

established by showing the presence of “a physical or mental impairment that substantially limits one of more of the major life activities of the individual,” “a record of such an impairment,” or “being regarded as having such an impairment” (42 U.S.C. § 12102 (2)). The court described changes made under the ADA Amendments Act of 2008 and regulations that make clear that the phrases “major life activities” and “substantially limits” must be broadly construed as the focus of the ADA is on “whether public entities have complied with their obligations” to accommodate (*Epley*, p 311, citing 28 C.F.R. § 35.108(d)(1)) (2016)). The court explained these changes were made in response to decisions from the Supreme Court that had placed too high a bar on qualifying disabilities under the ADA.

The Fifth Circuit said that Mr. Epley had clearly alleged his mental conditions of PTSD and TBI prevented him from complying with the guards’ orders to enter the multi-occupancy cell at the Montford Unit. Additionally, the court concluded Mr. Epley sufficiently alleged a record of his having a qualifying impairment under the ADA. This was evidenced by his housing restrictions, which were available to the staff at the Montford Unit via instantaneous electronic access to his medical records, which would have indicated that Mr. Epley was under the single-cell restriction. His claim that the staff of the Montford Unit were aware of his having a qualifying impairment under the ADA, and that he had an accommodation related to this impairment was supported by the fact that Mr. Epley had been placed in a single cell for his first four days at the facility.

The Fifth Circuit noted that Mr. Epley sufficiently pleaded that staff of the Montford Unit knew of his disability and the related accommodations but also that he needed medical transportation, as evidenced by his arriving at the Montford Unit in a medical van. The court therefore concluded that Mr. Epley sufficiently pleaded his contention that the Montford Unit officials knew of his disabilities as well as the accommodations he had been granted yet subsequently denied him the benefits of safe prison housing and appropriate transportation. With this, he had pleaded sufficient facts to show that he was discriminated in some fashion by “reason of his disability” (*Epley*, p 314).

The court acknowledged that an ADA claim cannot rest on precisely the same facts included in a claim for denial of medical care. But, the court concluded Mr. Epley’s ADA claims could be distinguished from

the claim for denial of medical care. The court explained that Mr. Epley’s ADA claims were based on his being denied accommodations of safe housing and appropriate transportation. The court clarified the housing and transportation accommodations Mr. Epley had stated were denied to him do not treat his underlying mental conditions. Based on these observations, the court of appeals concluded the district court’s rationale to dismiss Mr. Epley’s ADA claims (i.e., his ADA claims were simply restatements of his denial of medical care claims) was erroneous. The court of appeals reversed the judgment of the district court and remanded the case for further proceedings.

Discussion

The present case raises a number of important points for practicing psychiatrists. First, for purposes of an ADA claim, a qualifying disability can be either physical or mental in nature. Next, the court reiterated the definition of a disability under the ADA, including alternate ways disability can be established for the purpose of an ADA claim. The court emphasized that Congress has made clear that the terms “substantially” and “major” are to be understood and interpreted broadly.

Epley serves to remind psychiatrists performing disability assessments under the ADA to carefully document how the person’s condition meets the definition of disability and the types of accommodations, if needed, that are reasonably required. Such careful evaluations and documentation will allow others (e.g., courts, other clinicians, employers, etc.) to understand the nature of the disability and of the proposed accommodation(s). Failure to take into account one’s disabilities and accommodations can lead to legal action for discrimination.

Substantial Evidence of Mental Incompetence

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Procedural Due Process Requires a Competency Hearing When Substantial Evidence of Mental Incompetence is Presented from an Expert's Uncontested Opinion

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Key words: competence to stand trial; waive right to counsel; substantial evidence; retrospective; death penalty

In *People v. Wycoff*, 493 P.3d 789 (Cal. 2021), the Supreme Court of California considered whether the trial court erred in failing to initiate competency procedures after a forensic psychologist submitted a pre-trial opinion that the defendant was not competent to stand trial. The defendant subsequently represented himself and was found guilty of two counts of first-degree murder and was sentenced to death. The Supreme Court of California reversed the judgment on the basis that the uncontradicted opinion of a mental health professional presented, as a matter of law, substantial evidence of the defendant's mental incompetence.

Facts of the Case

On January 31, 2006, police responded to a call for service at the home of Julie and Paul Rogers, who had been fatally wounded. Mr. Rogers identified his brother-in-law, Matthew Wycoff, as their assailant and died soon afterward. The police arrested Mr. Wycoff later that day and interviewed him the following day. In the interview, Mr. Wycoff confessed to stabbing and killing Julie and Paul Rogers and to planning their murders in advance because he believed they were "really bad, rotten people." Mr. Wycoff underwent several changes in representation while awaiting trial. He had disagreements with two of his lead attorneys, Daniel Cook (who resigned shortly after Mr. Wycoff attempted to replace him via a *Marsden* motion; *People v. Marsden*, 465 P.2d 44 (Cal. 1970)) and Roberto Najera (who Mr. Wycoff tried to replace via another *Marsden* motion). Mr. Wycoff then sought to represent himself and filed a *Faretta* motion, explaining he was using the motion to remove Mr. Najera from his case. The *Faretta* motion was denied. Two months later, Mr. Najera resigned and was replaced by a new attorney. Mr. Wycoff filed another *Faretta* motion. Mr. Wycoff's stated rationale for the motion was that his attorneys were not respecting him, and he would punish them with self-sabotaging behaviors.

