. Ziade had a verbal argument in a parking garage regarding work hours and accountability. They insulted each other, used profanity, and ultimately engaged in a fist fight. Witnesses said that Mr. Parker hit Mr. Ziade. A co-worker broke up the