

or data” and be “the product of reliable principles and methods” (28 U.S.C. § 792 (2011)). It is noteworthy to forensic psychiatrists that the Ninth Circuit did not consider the state court’s acceptance of Dr. Vega’s testimony to be unreasonable despite Mr. Dixon’s objections. The Ninth Circuit’s decision suggests that video evaluations, even in capital cases, are likely to meet the requirements of Rule 702, which is significant given the potential for an increasing frequency of such evaluations since the COVID-19 pandemic.

Insanity Partially Caused by Antisocial Personality Disorder

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Defendant Not Required to Prove Insanity Stemmed Solely from a Qualifying Disorder

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In *State v. Meiser*, 506 P.3d 402 (Or. 2022), the Supreme Court of Oregon considered whether a defendant entering an insanity plea is required by state law to prove that his asserted insanity was caused exclusively by a qualifying mental disorder and not in any way by a co-occurring personality disorder. The defendant, Erik J. Meiser, argued that the state’s insanity statute did not require him to prove that his mental condition at the time of the crime was solely the result of schizophrenia and not at all the result of antisocial personality disorder. The state supreme court agreed, holding that such a requirement is contrary to the meaning of the state’s insanity statute.

Facts of the Case

In 2012, after breaking into a martial arts studio and stealing a samurai sword, Mr. Meiser entered a home with a plan to force its occupants to transfer

\$40,000 to him under the belief that this was “the only way to protect his children” (*Meiser*, p 403). When the homeowners attempted to escape, he struck one of them repeatedly in the head, killing that individual. Mr. Meiser was subsequently charged with aggravated murder and multiple felony counts of robbery and burglary.

After being found incompetent to stand trial several times, Mr. Meiser was eventually restored to fitness following almost four years of treatment at the Oregon State Hospital. He proceeded to a bench trial, and his plea to all charges was “guilty except for insanity,” which is Oregon’s affirmative insanity defense. Guilty except for insanity is a complete defense, equivalent to the not guilty by reason of insanity defense used by many states.

Oregon’s applicable legal standard is codified in Oregon Revised Statutes § 161.295 (2011): “A person is guilty except for insanity if, as a result of mental disease or defect at the time of engaging in criminal conduct, the person lacks substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the requirements of law.” The statute clarifies that “solely a personality disorder” does not constitute a qualifying “mental disease or defect.”

During Mr. Meiser’s trial, the defense called three psychiatrists and a psychologist as mental health experts. All testified that he met criteria for both schizophrenia and antisocial personality disorder. Two of the psychiatrists testified that he met Oregon’s insanity standard because his mental disorder impaired his ability to conform his conduct to the requirements of the law at the time of the charged offense. Both testified that “if not for the psychosis, defendant would not have committed the crimes” (*Meiser*, p 404). One expert elaborated that “both . . . conditions were ‘active’ at the time of the murder,” but schizophrenia was “the predominant driver of his behaviors” (*Meiser*, p 404).

The prosecution argued that Oregon’s insanity statute required Mr. Meiser to prove that schizophrenia was the sole cause of his inability to conform his conduct to the requirements of the law, without any contribution from antisocial personality disorder. The prosecution contended that, because Mr. Meiser’s actions during the offenses “were . . . influenced by his anti-social personality disorder,” he failed to meet the state’s insanity standard (*Meiser*, p 404).

The trial court found Mr. Meiser guilty of murder and one count of second-degree burglary, while

finding him guilty except for insanity with respect to the remaining charges. Mr. Meiser appealed the murder conviction. He argued that by implicitly accepting the prosecution’s interpretation of the insanity statute, the trial court had committed a reversible error.

The court of appeals affirmed the trial court’s verdict. The appeals court agreed with the prosecution’s argument that Oregon’s insanity statute required defendants to prove that a qualifying mental disorder was the sole cause of their mental impairment at the time of the criminal act. The appeals court determined that a reasonable factfinder could conclude that Mr. Meiser’s mental condition at the time of the offense was influenced by both schizophrenia and antisocial personality disorder, that is, not exclusively by a qualifying disorder. Therefore, the appeals court ruled, the trial court had not erred by rejecting his insanity defense.

Mr. Meiser sought review from the Oregon Supreme Court, which granted *certiorari* as to whether “a combination of a qualifying and nonqualifying impairments” is a permissible cause of insanity under state law (*Meiser*, p 405).

Ruling and Reasoning

The Oregon Supreme Court rejected the appeals court’s determination that the state’s insanity statute required Mr. Meiser to prove that “his asserted lack of capacity was solely the result of his schizophrenia and in no part the result of his antisocial personality disorder” (*Meiser*, p 406). The case was remanded to the appellate court for further consideration.

The state supreme court concluded that the appellate court’s interpretation of Oregon’s insanity statute was contrary to legislative intent. The state legislature had amended the statute in 1983 to exclude personality disorders from the definition of “mental disease or defect.” The stated motivation for adding this exclusion was to prevent “recidivists” from qualifying for insanity based only on a personality disorder or repeated antisocial conduct. But, the legislature’s drafting task force specifically emphasized that an individual with “a personality disorder plus a psychosis . . . may still qualify” (Oregon State Legislature Tape Recording, House Committee on Judiciary, May 31, 1983, HB 2075, Tape 386, Side A, statement of Legal Counsel Linda Zuckerman). The legislature did not desire to narrow the insanity defense to the extent that a defendant with a qualifying mental disorder would become ineligible for a finding of insanity due to a co-occurring personality disorder.

Discussion

Given the high rate of comorbid personality disorders observed in justice-involved individuals with severe mental illness, the state supreme court’s ruling in *Meiser* has the potential to affect many defendants in Oregon considering a plea of guilty except for insanity. This ruling makes clear that impairment from a combination of qualifying mental disorder and a co-occurring personality disorder may hypothetically meet Oregon’s standard for insanity. But, it remains unresolved if there is an upper limit to the permissible contribution from a personality disorder, above which a defendant becomes ineligible to be found insane.

In the absence of a known limit, the forensic mental health evaluator can aid the trier of fact in parsing the relative contributions of qualifying and nonqualifying disorders to the defendant’s mental state at the time of the crime. In addition to insanity, the concepts raised by this case may apply to other legal situations requiring a nexus between a qualifying mental disorder and a criminal act, such as pretrial mental health diversion. Without specific statutory guidance, it will be left to the courts to determine whether individuals with both qualifying and nonqualifying disorders are eligible for these programs.

Litigation Challenges in Cases Involving Patient Suicide

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Plaintiffs are Tasked with Proving “But For” Causation to Establish Defendant’s Negligence in Cases of Suicide

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In *Pediatrics Cool Care v. Thompson*, 649 S.W.3d 152 (Tex. 2022), the Supreme Court of Texas