

by prescribed medications: An appellate case review. *J Am Acad Psychiatry Law*. 2015; 43 (3):321-8). Along with the related phrase “pathological intoxication” (historically more tied to unexpected reactions to alcohol), involuntary intoxication was once a catch-all category for a number of reactions to alcohol, as well as other neurotoxic or psychoactive substances. But the field of psychiatry now largely avoids inclusion of the phrase. The DSM-5 only creates a slight gap for it via “Other Adverse Effects of Medication” (American Psychiatric Association. *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)*. Washington, DC: American Psychiatric Publishing; 2013. p 714). Given its protean manifestations, involuntary intoxication has proved to be unwieldy in legal settings. One state supreme court described it as “a complete defense, albeit a disfavored one” (*State v. Mriglot*, 564 P.2d 784 (Wash. 1977), p 786). Another commentator, referring specifically to pathological intoxication, wrote that the multiplicity of possible symptoms and “reaction types” results in an entity bearing “more relation to legendary composite figures such as the minotaur and the centaur than to clinical reality” (May PR, Ebaugh FG. Pathological intoxication, alcoholic hallucinosis, and other reaction to alcohol; a clinical study. *Q J Stud Alcohol*. 1953; 14(2):200-27, p 200; see also: Feulner T. Note: The minotaur defense: The myth of the pathological intoxication defense. *Am Crim L Rev*. 2012; 49:1969–99).

Connecting Mental Illness to Criminal Conduct in the Insanity Defense

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Court May Reject Uncontested Expert Testimony on Insanity If the Defendant Has Not Established a Connection Between Mental Illness and Criminal Conduct

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In *State v. Weathers*, 260 A.3d 440 (Conn. 2021), the Supreme Court of Connecticut affirmed the Appellate Court’s finding that the trial court had not erred in its rejection of a defendant’s insanity plea. The state supreme court held that the trial court’s rejection of the opinions of two defense experts was not arbitrary, even in the absence of state experts arguing against insanity, as there was evidence other than the experts’ opinions suggesting that the defendant was feigning or exaggerating psychiatric symptoms. Furthermore, the state supreme court affirmed the lower courts’ findings that the defendant did not adequately prove a connection between his reported mental illness and his criminal conduct as related to the insanity defense.

Facts of the Case

On March 26, 2015, Gregory Weathers approached two construction workers at a job site and asked whether their company was hiring. They directed him to apply elsewhere. Another worker later recalled that Mr. Weathers behaved normally and appeared rational. Mr. Weathers initially walked away before re-approaching the two workers, reportedly looking to ensure the street was empty before continuing. Wordlessly, Mr. Weathers shot one of the workers, who later died from his injuries. Co-workers of the victim pursued Mr. Weathers as he zigzagged down the street and attempted to enter a locked vehicle. He was ultimately apprehended by police, after which he tried to run once more before surrendering.

Upon arrest, Mr. Weathers made statements such as “I messed up” and that he was involved in a “labor dispute.” During an interrogation with detectives, Mr. Weathers was noted to be able to understand and appropriately answer basic questions about his life. He was also described, however, as disorganized, unable to concentrate, and incoherently rambling. He stated he was “going crazy” and that he “needed help.” He also informed investigators that he was not working, needed to feed his family, and that he shot

the victim because of unemployment. Investigators postulated that Mr. Weathers was either mentally ill or under the influence of illicit substances.

Mr. Weathers raised the insanity defense, asserting that he met both the volitional and cognitive prongs. Two experts testified on behalf of the defense. One expert, a neuropsychologist, relied on collateral sources as well as an interview with Mr. Weathers. He described a slow decompensation after Mr. Weathers lost his job in 2013, marked with periods of suicidal thoughts, paranoia, disorganized thinking, and ideas of reference. He opined that Mr. Weathers was psychotic at the time of the offense but did not arrive at a specific diagnosis. While his report did not document a link between Mr. Weather's mental illness and his actions, this expert testified at trial that there was a connection.

Another expert, a forensic psychiatrist, relied on the same information as the neuropsychologist in forming his opinion. He concluded that Mr. Weathers was psychotic at the time of the offense, although he said he could not provide a more specific diagnosis. The psychiatrist described several factors that strongly suggested that Mr. Weathers was "embellishing his psychiatric symptoms," including a jail psychiatrist's conclusion that he was "trying to feign mental illness" (*Weathers*, p 449, n. 6), the atypical nature of his symptoms, and the fact that he had never disclosed any psychotic symptoms to others prior to the offense. Nonetheless, he opined that Mr. Weathers was in a state of psychotic disorganization and lacked substantial capacity to control his actions at the time of the offense, citing the "illogical nature of the act" (*Weathers*, p 451), the lack of apparent motive for the crime, and assessments immediately after the crime that indicated he was psychiatrically ill.

The state offered no expert of its own, relying on rebuttal during cross-examination, and theorized that Mr. Weathers may have been under the influence of illicit substances. They challenged the conclusion that he could not control his conduct. Both experts conceded on cross-examination that psychosis in itself does not necessitate the loss of control of one's actions.

