

districts could instead use cost-effective but potentially inappropriate intermediate steps to justify compliance with a child-find duty via these unclearly defined “proactive steps.” This could enhance disparities in access to mental health resources and accommodations for students in under-resourced districts. In particular, delays in evaluation and subsequent intervention can have a devastating impact on a child’s development, socio-emotional functioning, and prognosis. Additionally, at the current time, the ruling must be interpreted within the context of the coronavirus pandemic, which has amplified limitations in identifying, evaluating, and implementing an IEP for students with mental health difficulties qualifying for special education services.

Admissibility of Statements Made in Forensic Interviews

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Statements Made by a Defendant During a Forensic Interview Are Not Admissible for the Truth of the Matter

DOI:10.29158/JAAPL.210003L4-21

Key words: hearsay; expert testimony; psychiatric forensic evaluations

In *Commonwealth v. Rodriguez*, 484 Mass. 677 (Mass. 2020), Christian Rodriguez appealed his conviction of murder in the first degree to the Massachusetts Supreme Judicial Court on the theory of extreme atrocity or cruelty for the beating death of his roommate, Roosevelt Harris. Mr. Rodriguez argued that the trial court erred in ruling that explanations he gave during the forensic interviews were not admissible for the truth of the matter asserted. The court affirmed his conviction, ruling that while

a forensic expert may use an individual’s statements in forming conclusions, these statements are not themselves admissible.

Facts of the Case

At trial, the Commonwealth presented the following evidence. Mr. Rodriguez, the victim, and three others resided together in a rooming house in Boston. Mr. Rodriguez and the victim had a history of arguments while living together, including both verbal and physical altercations in which Mr. Rodriguez was the aggressor.

Two of the roommates testified that, on February 9, 2012, they heard noises coming from the victim’s room, including the sound of someone falling, eight to ten banging noises, and the victim grunting. They also testified that they heard someone run out of the apartment, and they discovered the victim lying face up with significant head trauma, barely breathing. Around the same time, a woman was parking her car and saw Mr. Rodriguez running toward her with a baseball bat. She recognized him from the neighborhood due to a scar on his face. She saw him place the bat in a garbage can, where she later returned to find a bloody metal bat. She also identified Mr. Rodriguez from a photo array.

Subsequently, Mr. Rodriguez’s jacket, shirt, and shoes tested positive for blood. A sample from his pants also matched the victim’s DNA profile. At trial, Mr. Rodriguez admitted that he used the baseball bat to kill the victim. The cause of death was determined to be blunt trauma to the head with associated skull fractures and brain injuries.

During the trial, the defense argued that Mr. Rodriguez lacked criminal responsibility for the victim’s murder. They presented evidence that Mr. Rodriguez was arrested in the early morning hours following the murder after unsuccessfully attempting to steal a car. A probation officer who met with Mr. Rodriguez hours after his arrest found him washing his hair in urine and his cell was smeared with feces. She observed him put his head in the toilet, but noted that he was redirectable when she told him to stop.

Also during the morning following the alleged murder, a state forensic psychologist evaluated Mr. Rodriguez to determine whether he was competent to stand trial. She described him as having brown liquid dripping from his face and noted a brown puddle in his cell. He was agitated, moving rapidly, speaking

rapidly, and his eyes were “looking around.” Mr. Rodriguez told the psychologist that he had been diagnosed with bipolar disorder at 8 years old, that he stopped taking his medications, and that he had a history of a significant head injury. He also reported hearing voices, some of which commanded him to do dangerous things. The psychologist concluded that he was psychotic at the time of the evaluation (i. e., the day after the murder), and she made a diagnosis of schizoaffective disorder.

An expert forensic psychiatrist hired by the defense also interviewed Mr. Rodriguez and diagnosed schizoaffective disorder, polysubstance use disorder, neurocognitive disorder, and posttraumatic stress disorder. The psychiatrist noted a history of suicide attempts, family history of mental illness, and no record of malingering in the state hospital records. Mr. Rodriguez described command hallucinations to the forensic psychiatrist, as well as use of heroin, cocaine, and marijuana 30 to 60 minutes prior to the victim knocking on his door requesting to purchase drugs for a friend. Mr. Rodriguez went to the victim’s room, and the victim did not have the money to pay for the drugs. When Mr. Rodriguez turned to walk away, the victim allegedly hit him with a baseball bat. Mr. Rodriguez reported that he was afraid for his life and heard voices telling him to hit the victim because he was an enemy. Mr. Rodriguez testified that he had no memory of the attack itself.

In rebuttal, the state called a forensic psychiatrist who opined that Mr. Rodriguez did not show true symptoms of a psychotic disorder. The state’s expert gave Mr. Rodriguez a diagnosis of antisocial personality disorder and substance use.

The judge instructed the jury that Mr. Rodriguez’s statements to the psychologist and psychiatrists were not admissible for their truth and could be considered only as information on which the experts relied in reaching their opinions. The jury convicted Mr. Rodriguez of first degree murder on the theory of extreme atrocity or cruelty.

