

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

Martin Ahern, MD
Fellow in Forensic Psychiatry

Darren L. Lish, MD
Associate Clinical Professor of Psychiatry
Deputy Director of Forensic Services

Richard Martinez, MD, MH
Robert D. Miller Professor of Forensic Psychiatry
Director, Forensic Psychiatry Services and Training

Department of Psychiatry
Division of Forensic Psychiatry
University of Colorado Anschutz Medical Campus
Aurora, Colorado

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

the expert witness testimony of Dr. Geoffrey McKee and Dr. Donna Schwartz-Watts, both of whom supported this conclusion. The defense also had Dr. Donald Evans, a staff psychiatrist at the Veterans Affairs (VA) Medical Center in Augusta, Georgia, testify to his treatment of Ms. Middlebrooks during two previous psychiatric hospitalizations in 2011 and 2012. Dr. Evans was accompanied by an assistant United States attorney who advised the court that the VA's Office of General Counsel "authorized him to testify within boundaries, specifically that Dr. Evans could testify about his personal observations of Middlebrooks, about conversations he had with her, and about the contents of her medical records, but that he could not serve as an expert witness or answer hypothetical questions" (*Middlebrooks*, p 331). The court ruled that Dr. Evans could testify, but that he could not discuss his diagnosis of Ms. Middlebrooks, as that would constitute an expert opinion. The defense counsel agreed to this stipulation.

The state argued that Ms. Middlebrooks was feigning symptoms of schizophrenia in an attempt to avoid criminal responsibility. The state presented the expert witness testimony of Dr. Michael Vitacco, a forensic psychologist who evaluated Ms. Middlebrooks in June and July of 2013, shortly following her arrest. Dr. Vitacco testified that Ms. Middlebrooks was malingering symptoms of schizophrenia. He stated that Ms. Middlebrooks' observed behavior was not consistent with her reported psychotic symptoms, that she questioned clinical staff about how to build an insanity defense, and that her sudden recollection of detailed psychotic symptoms surrounding the time of the crime after multiple prior reports of diminished memory demonstrated evidence of malingering.

At the end of Dr. Vitacco's testimony, the prosecutor asked him what happens after an individual is found not guilty by reason of insanity. Dr. Vitacco responded that an individual "would come to our hospital for a period of 30 days. And then we would evaluate that individual . . . to determine if they were mentally ill . . . and dangerous to themselves or others. And then we would have a hearing in 30 days to determine if they could be released, as required by state law" (*Middlebrooks*, p 326). The prosecutor proceeded to ask, "By law, if that person is not a danger to themselves or others and is not suffering from a mental illness, what is the court obligated to do?" (*Middlebrooks*, p 326). Dr. Vitacco replied, "According to the Supreme Court, the trial court would be

obligated to release that individual" (*Middlebrooks*, p 326). Ms. Middlebrooks' defense counsel objected to this testimony, arguing that Dr. Vitacco was inappropriately offering a "legal opinion" about the application of the law. The trial court overruled the objection and declined to strike the testimony.

Ultimately, the trial court found Ms. Middlebrooks guilty of both charges and she was sentenced to life without parole. Upon appeal, Ms. Middlebrooks argued that a new trial was warranted because of three main concerns. First, Ms. Middlebrooks claimed the trial court erred in limiting Dr. Evans' testimony by not following correct procedure. Second, she argued that her defense attorney's decision not to object to the limitations placed upon Dr. Evans' testimony constituted ineffective assistance of counsel. Third, Ms. Middlebrooks contended that the court erred in overruling her objection to Dr. Vitacco's testimony. She argued that Dr. Vitacco incompletely paraphrased sections of Ga. Code Ann. § 17-7-131 (2017), which deals with the evaluation and commitment procedures following a not guilty by reason of insanity verdict, and that this unfairly biased the jury.

Ruling and Reasoning

The court first considered the trial court's procedure for limiting the VA psychiatrist's testimony. The court determined that Ms. Middlebrooks' defense attorney appropriately filed a request with the VA for Dr. Evans to testify and that the VA authorized Dr. Evans to testify within their prescribed boundaries. The court concluded that this was in line with 38 C.F.R. § 14.808(a) (1954) and affirmed the trial court's ruling to limit Dr. Evans' testimony.