The court found Mr. Weathers guilty and sentenced him to a 45-year prison term. The court concluded that Mr. Weathers had not met his burden of proving insanity in accordance with Connecticut General Statute § 53a-13 (2016), which states, "[I]t shall be an affirmative defense that the defendant, at the time the

defendant committed the proscribed act or acts, lacked substantial capacity, as a result of mental disease or defect, either to appreciate the wrongfulness of his conduct or to control his conduct within the requirements of the law." The court added that there was evidence Mr. Weathers was malingering. It concluded that his behavior had more likely been a result of frustration than a result of his mental illness and asserted that the defense experts had not sufficiently proven that Mr. Weathers could not conform his conduct within the requirements of the law.

Mr. Weathers appealed the decision, calling the trial court's decision to disregard the expert testimony arbitrary. The Appellate Court affirmed the trial court's decision, concluding that the trial court could rely on its own interpretation of Mr. Weathers' motive and weigh evidence presented by the prosecution to refute his claims. Mr. Weathers appealed the decision to the Supreme Court of Connecticut.

Ruling and Reasoning

The Supreme Court of Connecticut stated that the trial court could not reject expert opinion arbitrarily but also found that the record contained ample evidence that the trial court's decision was not arbitrary. The state supreme court noted that the role of an expert witness is to educate fact finders, drawing their attention to relevant symptoms and explaining how those symptoms affect behavior. The trier of fact is not limited to an expert's finding and may weigh things such as the expert's expertise and the reasonableness of the expert's opinion. A decision to disregard expert opinion must therefore be grounded in reason. The trial court in this case cited several factors that led to their dismissal of the experts' opinions, indicating that the dismissal was not arbitrary.

Although the trial court acknowledged that malingering, as alleged in this case, does not necessarily disprove the presence of genuine mental illness, it added that the forensic psychiatrist's opinion related to the presence of mental illness was tentative and not persuasive. The state supreme court also observed that neither expert appeared to fully substantiate that Mr. Weathers' conduct was caused by a mental illness that affected his behavior, in that they had not elaborated further on why Mr. Weathers' psychosis led to his actions in this case. The court noted that "the mere fact that the defendant violated the law does not establish the requisite connection, and, for the foregoing reasons, the trial court was not bound

to accept the opinions of the defendant's experts insofar as they purported to make that connection" (*Weathers*, p 464).

The judgment of the appellate court was affirmed.

Discussion

In this case, the trial court ruled that the experts failed to make a strong enough connection between mental illness and criminal conduct. This case highlights the importance of clearly and specifically identifying the ways in which the defendant's mental illness resulted in the inability to appreciate, understand, or control his conduct, as dictated by a jurisdiction's statutory language.

Similarly, this case highlights long-standing difficulties associated with the volitional prong of the insanity defense. The AAPL Practice Guideline for Forensic Psychiatric Evaluation of Defendants Raising the Insanity Defense indicates that Connecticut is one of only sixteen states to allow for an opinion of insanity based on the volitional prong alone (AAPL Practice Guideline, JAAPL. 2014; 42(4):S3-S76). Clinicians rarely rely on the volitional prong alone, raising concerns about the lack of a clear definition for an "irresistible impulse" and lack of reliable ways to objectively measure one's ability to resist (Donohue A, Arya V, Fitch L, Hammen D: Legal insanity: assessment of the inability to refrain. *Psychiatry* (Edgmont). 2008; 5:58-66). As the American Psychiatric Association wrote in their 1983 statement on the insanity defense, "The line between an irresistible impulse and an impulse not resisted is probably no sharper than that between twilight and dusk" (APA Statement on the insanity defense. *Am. J. Psych.* 1983; 140(6):681-8, p 685). This point was demonstrated in this case when the experts conceded that the fact that an illegal act was committed while a defendant was in a psychotic state does not necessarily mean that he lacked the ability to conform his conduct to the law at the time. In combination with the lack of a clearly illustrated link between the mental illness and the act, this concession likely lessened the consideration the fact-finder gave to the experts' testimony in this case.

Finally, this case highlights important considerations on the subject of malingering. The suspected presence of malingering appears to have played a significant role in the court's decision to disregard the experts' conclusions. Malingering is an emotionally charged word that may lead to bias, both on the part of the evaluator and on the part of the fact-finder.

Expert clinicians may have difficulty persuading the court that a defendant who shows some evidence of malingering can nonetheless be mentally ill and meet criteria for the insanity defense despite the malingering. Scenarios in which there is partial malingering by evaluatees who also have a mental illness or when an evaluatee feigns or exaggerates illness for psychotic reasons can be even more difficult to explain to the court without appearing less authoritative in one's opinions. Given this, if an evaluator does report that an evaluatee is malingering, the evaluation should be thorough and consider other factors that may be influencing the patient's reported symptoms.

Civil Commitment Proceedings

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Strict Adherence to Judicial Processes Required for Civil Commitment

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In *In re F.S.*, 496 P.3d 958 (Mont. 2021), the Supreme Court of Montana reversed the judgment of the district court to involuntarily commit the respondent to Montana State Hospital. The court held that the waiver of F.S.'s presence at the initial hearing on the state's petition for commitment was invalid. The court ruled that the district court did not meet the statutory standards when it accepted counsel's waiver of F.S.'s presence and observed that the trial court never informed F.S. of his rights at the later commitment hearing. Therefore, the court held that the error with respect to the respondent's presence was prejudicial and compromised the integrity of the judicial process required in commitment proceedings.

Facts of the Case

F.S., a 73-year-old man with a history of vascular dementia, was brought to the emergency room by providers at his nursing home due to increasingly