At this point, the trial court assigned a forensic psychologist, Paul Good, PhD, to evaluate Mr. Wycoff's competence to represent himself at trial. Dr. Good diagnosed Mr. Wycoff with severe mental illness, most probably schizophrenia. Dr. Good noted that while he demonstrated an adequate understanding of the legal proceedings, Mr. Wycoff was unable to rationally consult with counsel because of the symptoms of his mental disorder (including paranoia, grandiosity, and impaired judgment). Although Dr. Good was appointed to evaluate Mr. Wycoff's competence to represent himself, he opined that Mr. Wycoff was not competent to stand trial. In November 2008, the trial court granted Mr. Wycoff's *Faretta* motion after considering Dr. Good's report and the court's own observations of Mr. Wycoff. On September 10, 2009, during preparation for jury selection, the prosecutor asked the court to address its implicit finding of competence in light of Dr. Good's opinion. The court commented that Mr. Wycoff's in-court behavior had not provided any reason to question his competence to represent himself or his competence to stand trial. After taking two recesses to review the record and Dr. Good's report, the court repeated the beliefs articulated earlier.

During the guilt phase of his jury trial, Mr. Wycoff represented himself and admitted to murdering Julie and Paul Rogers, characterizing them as bad people and himself as a hero. He was found guilty of two counts of first-degree murder. During the penalty phase, Mr. Wycoff made inappropriate jokes, praised himself for the murders, portrayed himself as a victim, and introduced into evidence homemade video recordings of his escapades. In his closing argument, Mr. Wycoff repeated the above themes and threatened the prosecutor. The jury sentenced him to death. During sentencing, Mr. Wycoff continued to joke, read graphic poetry, and implied he lied during earlier testimony. The trial court commented "that [defendant] has at all times demonstrated that he is competent to stand trial and has been competent to stand trial and to waive his right to counsel" (*Wycoff*, p 803).

Ruling and Reasoning

The Supreme Court of California previously ruled in *People v. Rodas*, 429 P.3d 1122 (Cal. 2018), that if presented with substantial evidence of the defendant's mental incompetence, the trial court must

declare a doubt and initiate an inquiry, regardless of the source of the substantial evidence or other sources of evidence (including the court's own observations) that may suggest the defendant is competent. This was consistent with the U.S. Supreme Court's ruling in *Pate v. Robinson*, 383 U.S. 375 (1966), which held that a competency hearing is required once substantial evidence of incompetence exists, regardless of the defendant's behavior in court. The court also referenced its prior ruling in *People v. Lewis*, 140 P.3d 775 (Cal. 2006), which held the opinion of a qualified expert who had sufficient opportunity to examine the defendant and testifies under oath regarding the defendant's mental incompetence satisfied the requirements of substantial evidence.

The California Supreme Court was convinced that Dr. Good's examination and report, containing an uncontradicted opinion that Mr. Wycoff was not competent to stand trial because of his inability to cooperate with counsel, constituted substantial evidence of his mental incompetence. The court found the trial court failed to satisfy the procedural requirements of Cal. Penal Code § 1368(a) (2015) by not initiating an inquiry when Dr. Good's report was provided and erred once more a year later by not appointing counsel and initiating competency proceedings when the question of his mental incompetence was raised while Mr. Wycoff was representing himself. The court found the two brief hearings held by the trial court related to Dr. Good's report did not satisfy the procedural requirements for a competency hearing, as outlined by Cal. Penal Code § 1369, which under most circumstances, requires the appointment of one or two mental health experts and a jury trial.

The court referenced *Godinez v. Moran*, 509 U.S. 389 (1993), in which the U.S. Supreme Court established that competence to stand trial and competence to waive counsel were governed by the same standards. The court considered the argument that a defendant seeking to waive counsel does not require the ability to consult with counsel. The court held that to waive counsel, a defendant must be able to consult with counsel to understand and reason through the decision. The court further held that Mr. Wycoff's decision to waive counsel, his contentious relationships with counsel, and the symptoms of his mental disorder were directly related.

The court declined to make a conditional reversal to consider the feasibility of a retrospective competency trial. The court referenced cases in which judgment was reversed and no retrospective competency hearing was

ordered due to the difficulty of determining past competency, such as *Pate v. Robinson*, 383 U.S. 375 (1966), and *Drope v. Missouri*, 420 U.S. 162 (1975). The court noted thirteen years had passed since Mr. Wycoff's trial, and there were insufficient records to reasonably place him in a comparable position to when he was originally tried. The court ruled that a retrospective competency trial, in which the defendant bears the burden of proof, would violate Mr. Wycoff's due process rights.

The California Supreme Court reversed the conviction and sentence, noting that Mr. Wycoff may be retried if he is found mentally competent. If he again sought to represent himself, the trial court had the discretion to deny such a request.

