

(such as a treating health care provider). Thus, if treating clinicians provide expert testimony, they are held to higher standards of admissibility.

The practical question becomes how litigants verify the qualifications of an expert witness and whether they meet the standards set forth by a jurisdiction. In this case, Mr. Gruttemeyer provided information about Ms. Buda Dardon's qualifications that he thought was accurate. Additionally, Metro's objection to the district court admitting Ms. Buda Dardon's testimony without expert disclosure is inapplicable as she testified as a treating practitioner only, and not about the causation or topics outside of Mr. Gruttemeyer's disability. To avoid similar mishaps, opposing parties should play an active role in verifying the qualifications of expert witnesses.

Mentioned in the case opinion was that Metro had also sought to exclude evidence of Mr. Gruttemeyer's diagnosis of major depressive disorder because he had only identified bipolar disorder as a disability in his complaint. The district court denied Metro's request on the grounds that Metro was aware through discovery of Mr. Gruttemeyer's other diagnoses. Metro argued that *EEOC v. Lee's Log Cabin, Inc.*, 546 F.3d 438 (7th Cir. 2008) was persuasive authority. In *Lee's Log Cabin*, the Seventh Circuit affirmed a district court's decision that AIDS and HIV were not synonymous, "given the symptomatic variances." In contrast, in *Gruttemeyer*, the court ruled that Mr. Gruttemeyer's diagnoses (major depressive disorder, anxiety, and bipolar disorder) are interrelated, and their inclusion was unlikely to change fundamentally the factual basis of the case.

From this case, several questions may arise for the psychiatric expert, such as when diagnoses are mutually exclusive and what criteria are used to make these determinations clinically and in law. Research on the biological and psychosocial underpinnings of psychopathology overwhelmingly suggest difficulty in discrete conditions. There is substantial evidence that many of the same genes underlie seemingly distinct disorders. Additionally, a mental health condition often predisposes an individual to other mental health conditions, regardless of how distinct the symptoms may be. Much the way the court noted that Mr. Gruttemeyer's varied diagnoses are interrelated, mental health conditions are often not separated by hard dividing lines.

Should the expert witness need to draw distinctions among mental disorders, presently the best available resource would be the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition

(DSM-5), which provides both a categorical and dimensional approach to diagnosis and classification. The dimensional approach provides more latitude to assess disorders on the basis of severity and range of symptoms, allowing for an integrative approach to diagnosis and classification. On the other hand, a severe manifestation of a disorder may be sufficiently different in "symptomatic variances" from a mild manifestation that a distinction may be drawn on a dimensional basis when answering a particular legal question.

To prevail on the ADA employment claim, claimants must establish that the defendant knew of their disability, or record of disability, and it was a motivating (i.e., discriminatory) factor in the employee's termination. In *Gruttemeyer*, part of the evidence presented in support of this was the fact that Metro, a bus driver, and the Union president spread rumors about Mr. Gruttemeyer's mental health, calling him, "nuts," "crazy," and "unstable." There was evidence that this was known to Metro's executive director. These types of comments reflect stigma against individuals with mental illness and can be used as evidence in court of discrimination.

## Judicial Discretion, Competency, and Due Process Rights in Juvenile Arraignments

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### Constitutional Due Process Protections Were Satisfied Despite Court's Denial of Juvenile's Motion to Continue Arraignment for Competency Evaluation and Subsequent Petition for Arraignment Expungement

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In *Commonwealth v. Carson C.*, 187 N.E.3d 361 (Mass. 2022), Carson C. (referred to solely as "the

juvenile” in the case) argued that his due process rights were violated when a judge denied his continuance motion at arraignment to obtain a competency evaluation. The juvenile further argued that the judge abused his discretion in denying the juvenile’s petition for expungement four months following the arraignment, when the juvenile was found incompetent to stand trial and his charges were dismissed. The Supreme Judicial Court of Massachusetts disagreed and affirmed the lower court’s decisions.

#### Facts of the Case

In March 2019, as the result of two separate incidents, a 13-year-old juvenile was charged with disturbing the peace, disorderly conduct, two counts of vandalism, and three counts of assault and battery with a dangerous weapon. At the time of both events, the juvenile was in the custody of the Department of Children and Families (DCF), residing in a treatment facility for children with developmental disabilities, psychiatric illness, or trauma history.

In April 2019, the juvenile appeared in juvenile court for arraignment. He had previously filed a continuance motion to undergo a pre-arraignment competency evaluation because of concerns raised by his defense counsel and treatment facility staff. The prosecution opposed the motion and argued that incompetency did not preclude the possibility of arraignment and that a competency examination could proceed after arraignment.

During the motion hearing, the judge conducted colloquies of the treatment facility director and the juvenile. The judge questioned the juvenile about his family and school. The juvenile provided coherent and factually accurate responses. When asked about the role of a judge, the juvenile stated that he did not know. Following the colloquies, the judge denied both the continuance motion and the motion to dismiss, and he arraigned the juvenile. The juvenile was conditionally released to DCF’s custody and was returned to the treatment facility.

Months later, a forensic psychologist evaluated the juvenile and concluded that he was incompetent to stand trial and unlikely to become competent in the foreseeable future. At that point, the prosecution moved to dismiss the charges, and the judge who had arraigned the juvenile declared the juvenile incompetent and dismissed the charges. The juvenile then moved for reconsideration of the previous denial to continue his arraignment and petitioned

for expungement, arguing that the judge erred in proceeding with the arraignment. The judge denied the motion and petition. The juvenile appealed and argued that the denial of his motion for a pre-arraignment competency evaluation constituted a constitutional due process violation.

