

defendant's mental health as it relates to self-defense and that evidence may be admissible, as long as the data do not enter the realm of insanity. This holding highlights the importance for experts to clearly articulate the severity of impairment, and the relationship, or lack thereof, to insanity.

Expert Testimony on Settled Insanity

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Expert Testimony on Permanent Psychosis Resulting from a Defendant's Substance Use is Permitted When It is Relevant to a Criminal Responsibility Defense

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Key words: settled insanity; substance-induced psychosis; complete defense; voluntary intoxication; mental health defense

In *State v. Abion*, 478 P.3d 270 (Haw. 2020) the Supreme Court of Hawaii considered whether the lower courts erred in prohibiting expert testimony regarding settled insanity as part of a criminal responsibility defense. The court ruled that the defendant had the right to present a complete defense, and the expert's testimony should have been permitted.

Facts of the Case

On January 11, 2016, a gas station employee saw Ramoncito Abion lying nearby on the sidewalk talking to himself. After she asked Mr. Abion to leave, he hit her in the back of the head with a hammer. During questioning by a police officer, Mr. Abion admitted he hit "the lady" with a hammer but asserted that she swept dust into his face and struck him first. He also produced the hammer from his backpack. At the time he gave the statement, it was noted that Mr. Abion was cooperative and did not appear intoxicated. But, the officer noted him to be

"really animated," displaying bizarre behavior, and experiencing auditory and visual hallucinations, and was unusually suspicious.

Mr. Abion was arrested and charged with second degree assault. He then requested a competency to proceed evaluation, as well as an evaluation to determine whether he was experiencing a physical or mental disease, defect, or disorder at the time of the offense. He was evaluated by three examiners, all of whom found him competent. Two of the examiners opined his cognitive and volitional capacities were not substantially impaired because of mental illness. The third examiner, Dr. Martin Blinder, determined that because Mr. Abion had permanent psychosis resulting from his methamphetamine use, he may be entitled to a mental health defense.

At a pretrial hearing, Dr. Blinder testified Mr. Abion would not have developed psychosis but for his use of methamphetamine. Dr. Blinder said that "protracted use of methamphetamines causes permanent brain damage. . . its effects apparent long after an individual has been free of the drug" (*Abion*, p 274). Dr. Blinder opined that were it not for Mr. Abion's psychosis, he would not have engaged in the attack. The State filed a motion of inadmissibility of Dr. Blinder's testimony, arguing it was irrelevant as intoxication is not a mental disease or defect. Ultimately the circuit court granted the State's motion for inadmissibility. They cited *State v. Young*, 999 P.2d 230 (Haw. 2000), which determined that drug-induced mental illness was self-induced intoxication, and therefore, under Haw. Rev. Stat. § 702-230 (2015), Mr. Abion was not eligible for a mental health defense. Thus, Dr. Blinder's testimony was considered irrelevant.

Mr. Abion's trial occurred on March 19, 2018. He did not call witnesses, and he did not testify. His defense counsel argued that Mr. Abion was "unable to conform his actions to societal norms, as indicated by testimony he was talking and laughing to himself despite [the officer's] report indicating that he was not intoxicated" (*Abion*, p 277). Mr. Abion was convicted of assault in the second degree and sentenced to five years imprisonment. He appealed, and the circuit court affirmed his conviction and sentencing. He then appealed to the Supreme Court of Hawaii.

Ruling and Reasoning

The Supreme Court of Hawaii ruled that the lower courts erred in precluding Dr. Blinder's testimony

for two primary reasons. First, the Supreme Court of Hawaii cited the lower court's misinterpretation of the holdings of *State v. Young*. Specifically, in *State v. Young*, the court ruled that self-induced intoxication cannot be the basis for an insanity defense. Here the state supreme court said that it was erroneous to apply these findings to Mr. Abion's case because he was seeking a defense based on a preexisting mental disease. The court distinguished *State v. Young*, in which the defendant experienced temporary intoxication at the time of the offense after voluntarily consuming alcohol and drugs prior to the offense. The court in *State v. Young* did not address whether a defendant experiencing long-term effects of voluntary substance use was entitled to the self-induced intoxication exception of Haw. Rev. Stat. § 702-230. The court found that permanent mental impairment resulting from voluntary intoxication may be grounds for an affirmative defense.

The second reason for the court's ruling pertains to Mr. Abion's constitutional right to present a complete defense. According to both the Hawaii's Constitution and the Federal Constitution, defendants have a right to present a complete defense, which includes asserting a lack of penal responsibility. Defendants have the right to present "any and all competent evidence" aiding in that defense (*Abion*, p 283, citing *State v. Acker*, 327 P.3d 931, 979 (Haw. 2014)). It was Dr. Blinder's opinion that Mr. Abion was not under the influence of methamphetamine at the time of the offense, but rather he was experiencing the long-term effects of its use and may be entitled to a mental health defense. Because the state erred by not allowing the testimony of Dr. Blinder, the Supreme Court of Hawaii held that Mr. Abion's due process right to present a complete defense was violated. The Supreme Court vacated and remanded the case to the circuit court for further proceedings.

Discussion

The Supreme Court of Hawaii first addressed the law of criminal responsibility with regard to voluntary intoxication. In some jurisdictions voluntary acute intoxication can be used to demonstrate diminished capacity to form specific intent necessary for the commission of an offense. That being said, voluntary acute intoxication precludes a defendant's being able to use an affirmative mental health defense in federal courts, as well as many state

courts. This is true even if the intoxication resulted in, or predictably exacerbated underlying, acute psychotic symptoms. Indeed, in *United States v. Knott*, 894 F.2d 1119 (9th Cir. 1990), the Ninth Circuit Court of Appeals said that "voluntary intoxication combined with a mental disease will not support an insanity defense" (*Knott*, p 1122).