The court next considered Ms. Middlebrooks' assertion that her defense attorney unfairly prejudiced the outcome of the trial by not objecting to this first ruling. It concluded that defense counsel provided evidence that sufficiently tied Ms. Middlebrooks' mental health symptoms at the time of the crime to her preexisting history of mental illness by presenting two expert witnesses in addition to Dr. Evans. The court ruled, therefore, that they did not believe the defense counsel's alleged error affected the outcome of the trial with a reasonable degree of probability.

Perhaps the main concern pertaining to forensic psychiatric practice was Ms. Middlebrooks' assertion that the state's expert witness unfairly biased the jury. Ms. Middlebrooks argued that Dr. Vitacco provided potentially misleading testimony by insinuating

that should she be found not guilty by reason of insanity, she would be evaluated at his home institution during a 30-day commitment, at which point she would likely be released, given his testimony that she was malingering. The court considered Dr. Vitacco's testimony and determined that it was potentially misleading. The court determined that Dr. Vitacco's statements "could have reinforced, rather than corrected, any misconceptions jurors may have had that only a guilty verdict would prevent Middlebrooks's nearly immediate release" (*Middlebrooks*, p 329).

To determine whether this improper, nonconstitutional, evidentiary ruling warranted a new trial, the court applied a "harmless-error test" as was done in *Jones v. State*, 880 S.E.2d 509 (Ga. 2022). The court sought to determine whether there was more than a theoretical possibility Dr. Vitacco's testimony contributed to the verdicts. The court concluded that compared with the "substantial evidence that Middlebrooks had the mental capacity to distinguish right from wrong" (*Middlebrooks*, p 330), it was highly unlikely that Dr. Vitacco's testimony was an important factor for the jury in reaching their guilty verdicts and ruled there was no justification for a new trial.

Discussion

The court's first two rulings highlight a federal regulation that is pertinent to forensic psychiatric practice. 38 C.F.R. § 14.808(a) states that "VA personnel shall not provide, with or without compensation, opinion or expert testimony in any legal proceedings concerning official VA information, subjects, or activities, except on behalf of the United States or a party represented by the United States Department of Justice," barring authorization from a "responsible VA official." This case serves as an important reminder for individuals working for the Department of Veterans Affairs to consult with the appropriate VA officials prior to speaking with legal counsel regarding VA-related information. This case also emphasizes the importance of reviewing VA medical records, when available, as the forensic expert's report and testimony may be the most effective way to introduce relevant information related to an individual's psychiatric history within the VA system.

This case also serves as a cautionary tale for forensic psychiatrists to stay within their scope of expertise

when providing testimony. While this case makes clear that the legal error in allowing the state expert's testimony lies with the state and not the expert witness, it does raise consideration of what topics an expert witness should speak to on the witness stand. The prosecution's line of questioning related to the consequences of a not guilty by reason of insanity verdict, while not completely unrelated to forensic mental health practice, began to stray from the witness' scope of expertise, as it encroached upon the court's instructions to the jury regarding potential verdicts. Expert witnesses may be well-intentioned in answering such questions based on their undoubted familiarity with relevant statutory law. Nonetheless, they run the risk of presenting a biased understanding of how that law is applied. Forensic psychiatrists are not experts in the application of the law and thus should exercise caution when asked to provide such testimony.

Involuntary Medication and Detention in Federal Court via Sell Criteria

Hareesh Pillai, MD

Fellow in Forensic Psychiatry

Richard Martinez, MD, MH

*Robert D. Miller Professor of Forensic Psychiatry
Director, Forensic Psychiatry Services and Training*

Department of Psychiatry

Division of Forensic Psychiatry

*University of Colorado Anschutz Medical Campus
Aurora, Colorado*

Extending Involuntary Medications and Detention Using the Sell Criteria Allowed for Competency Restoration Treatment

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In *United States v. Tucker*, 60 F.4th 879 (4th Cir. 2023), the Fourth Circuit Court of Appeals considered whether a criminal defendant who had been found incompetent to stand trial and was held in pretrial custody for more than five years, could be ordered for continued commitment and involuntary medications. The court ruled that, although not without limits, further extension of his commitment was reasonable.