

decision of legal sanity and several sets of factors. Of all the factors examined, the study concluded that expert opinion is the factor most strongly correlated with the court's final decision (Steadman HJ, Keitner L, Braff J, Arvanites TM: Factors associated with a successful insanity plea. *Am J Psychiatry* 140(4):401-405, 1983). Such studies, as well as the findings in *Rodriguez*, highlight the impact of expert opinion in these evaluations.

Evaluations of legal sanity are considered some of the most multifaceted and important mental health evaluations that forensic clinicians conduct. Even though the insanity defense is raised in only about one percent of felony cases and is successful in approximately a quarter of those cases, the insanity defense has long been the subject of public scrutiny (Callahan LA, Steadman HJ, McGreevy MA, Robbins PC: The volume and characteristics of insanity defense pleas: An eight-state study. *Bull Am Acad Psychiatry Law* 1991; 19(4):331-338). *Rodriguez* suggests that a defendant's self-report alone is not enough to overcome an expert opinion to the contrary regarding criminal responsibility.

Insanity Acquittees with Resolved Substance-Induced Psychosis

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Antisocial Personality Disorder by Itself Does Not Constitute a "Mental Illness" Necessary for Continued Commitment of an Insanity Acquittee

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In *State v. Edwards*, 348 So.3d 1269 (La. 2022), the Louisiana Supreme Court denied *certiorari* on the trial court's decision, in accordance with Louisiana statute (La. Code. Crim. Proc. Ann. art. 657 (1992)) and *Foucha v. Louisiana*, 504 U.S. 71 (1992), to order the release of an insanity acquittee whose psychotic symptoms resolved but still presented clear and convincing evidence of ongoing danger to the public. The court shared the lower court's concerns regarding the consequences of *Foucha* and its implementation and urged for a legislative solution to protect the public.

Facts of the Case

Jamaal Edwards shot and killed his fiancée on August 10, 2013, and it was believed that he experienced temporary psychosis resulting from a synthetic drug not identified on laboratory drug testing. After a bench trial, he was found not guilty by reason of insanity (NGRI) on July 20, 2016. He was committed to inpatient forensic psychiatry treatment where he received a primary diagnosis of antisocial personality disorder (ASPD) along with multiple substance use disorders (in forced remission in a controlled environment). The previous episode of substance-induced psychosis, during which he killed his fiancée, was also noted. His risk of future violence was assessed to be "clear and apparent" (*Edwards*, p 1270), thus meeting the second of two statutory preconditions of involuntary psychiatric hospitalization for insanity acquittees: dangerousness. Louisiana statute characterizes ASPD as untreatable and expressly not a mental illness.

The trial court ordered Mr. Edwards to be unconditionally released into the community because he no longer met the first statutory precondition for involuntary psychiatric hospitalization: having a mental illness. The state filed a supervisory writ with the Louisiana Fifth Circuit Court of Appeal, which affirmed his release but remanded to the trial court to determine specific conditions of release, ruling that neither *Foucha* nor state statute prohibited conditional release of dangerous insanity acquittees with ongoing mental health "conditions" (distinct from "illnesses"). Within two weeks of release, Mr. Edwards violated the conditions of release. The state petitioned the Louisiana Supreme Court for a writ of *certiorari*.

Ruling and Reasoning

Despite voicing misgivings, the Louisiana Supreme Court said that it was bound by the U.S. Supreme

Court's decision in *Foucha v. Louisiana*, a case which establishes that an insanity acquittee who is no longer mentally ill must be released back into the community.

As the Court in *Foucha* explained, insanity acquittees may only be committed to a psychiatric hospital if they remain both mentally ill and dangerous because the Due Process Clause of the Fourteenth Amendment requires that the nature of an individual's commitment "bear some reasonable relation" to the purpose for which the individual was committed (*Foucha*, p 79). When an insanity acquittee is either no longer mentally ill or no longer dangerous, the legal basis for holding the acquittee in a psychiatric hospital has disappeared (*Foucha*, p 72).

In *Foucha*, the defendant was charged with aggravated burglary but was found NGRI because the act was suspected to have been committed in a state of substance-induced psychosis, a temporary condition from which he eventually recovered. The state of Louisiana attempted to justify his continued confinement on the grounds that he had also been diagnosed with ASPD, an ongoing condition, but the argument failed because ASPD was not generally considered a mental illness (*Foucha*, p 78).

The Louisiana Supreme Court applied the same reasoning in this case, explaining that "the State is required to prove by clear and convincing evidence 'that the committed person is currently both mental ill and dangerous'" but could not make this showing "because antisocial personality disorder is not deemed a mental illness as defined by La. Rev. Stat. Ann. § 28:2 (2018) and current diagnostic standards" (*Edwards*, p 1272). Thus, under the precedent set in *Foucha*, Mr. Edwards was entitled to conditional discharge from involuntary psychiatric commitment despite clear and convincing evidence of his dangerousness (*Edwards*, p 1273).

Discussion

In this case, the Louisiana Supreme Court found itself in the unenviable position of upholding the release of an insanity acquittee who, by all accounts, remained dangerous to the public. What is interesting about the result is that, while clearly following established legal precedent for interpreting *Foucha* in the state, the court used language to distance itself from its own ruling, stressing that it acts "reluctantly, with trepidation" and urging the U.S. Supreme Court to "reexamine this area of law" while simultaneously calling on the Louisiana legislature "to

examine the concerning situation presented here and carefully craft a legislative solution to better protect the public" (*Edwards*, p 1272-73).

