

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

volatile and threatening behavior. His providers reported he had a history of refusing medication as well as hearing problems, making communication with him difficult. The Flathead County Attorney in Montana filed a petition for involuntary commitment. The following day, the district court convened an initial appearance, but F.S. was not present. His attorney stated he was waiving F.S.'s presence at the hearing due to F.S.'s difficulties hearing and his dementia. The district court agreed to waive the initial appearance and indicated it would re-advise F.S. of his constitutional and statutory rights when he appeared in court next for the adjudicatory hearing.

At the adjudicatory hearing, F.S. appeared via video conference; he had a new attorney, present in the courtroom, and the state was represented by a new deputy county attorney, also present in the courtroom. The fact that the district court had not advised F.S. of his right was overlooked, and the court did not advise him of his rights at the adjudicatory hearing. At the conclusion of the hearing, the court found that F.S. had received a diagnosis of a mental disorder and required commitment because he could not care for his basic needs. Thus, F.S. was involuntarily committed to Montana State Hospital. F.S. appealed his involuntary commitment on the grounds that the waiver of his right to be physically present at the hearing was invalid, and he was never informed of his rights.

Ruling and Reasoning

The Supreme Court of Montana reversed the district court's order for involuntary commitment. First, the state supreme court stated that the district court did not satisfy statutory standards when it accepted counsel's waiver of F.S.'s presence at the initial hearing. Per Montana Code Annotated § 53-21-119 (2021), the respondent's right to be physically present at a hearing may be waived when the court makes a finding that either the presence of the respondent at the hearing would be likely to seriously adversely affect the respondent's mental condition and an alternative location for the hearing would not prevent the adverse effects, or the respondent has voluntarily expressed a desire to waive their presence. In the case of F.S., the court made neither of these findings.

Second, the state supreme court found that the district court failed to inform F.S. of his statutory and constitutional rights during either the initial

hearing or the later adjudicatory hearing. In fact, F.S. did not have an introduction to the commitment proceedings, and there was no record that anyone discussed his rights with him. The Supreme Court of Montana observed that the "probable value" of the initial hearing is substantial as it introduces a respondent to the legal proceedings that could "take away the respondent's liberty" (*In re F.S.*, p 963). Thus, the failure to inform F.S. of his rights compromised the integrity of the commitment proceedings and therefore made the waiver of his presence at the first hearing invalid.

Discussion

The holding in this case emphasizes the importance of strict adherence to civil commitment statutes and procedures given the liberty interests and substantial rights at stake. Despite the emergence of more robust criteria along with more formal and legalistic procedures for civil commitment across the United States in the 1970s, scholars and practitioners have continued to observe that adherence to these procedures is often lax, characterized by cooperative rather than adversarial hearings, minimal preparation by attorneys, and unquestioning acceptance of physicians' opinions. Given the intrusive nature of involuntary treatment on individuals' civil liberty rights, *In re F.S.* serves as an important reminder about the role of civil commitment procedures.

Clinicians must become and remain aware of the commitment laws and procedures in their jurisdictions, as these laws and procedures uniquely traverse patients' need for treatment and their civil liberties. In fact, clinicians may be in a position both to educate patients about their rights and to assess their level of understanding. Further, civil commitment procedures can vary across jurisdictions and change periodically within jurisdictions, so it is important that clinicians closely follow any changes in procedures. Failure to follow procedures strictly can lead to rights violations and diminish individuals' perceptions of procedural justice. As *In re F.S.* demonstrates, some courts may not be as scrupulous in enforcing the procedural requirements of civil commitment. In these contexts, well-informed and attentive observers, including clinicians, can play a role in bringing procedural deviations to the attention of legal actors.