mental stress of the choking incident was not the predominant cause of mental injury.

The court also concluded that the Commission did not err by affirming the Board’s denial of a SME. Additionally, the court ruled that the Board’s exclusion of parts of Ms. Magestro’s testimony was not prejudicial, particularly because Ms. Magestro conceded she was unqualified to offer diagnoses. Ms. Patterson was permitted to present other opinions by qualified experts, yet the Board assigned more weight to the opposing expert.

Discussion

This case addressed both “physical-mental” and “mental-mental” claims and describes criteria mental health professionals involved in worker’s compensation cases may use to evaluate an individual’s injury. The court’s holding highlights the importance of considering context when clinicians assess the extent of a claimant’s injury. In this case, although a school nurse may be expected to encounter choking emergencies with children, the progression of the choking and the outcome (i.e., death) may have had a differential impact, rendering the event traumatic. One expert witness provided testimony that the child’s death would be extraordinary and unusual stress for a school nurse. Offering a similar analysis regarding the specific circumstances would be consistent with the court’s recommended practice of taking key details into account.

In addition to considering facts of the case, the claimant’s preexisting conditions may make evaluation of proximate cause difficult, particularly when personality pathology is present. Ms. Patterson may have had characterological personality traits in addition to a traumatic response to the choking incident. Although the Board ruled in favor of the defendant owing to Dr. Sheorn’s testimony, other clinicians noted both PTSD and personality traits. This scenario is similar to the “eggshell plaintiff rule,” indicating a defendant is still liable for uncommon reactions resulting from preexisting conditions. This case emphasizes the potential difficulty in attributing symptomology to a causal event, and thus the need for evaluators to communicate their rationale to the court clearly.

Finally, the court affirmed the Board’s assigned weight to the testimony of the various experts involved in this case. In reviewing the original case before the Commission, Dr. Sheorn was described as “conscientious, reliable, and credible” in her report, while noting that Dr. Glass did not appear to review records or a previous evaluation (Patterson v. Matanuska-Susitna Borough School District, AWCAC Appeal Nos. 18-023 and 19-020 (2020)). Supported credible analyses, as well as one’s qualifications, are factors considered for determinations of credibility and weight given to expert testimony.

Forensic Practitioner Testimony and Jury Instructions Involving Insanity Defense

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Jury Instructions Were Sufficient for Defining Mental Disease or Defect, the Difference between Criminal Responsibility and Diminished Capacity, and the Role of Substance Use

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In Commonwealth v. Toolan, 194 N.E.3d 674 (Mass. 2022), the Supreme Judicial Court (SJC) of Massachusetts affirmed Thomas E. Toolan III’s convictions of murder in the first degree and assault and battery by means of a dangerous weapon, finding no error in jury instructions regarding the definition of “mental disease or defect” or the difference between “criminal responsibility” and “diminished capacity.” The SJC further held that there was no error in the trial judge’s decision to not instruct the jury to consider the defendant’s inability to resist the urge to use drugs and alcohol.

Facts of the Case

Mr. Toolan and the victim, Elizabeth Lochtefeld, met in New York in September 2004 and began dating shortly thereafter. On October 23, 2004, Ms. Lochtefeld ended the relationship because of Mr. Toolan’s excessive drinking. That same day, Mr.
Toolan called a friend, who later found Mr. Toolan at a bar drinking vodka and appearing intoxicated. His friend convinced him to refrain from attempting suicide. On October 24, 2004, Mr. Toolan purchased a one-way plane ticket to Nantucket, Ms. Lochtefeld’s place of residence. Airport security prevented him from boarding the plane because he appeared intoxicated and possessed a “large kitchen knife.”

On October 25, 2004, Mr. Toolan returned to the airport, purchased another one-way ticket, and successfully traveled to Nantucket. On arrival, he rented a vehicle and drove to a surf shop seeking a knife. He was directed to another store, where he then purchased three knives. Next, he drove to Ms. Lochtefeld’s cottage, approached the landlord, and inquired as to whether Ms. Lochtefeld was home. The landlord, concerned by Mr. Toolan’s appearance, stated that she was unaware of Ms. Lochtefeld’s location, despite knowing that she was home. Mr. Toolan then entered the cottage, where the door and window shades were open. He stabbed Ms. Lochtefeld 23 times, leaving blood on multiple surfaces throughout the apartment. Before leaving, Mr. Toolan drew the shades and closed the door. Next, he drove back to the airport and took a flight to the nearest mainland airport, where he rented a vehicle to drive back to New York City. Shortly thereafter, officers found Ms. Lochtefeld’s body and obtained Mr. Toolan’s contact information. Subsequently, Rhode Island State Police interdicted him driving on Route 95; he was placed under arrest. Two hours later, he took a breathalyzer test, producing a blood alcohol level of .185. When Massachusetts State Police arrived, Mr. Toolan stated that he had not seen Ms. Lochtefeld for three days. His clothing later tested positive for her blood, and officers found empty bottles of alcohol, as well as prescription bottles of sertraline and clonazepam, in his apartment.