Ruling and Reasoning

In affirming Mr. Rodriguez’s murder conviction, the Massachusetts Supreme Judicial Court ruled that the trial court did not err in determining that statements Mr. Rodriguez made to the doctors during the forensic interviews were not admissible for the truth of the matter asserted. The court reviewed the previous case law and rules of evidence in Massachusetts,

including *Commonwealth v. Comtois*, 506 N.E.2d 503 (Mass. 1987) and Mass. G. Evid. § 803(4), which established that there is a hearsay exception that physicians may testify as to statements of past pain, symptoms, and conditions made to them for the purposes of diagnosis or treatment. The court also described *Commonwealth v. Piantedosi*, 87 N.E.3d 549 (Mass. 2017), which held that “[a]lthough an expert may formulate an opinion based on facts or data not admitted in evidence, but that would be admissible with the proper witness or foundation, ‘the expert may not testify to the substance or contents of that information on direct examination’” (*Rodriguez*, p 683).

The court rejected Mr. Rodriguez’s argument that they should overturn previous case law and rule that the psychiatrist “should have been permitted to recite the defendant’s statements of ‘past pain, symptoms, and conditions’ that were made to him and other doctors” (*Rodriguez*, p 683) during the course of their diagnosis of the defendant and that the statements should have been admitted for the truth of the matter. The court’s reasoning for denying Mr. Rodriguez’s argument was that the hearsay exception for statements made for the purposes of medical diagnosis or treatment did not apply where a defendant made the statements during a forensic interview to determine criminal responsibility.

The court summarized its logic in ruling that statements made during forensic evaluations are not admissible for the truth of the matter as follows: “The reason for these forensic interviews is to assess the defendant for a legal purpose: to determine whether the defendant meets the legal definition of a ‘mental illness or mental defect’ and therefore cannot be held criminally responsible for the crime charged. Therefore, the statements made during the course of these assessments do not carry the same inherent reliability as statements made to a professional for purposes of medical treatment or diagnosis” (*Rodriguez*, p 684).

Discussion

While psychiatrists are often in the role of gathering information from clients for the purposes of treatment or diagnosis, forensic evaluations present unique ethics challenges for the practice of psychiatry and psychology. Forensic evaluations often involve a potential secondary gain by the subject of the evaluations; therefore, the information gathered should be subject to additional scrutiny in a courtroom. In

Rodriguez, the Massachusetts Supreme Judicial Court clarified that information gathered during forensic evaluations cannot be admitted to prove the truth of that information; rather, the information can be admitted for the sole purpose of explaining how the expert reached an opinion. In making its decision, the court emphasized that forensic interviews are inherently less reliable than clinical interviews, as defendants may be motivated by secondary gain in their legal case. Forensic interviews, however, are often more thorough than clinical interviews and often involve testing for malingering and a particularly heavy reliance on collateral information to inform the final opinion. Despite these practices designed to assess for potential deception in forensic interviews, the court ruled that information gathered during forensic interviews cannot be used to prove the truth of that information. The court's ruling serves as an important reminder that the potential for secondary gain by defendants may limit the admissibility of the information gathered in forensic interviews, no matter the safeguards put in place to assess for malingering.

Retroactive Application of Diversion Statute

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Retroactive Application of Diversion Eligibility Is Acceptable When Applied to a Class of Persons and for Ameliorative Benefit

DOI:10.29158/JAAPL.210003L5-21

Key words: diversion; eligibility; ameliorative; forensic assessment; court-mandated treatment

In *People v. Frahs*, 466 P.3d 844 (Cal. 2020), the Supreme Court of California upheld the decision of the California Court of Appeal to retroactively apply Cal. Penal Codes § 1001.35 and § 1001.36 (2018) to

Mr. Frahs's case. This conditionally reversed his conviction and sentence and remanded his case to the trial court for an eligibility hearing for pretrial diversion.

Facts of the Case

In March 2016, Eric Jason Frahs was asked to leave a market by the storeowner, who recognized him from a previous attempt to steal cigarettes. Mr. Frahs left the store and began throwing rocks at passing cars, striking and shattering a windshield. Mr. Frahs reentered the store and "grabbed a can of beer and an energy drink" (*Frahs*, p 846). When the storeowner and his son attempted to block his exit, Mr. Frahs "punched the owner in the head" (*Frahs*, p 846) and ran into the parking lot, where the owner and son detained him until police arrived. Mr. Frahs was "charged with two counts of second degree robbery and one felony count of throwing a substance at a motor vehicle with intent to cause injury" (*Frahs*, p 846).

Mr. Frahs testified about his mental health at his trial that same year. He described experiencing hallucinations and delusions since his early twenties, endorsed multiple psychiatric hospitalizations, and identified several months during which he required an appointed conservator. Mr. Frahs explained that, at the time of his arrest, he had not taken his psychiatric medications for four days and was experiencing severe hallucinations and delusions. He described specifically "he thought an angel flew by on a horse and talked to him just before he entered the market" (*Frahs*, p 846).

A clinical forensic psychologist who evaluated Mr. Frahs testified at the trial. He asserted that Mr. Frahs had a diagnosis of schizoaffective disorder, "was very ill and unstable" (*Frahs*, p 846), and was experiencing a psychotic episode that resulted in a disconnect from reality in the days preceding the incident. The psychologist testified that Mr. Frahs's behavior at the market was a result of a psychotic episode.

The jury found Mr. Frahs "guilty of two counts of second-degree robbery and [a] misdemeanor offense of throwing a substance at a motor vehicle without intent to cause injury" (*Frahs*, p 847). During a subsequent bench trial prior to sentencing, the court found Mr. Frahs had previously been convicted of a "strike" felony (under Cal. Penal Code § 667 (2012), a defendant convicted of a felony after a previous serious felony conviction is imposed a sentence double that for the provided crime) and thus imposed a nine-year sentence.