Settled insanity is inherently different than acute intoxication. Unlike acute intoxication, settled insanity is a chronic psychiatric condition resulting from distal (or chronic) substance use. If it can be demonstrated that substance use triggered persisting psychotic symptoms outlasting the typical duration of acute intoxication, settled insanity could act as a basis for an insanity defense in some jurisdictions (Reisner A, Piel J. Is chronic methamphetamine-induced psychosis a mental disease for the purposes of insanity? *J. Forensic Sci.* 2020 July; 65(4):1382-3). It could be argued that settled insanity is an extension of pathological intoxication (i.e., an excessive, disproportional, unforeseeable response to ingesting substances). Thus, even if the substance causing settled insanity was voluntarily consumed, a defendant may be eligible for an insanity defense in some cases.

Both the trial and appellate courts acknowledged *State v. Young* and said that acute voluntary intoxication cannot be used as grounds for an insanity defense. But, in *Abion*, the argument concerned the timing of Mr. Abion's ingestion of methamphetamine in relation to his mental state during the commission of his offense when he was not acutely intoxicated. His psychiatric symptoms were thought to be triggered by a permanent psychosis attributable to past methamphetamine use. It was the lower courts' failure to take into account these temporal considerations that, in part, led to their decision's being vacated and remanded.

The second question raised in this case is that of Mr. Abion's constitutional right to present a complete defense. The court is permitted latitude in admitting evidence that is central to the defendant's claim of innocence, or in Mr. Abion's case, inculpability. Dr. Blinder's testimony was the only evidence Mr. Abion had to support his defense, making it an indispensable part of the defense strategy.

The right to present a complete defense is afforded to defendants under both federal and state laws. Indeed, in *Crane v. Kentucky*, 476 U.S. 683 (1986), the Supreme Court found that the Fourteenth

Amendment due process clause and the Sixth Amendment's confrontation and compulsory process clauses guarantee defendants "a meaningful opportunity to present a complete defense" (*Crane*, p 690). The failure to allow Dr. Blinder's testimony based on the erroneous interpretation of *Young* violated Mr. Abion's right to due process. Regardless of how the triers of fact would have used the testimony in their adjudication, the court ruled that the information should have been presented to them.

Disability Discrimination in Corrections

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Former Inmate Pleads Sufficient Facts of Disability Discrimination Under the ADA and Rehabilitation Act

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In *Epley v. Gonzalez*, 860 F. App'x 310 (5th Cir. 2021), the Fifth Circuit Court of Appeals considered whether the symptoms of posttraumatic stress disorder (PTSD) and traumatic brain injury (TBI) constitute disabilities under the Americans with Disabilities Act (ADA) (42 U.S.C. § 12101 et seq. (1990)) and § 504 of the Rehabilitation Act (29 U.S.C. § 701 et seq. (1973)). It also considered whether the Texas Department of Criminal Justice (TDCJ) intentionally discriminated against Charles Epley by reason of his disability as well as whether Mr. Epley's ADA claims were mere restatements of his medical care claims.

Facts of the Case

Charles Epley was incarcerated for 28 years at the TDCJ. He was diagnosed with PTSD and TBI stemming from a physical attack in 1994. He was granted

"single-cell medical restriction" based on these diagnoses (*Epley*, p 311). He was housed alone for most of his time in prison and was also granted work-related limitations. In 2016, he was transferred to the TDJC's psychiatric prison, the Montford Unit. He was initially placed in a single cell but was soon ordered to move to a multi-occupancy cell. Mr. Epley contended this triggered severe PTSD symptoms, which prevented him from entering the cell. He alleged that his symptoms of PTSD included "migraine attacks, confusion during stressful situations, sleeping disturbances, . . . anxiety and panic attacks, vivid and distressing flashbacks and nightmares" (*Epley*, p 313).

According to Mr. Epley, when he asked to speak to a psychiatrist, he was ordered to strip and was placed in an empty room. A gaseous substance was sprayed into this room, which left him "unable to think." This treatment was reportedly followed by guards' assaulting him, slamming his head to the ground, "crushing" him, causing "intense pain," and "breaking several ribs." Mr. Epley claimed that he was then handcuffed and returned to the multi-occupancy cell. Mr. Epley stated that the next day he was transferred 170 miles on a prison bus to a medical treatment facility. He said he was handcuffed and kept "in a stress position" for the entirety of the ride, which caused "excruciating pain" (*Epley*, p 311).

After his release from prison, Mr. Epley filed a civil rights complaint against multiple staff members of the TDCJ, asserting claims that included denial of medical care, excessive use of force, retaliation, due process rights violations, conspiracy, assault, battery, and negligence. The case was referred to a magistrate judge who granted the motion *in forma pauperis*. The magistrate judge then issued a report suggesting the district court dismiss all of Mr. Epley's claims on the bases of frivolity and his failure to state a claim for which the court could provide relief as required by the Prison Litigation Reform Act (28 U.S.C. § 1915(e)(2) (1996)). The magistrate's suggestion was adopted by the district court, which dismissed his case. Mr. Epley then filed an appeal with the Fifth Circuit Court of Appeals, alleging wrongful dismissal of his claims according to the ADA and § 504 of the Rehabilitation Act. The Court of Appeals granted a hearing.

Ruling and Reasoning

The Fifth Circuit Court of Appeals articulated that a qualified disability under the ADA is