On January 10, 2005, Mr. Toolan was indicted for murder in the first degree and assault and battery by means of a dangerous weapon. The initial convictions for both charges were vacated and remanded for retrial because of several procedural improprieties in the trial. At his second trial, he asserted a lack of criminal responsibility because of mental disease or defect and intoxication. The defense called three expert witnesses. First, Dr. Anthony Joseph opined that Mr. Toolan was not legally sane at the time of the stabbing because he lacked the capacity to conform his conduct to the requirements of the law. Second, Dr. Donald Davidoff opined that Mr. Toolan had frontal lobe damage owing to “chronic alcohol abuse.” Finally, Dr. Robert Tittman testified that taking multiple medications can cause confusion, aggravate psychosis, and exacerbate the effects of alcohol. The Commonwealth’s expert, Dr. Martin Kelly, opined that Mr. Toolan experienced features of narcissistic and antisocial personality disorders and addictions to alcohol and benzodiazepines. Further, Dr. Kelly testified that these features were not considered “mental disease[s] or defect[s],” noting several of Mr. Toolan’s actions which indicated that he maintained his ability to understand wrongfulness and conform his conduct. Importantly, Dr. Kelly described mental disease or defect as “words in the statute that determine criminal responsibility, so-called insanity in the state” (Toolan, p 683). Mr. Toolan was convicted of both charges. He appealed.

Ruling and Reasoning

According to prior case law in Massachusetts, a “person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect, he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of the law” (Commonwealth v. McHoul, 226 N.E.2d 556 (Mass. 1967), p 558 citing the Model Penal Code § 4.01 (Proposed Official Draft, 1962)). Under state law the use of substances does not preclude the use of the insanity defense, so long as the defendant did not know, or have reason to know, that the use of substances would exacerbate a mental condition. Mr. Toolan raised multiple challenges on appeal regarding the trial court’s error in failing to provide the appropriate jury instructions.

First, Mr. Toolan argued that the judge should have clarified the legal meaning of “mental disease or defect” after Dr. Kelly provided a legal definition, in addition to a clinical one, potentially causing the jury to not understand that they were not required to adopt any particular definition. The judge, however, instructed the jury, “the phrase ‘mental disease or defect’ is a legal term, not a medical term. . . . It is for you to determine. . . .” (Toolan, p 683). The court stated, “[w]hile an expert may frame his or her testimony in terms of the McHoul test, it is
preferable that the testimony be given in purely medical or psychological terms” (Toolan, p 683). Ultimately, the court found that Dr. Kelly’s testimony was permissible, because he only briefly mentioned the legal definition and then reframed his answer on objection.

Second, Mr. Toolan asserted that the judge did not sufficiently explain the difference between a lack of criminal responsibility (based on mental disease or defect) and diminished capacity (based on mental impairment), and that the jury may have assumed that they cannot find that the defendant had a diminished capacity if he was criminally responsible. The court ruled that the judge’s instructions were adequate, as he presented the two concepts as two separate factors to consider. Further, in this case, the court found that the evidence regarding premeditation was so strong that any confusion was unlikely to lead to error.

Finally, Mr. Toolan contended that the jury should have been instructed to consider Mr. Toolan’s inability to resist the urge to use drugs and alcohol, even if he knew the effect it would have on his mental state. He argued that this further instruction should have been given when the jury received instruction that a defendant who voluntarily uses substances, knowing the effect it would have on an existing mental disease or defect, is still criminally responsible. In affirming the convictions, the court acknowledged that the science previously relied on no longer reflects the current understanding of addiction and how it may affect a person’s urges to use drugs or alcohol. The court determined, however, that Mr. Toolan’s conduct was knowing and intentional and, therefore, did not meet the criteria for insanity.

Discussion

Three key themes relevant to forensic practitioners emerge from Toolan. First, the importance of stating opinions in medical or psychological terms, rather than legal terms, is of primary concern. The fields of forensic psychology and psychiatry have long understood the importance of not intruding on the domain of the trier of fact. Attempts to bridge the gap between clinical practice and legal concepts, however, may lead to the confflation of terms. Although the court in Toolan was relatively forgiving of the Commonwealth’s expert who referred to the “statute,” the appeal itself demonstrates the importance of ensuring that practitioners testify using the nomenclature of their field (i.e., clinical terms) rather than legal lexes.

Second, practitioners should understand the importance of the distinction between criminal responsibility and diminished capacity. The Toolan case demonstrates the difficulty in differentiating the two concepts. Although this distinction may not be applicable to many practitioners who practice in states in which they are not asked to conduct evaluations of diminished capacity, forensic evaluators should be aware of this difficulty. Notably, there is no consensus among the field regarding evaluative procedures or across jurisdictions about the role of forensic practitioners. Evaluators asked to opine on diminished capacity should ensure that they are not conflating it with criminal responsibility.

Finally, Toolan highlights an ongoing concern that may prove to be at the forefront of changing ideas regarding volitional control in addiction. As science moves toward a disease model of addiction, rather than one of moral failing, society may move toward reducing culpability for those who commit crimes under the influence. Although the impact of substance use may already be considered in mitigation evaluations, most jurisdictions do not allow for its use in an insanity defense. If science continues to show the impaired capacity of a person experiencing addiction to not use, and society continues to understand widespread sociocultural influences affecting who is likely to use drugs, the time may come in which the legal system must adapt to changing views. To be best prepared for when courts may seek input from mental health practitioners and scientists in defining statutes, it is prudent for the field to consider its position on this matter and coalesce around professional standards of practice.

Mental Health as Mitigation Evidence

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