This raises the question of what can be done to better protect the public in cases like these, where insanity acquittees with ASPD are discharged from involuntary commitment because their primary underlying disorder is not a statutory mental illness, yet they continue to pose a threat to public safety. There are at least four ways that the risk could be mitigated, each involving a different set of actors at different stages.

First, the Louisiana legislature could prevent criminal defendants like Mr. Edwards from being found NGRI by amending the state's statutory definition of "mental illness" to exclude substance-induced psychotic disorders resulting from voluntary intoxication specifically, as is standard in many other jurisdictions. California, for example, excludes both "personality or adjustment disorder" and "addiction to, or abuse of, intoxicating substances" from an insanity defense (Cal. Penal. Code § 29.8 (2021)). But the statutory definition of "mental illness" in Louisiana only excludes those who "suffer solely from a substance-related or addictive disorder," which is more ambiguous (La. Rev. Stat. Ann. § 28:2). If the law in Louisiana had been similar to that in California, Mr. Edwards may have experienced more challenges in pursuing an insanity defense.

Second, as pointed out by the court, prosecutors could have charged Mr. Edwards with felonies for the multiple violent assaults he committed against other patients and staff while hospitalized (*Edwards*, p 1271). If ASPD is not a mental illness, and his prior episode of substance-induced psychosis had resolved, then it is difficult to imagine how he would have avoided incarceration if the state had pursued prosecution.

Third, the psychiatric expert on whose testimony the trial court relied in finding that ASPD was not a treatable mental illness could have arrived at a different conclusion based on research that suggests that some aspects of ASPD may be more treatable than traditionally assumed. Specifically, there are several randomized, controlled studies which support the conclusion that, although they may be more treatment resistant, individuals with ASPD can respond positively to at least some psychosocial treatment interventions, especially those that focus on substance-use treatment (McKendrick K, Sullivan C, Banks S, *et al.*: Modified therapeutic community

treatment for offenders with MICA disorders: antisocial personality disorder and treatment outcomes. *J Offender Rehabil* 44(2):133-159, 2006). Given that violence in ASPD is often linked to substance use, and that substance-use disorders are present in up to 90 percent of individuals with ASPD, it is reasonable to conclude that reducing substance use in individuals with ASPD may reduce their risk of violence, which is one of the fundamental goals of treatment for these individuals in the forensic setting.

Finally, in the event that insanity acquittees like Mr. Edwards are released back into the community, the trial court could attempt to deter future criminal behavior by imposing stringent conditions of release, which is what the court did in this case. Mr. Edwards was subjected to house arrest, electronic monitoring, and weekly drug screening (*Edwards*, p 1271). Unfortunately, many individuals with ASPD are unaffected by punishment and seem unable to consider consequences unless they are immediate (Parris J, Black DW, Social Theories of Causation. In DW Black and NJ Kolla (Eds.) *Textbook of Antisocial Personality Disorder*. Washington, DC: American Psychiatric Association, 2022, p 151-154). It is perhaps unsurprising that Mr. Edwards violated his conditions of discharge shortly after release and was briefly jailed.

The examples above would all potentially mitigate the risk to public safety posed by the release of insanity acquittees like Mr. Edwards. On a more fundamental level, this case is instructive to forensic psychiatrists because it illustrates a key point regarding involuntary commitment. In assessing whether a potentially dangerous insanity acquittee, who has regained sanity by state statute, meets the requirements for release into the community, examiners should be mindful of co-occurring psychiatric disorders, including current treatment options for personality disorders. Ultimately, however, they are beholden to the law of their jurisdictions, which reinforces both the ethics and practical importance of carefully reviewing a jurisdiction's case law and statutory requirements.

Expert Witness Testimony and Consequences of a Not Guilty by Reason of Insanity Verdict

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Potentially Misleading Expert Witness Testimony Deemed a Harmless Error

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In *Middlebrooks v. State*, 884 S.E.2d 318 (Ga. 2023), the Georgia Supreme Court considered whether there was justification for a new trial following a guilty verdict in a case where the defendant pled not guilty by reason of insanity. The court considered whether the trial court erred in admitting potentially misleading testimony from the state's expert witness regarding the consequences of a not guilty by reason of insanity verdict, which may have unfairly biased the jury. The court ruled that the trial court did err in allowing this expert witness' testimony, but that ultimately it was a harmless error, and it did not justify a new trial.

Facts of the Case

On May 2, 2013, Marina Middlebrooks crashed her car in Columbia County, Georgia. First responders found Ms. Middlebrooks in the driver's seat covered in blood. They also discovered the dead body of Ms. Middlebrooks' two-year-old daughter, Sky Allen, on the rear floor of the car, unclothed, with multiple stab wounds to her neck. The wounds were consistent with having been created by an open pair of scissors that had been found on the passenger seat of Ms. Middlebrooks' car.

Ms. Middlebrooks pled not guilty by reason of insanity to charges of murder and cruelty to children in the first degree. At trial, the defense argued that Ms. Middlebrooks was diagnosed with schizophrenia and was experiencing delusional thought content that prevented her from appreciating right from wrong when she killed her daughter. The defense presented