Discussion

People v. Wycoff contributes to case law on the procedural rules in place to protect the due process rights of mentally incompetent criminal defendants. While the U.S. Supreme Court has defined the concepts of competency to stand trial and other criminal competencies, the exact procedures for ensuring constitutionally appropriate competency requirements have largely been deferred to the states' discretion. In *Pate v. Robinson*, the Court simply wrote "state procedures must be adequate to protect this right" (*Pate*, p 378). The court's ruling in *Wycoff* emphasizes the accountability and responsibility of trial courts in California to follow the statutory requirements for competency proceedings, as established by Cal. Penal Code § 1368(a), § 1369 and further articulated through case law. Most jurisdictions have similar procedural rules governing competency proceedings, but the laws vary from state to state. Forensic psychiatrists should familiarize themselves with the specific procedures of the jurisdictions in which they practice.

In *Wycoff*, the Supreme Court of California detailed the strengths of Dr. Good's report, which enhanced his credibility and the court's readiness to accept his conclusions as substantial evidence of mental incompetence. The court acknowledged that, in a different case, it previously found the opinion of a different psychologist to be "inherently unreliable" based on the evaluator's reputation, the insufficient factual basis for the conclusions, and the evaluator's failure to consider contradictory evidence (*Wycoff*, p 807). The Supreme Court of California favorably reviewed Dr. Good's detailed description of the evaluation procedures, extensive interview, thorough psychiatric history and mental status exam, appropriate use of psychological

testing, and detailed reasoning that addressed Mr. Wycoff's strengths, the specific impairment on which he concluded Mr. Wycoff was not competent to stand trial, and the relationship between his impairment and mental disorder. This speaks to the importance of the expert's credibility and the need for forensic psychiatrists to conduct and document the rigor of the assessment employed by the expert to reach a conclusion in competency to stand trial determinations.

Expert Witness Testimony in Hostile Work Environment Case

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Court Considers Whether Lower Court Erred in Precluding Testimony of Opposition's Retained but Non-Testifying Expert

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Key words: expert witness; hostile work environment; harmless error

In *Cooper v. City of St. Louis*, 999 F.3d 1138 (8th Cir. 2021), the Eighth Circuit Court of Appeals affirmed the district court's ruling after considering an appellant's claim that a district court had erred in not allowing him to utilize testimony and a report from the nontestifying expert psychiatrist retained by the City. The court said it would not reverse the trial court's decision to exclude testimony absent fundamental unfairness.

Facts of the Case

Rodney Cooper was a St. Louis Public Parks employee, working in a crew dedicated to Forest Park when he experienced a religious conversion in 2013. Following this event, he would frequently discuss religious topics at work, including God and Christianity.

Information from the lower court opinion in *Cooper v. City of St. Louis*, No. 4:16 CV 1521 RWS

(E.D. Mo. Jun. 22, 2018) is summarized here for additional relevant facts: During his deposition, Mr. Cooper reported that his supervisor called him nicknames, insulted him, and would allegedly often tell Mr. Cooper to "shut up." In a supplementary affidavit from Mr. Cooper's co-worker, it was disclosed that the supervisor once told Mr. Cooper that he would get fired "on the spot" if he did not stop praying. In his deposition, the supervisor admitted to calling Mr. Cooper "Reverend Rodney" but refuted the other allegations. Mr. Cooper additionally reported that he was overlooked for overtime opportunities by his supervisor.

Mr. Cooper pursued legal action for a hostile work environment and claimed that the City's actions caused his depression and anxiety. The circuit court opinion makes clear that Mr. Cooper filed an action against the City for hostile work environment on the basis of his religious beliefs and claimed damages, including emotional pain and suffering and mental anguish related to an intimidating environment.

On August 1, 2018, prior to his trial on August 20, Mr. Cooper shared intent to call Kristin Bulin, his treating therapist, as a witness. Mr. Cooper did not intend to call her as an expert witness, so the City requested to exclude Ms. Bulin's testimony. Another conference was held prior to the trial, and the district court postponed the trial date and ordered that Ms. Bulin be available for deposition by the City by September 14, 2018. Ms. Bulin was deposed, and the court ordered that if an independent medical examination (IME) was planned for Mr. Cooper, that it be completed by January 30, 2019. The City was also ordered by the court to share intent to call any expert witnesses by February 15, 2019 and ensure the availability of those experts for deposition by March 15, 2019. The new trial date was then set for June 10, 2019.

The City retained John Rabun, MD as a psychiatric expert, and he conducted an IME of Mr. Cooper on January 29, 2019. Though retained, the City did not officially disclose Dr. Rabun as an expert witness by the February 15, 2019 deadline imposed by the court. On March 18, 2019, Mr. Cooper requested Dr. Rabun's report and received the report shortly thereafter. Mr. Cooper then planned to call Dr. Rabun as a witness. The City argued that Dr. Rabun's testimony should be excluded because he was not designated as an expert by the City.

The district court agreed with the City on the grounds that Dr. Rabun was a consulting expert for