#### Ruling and Reasoning

In affirming the juvenile court’s ruling, the Supreme Judicial Court of Massachusetts held that the juvenile court did not abuse its discretion in denying the juvenile’s request for continuance of arraignment to obtain a competency evaluation after determining that the juvenile was competent. The court pointed to Massachusetts statutory law supporting a judge’s discretionary authority to order a competency examination at any stage of the proceedings after the issuance of a criminal complaint. The court then emphasized that, although medical expert opinion might be helpful to the court, competency determination is a legal judgment. Accordingly, a judge has discretion to determine whether circumstances call for expert opinion on competency or whether independent judicial assessment of a defendant’s capacity to participate in an arraignment would suffice.

The court contrasted the significance of a defendant’s competency at arraignment versus trial by underscoring the limited function of an arraignment in providing notice of criminal charges to a defendant, while emphasizing the trial as a “pivotal truth-seeking event” requiring a defendant to participate fully and make decisions to prevent erroneous conviction of those charges. Considering this distinction, the court stressed that the inquiry of competency at an arraignment does not need to be as comprehensive as an evaluation required for standing trial.

The court acknowledged that, because of age and immaturity, a more careful inquiry may be justified at arraignment in juvenile cases, because a juvenile may not understand the jargon, charges, and process involved in a criminal matter. The court recognized studies showing high rates of mental illness, substance use disorders, and trauma in justice-involved youth, which would make expert opinion potentially useful to a judge assessing a juvenile’s competence prior to arraignment. The court noted that, while constitutional due process requires cessation of a trial involving an incompetent defendant, a finding of incompetence does not require cessation of all pre-trial proceedings. The court referred to due process

as a flexible concept that depends on the situation and the competing interests of the defendant, the prosecution, and the protection of the public.

Ultimately, the court found that the juvenile court's competency determination was not an abuse of judicial discretion and, accordingly, did not represent judicial error. While the juvenile in this case did not know the judge's role and was not asked about the roles of other courtroom personnel, the judge's colloquy did not unveil any gross intellectual deficits suggesting that the juvenile was incompetent. There was no abuse of judicial discretion in declaring the juvenile competent, so the juvenile's due process claims were foreclosed. Consequently, the juvenile was ineligible to petition for expungement.

#### Discussion

While *Commonwealth v. Carson C.* hinged on whether the juvenile court abused its discretion in declaring a juvenile competent and moving forward with arraignment, two important points can be drawn from the case. First, while a defendant's competence is required for trial, certain pretrial proceedings may not require the same degree of scrutiny regarding a defendant's competence as expected for trial. Forensic evaluators who are accustomed to performing competency evaluations may expect that in all stages of criminal matters, particularly for a juvenile defendant, the defendant should be found competent prior to moving forward in legal proceedings. In contrast, this case highlights that the approach and standard involved in determining a defendant's competence during pretrial hearings may be less stringent than at trial.

Arraignment, a constitutionally required process of providing a description of pending criminal charges, ensures that a defendant receives fair notice of charges prior to trial. While arraignment permits formal entry of charges onto a defendant's record, the range of decisions by a defendant and the possible consequences related to those decisions at arraignment are limited in complexity when compared with trial. As discussed by the court in this case, an arraignment simply requires that defendants understand the general concept that charges have been brought against them, the nature of the charges, courtroom personnel roles, and any imposed release conditions. Conversely, at trial, a defendant must possess a "rational as well as a factual understanding of the proceedings against him," and a "sufficient present ability to consult with his lawyer" (*Dusky*, p 402) to meet the requirements

of a fair trial and to protect liberty interests against erroneous conviction under *Dusky v. United States*, 362 U.S. 402 (1960). Accordingly, a judge's independent determination that a defendant, including a juvenile defendant, is competent at arraignment without the assistance of medical opinion will likely be upheld.

Second, this case highlights that neither a question nor a finding of incompetency precludes a pretrial hearing, such as arraignment, from taking place. Accordingly, a judge may decide to proceed with an arraignment despite finding a defendant incompetent. In such cases, a judge must balance the competing interests of a defendant, the prosecution, and the general public. Should a judge determine that, on the basis of the involved pretrial issues, an incompetent defendant's interests are outweighed by those of the prosecution and public, a pretrial hearing, including arraignment, may proceed.

The potential consequences of such an approach may affect justice-involved youth more heavily than adults, when considering the ramifications of initiating delinquency proceedings. Once a juvenile is arraigned, a court activity record information (CARI) record is established. Regardless of the outcome of the proceedings, a CARI record may become a permanent fixture in a juvenile's life and result in lasting adverse effects, including enhancing future charging and sentencing, and limiting education, career, and military service opportunities. In this case, although the juvenile was eventually found incompetent and his charges were dropped, his juvenile criminal record continues to contain information that may lead to negative consequences into his adulthood.

Given the court's recognition of studies demonstrating associated mental illness, substance use disorders, and trauma in a high percentage of justice-involved youth, the immaturity of juveniles, and the longitudinal risks associated with having a juvenile record, one might question whether arraignment in juvenile court should carry more stringent standards and comprehensive assessments of competency. Ultimately, determination of competency is a legal judgment. While courts typically seek assistance from mental health professionals when there exists reason to believe there is a question of competency, it is left to a judge's discretion to determine when and how to assess a defendant's competence.