

none “of the factual issues Lewis identifies entitle[d] him to relief” (*Lewis*, p 1180).

Mr. Lewis argued that his trial counsel was ineffective during the penalty phase by not presenting evidence of his innocence in the murder of Mr. Rogers; not providing mental health experts with mitigating psychosocial information; failing to develop, investigate, and present mitigating factors; and not objecting when witnesses invoked their Fifth Amendment rights. Applying *Strickland v. Washington*, 466 U.S. 668 (1984), the Ninth Circuit said that Mr. Lewis’s arguments failed to show that his counsel performed ineffectively or was prejudicial to his defense. The remaining evidence could not be considered under the AEDPA, as it was not part of the court record when the SCC considered the case.

The Ninth Circuit determined that the SCC did not violate the AEDPA, as they could reasonably determine that the unrepresented mitigating factors were cumulative and speculative. Not presenting these factors also failed to be prejudicial. Furthermore, Mr. Lewis’s assertion that not providing relevant information to mental health experts during the penalty phase did not support his claim that his trial counsel’s investigation fell below a reasonable standard or was prejudicial. The Ninth Circuit posited that pleading for mercy and appealing to doubts of the jury was a reasonable mitigation strategy.

Finally, Mr. Lewis argued that the foreperson’s comments amounted to unconstitutional religious discrimination. The Ninth Circuit reasoned that Mr. Lewis’s citation of *Peña-Rodriguez v. Colorado*, 280 U.S. 206 (2017), was erroneous, as it had been decided 16 years after the SCC considered the argument.

#### Discussion

The Ninth Circuit’s reliance on AEDPA underscores the deference given to state court decisions. It reflects a rigorous standard of granting federal *habeas* petitions predicated on showing that the state court’s decision was not contrary to or an unreasonable application of established federal law. This barrier prevents federal courts from being inundated with ill-considered *habeas* petitions by necessitating a rigorous appellate review.

Additionally, the Ninth Circuit emphasized the importance of correctly applying the legal precedent in place when decisions were rendered in the state courts. Mr. Lewis’s defense misapplied the rulings in *J.D.B. v.*

*North Carolina* and *Peña-Rodriguez v. Colorado*, as neither case had been decided as his case progressed through the California legal system. The AEDPA prevents additional evidence from being introduced after a state’s high court had decided a case.

This case reinforces that forensic evaluators have an essential role in the criminal justice system. At various points, forensic mental health expertise could have been instrumental in addressing concerns relating to mental health, including assessing witness credibility, providing insight into Mr. Lewis’s psychological state during his juvenile confession, evaluating cognitive abilities germane to the ability to understand and intelligently waive one’s legal rights, and presenting mitigating evidence during the penalty phase.

## Bounds of Expert Testimony in Relation to Insanity Defense

**Nicole Lentini, MD**  
Fellow in Forensic Psychiatry

**Danielle Rynczak, JD, PsyD**  
Adjunct Assistant Professor

Forensic Psychiatry  
Psychiatry & Behavioral Sciences  
Northwestern University Feinberg School of Medicine  
Chicago, Illinois

**Nathan Frommer, JD, LLM**  
Assistant General Counsel  
Massachusetts Department of Mental Health  
Boston, Massachusetts

### Trial Court Erroneously Struck Portions of Psychiatric Testimony Key to Defendant’s Insanity Defense

DOI:10.29158/JAAPL.240094-24

**Key words:** expert testimony; expert witnesses; insanity; extreme mental or emotional disturbance; jury instructions

In *State v. Sylva*, 541 P.3d. 1210 (Haw. 2023), the Supreme Court of Hawaii held that portions of a psychiatrist’s testimony explaining the basis of the psychiatrist’s opinions were erroneously stricken, as Haw. Rev. Stat. § 704-410(4) (1988) mandates experts “shall be permitted to make any explanation reasonably

serving to clarify the examiner’s diagnosis and opinion” as part of an insanity defense. The court additionally affirmed that the jury was correctly instructed to consider an insanity defense prior to an extreme mental or emotional disturbance (EMED) defense.

#### Facts of the Case

On March 18, 2018, Kumulipo Iwa Coyote Sylva fatally struck Eduardo Alejandro Cerezo in the neck with a cane knife in a Hawaii shopping center bathroom. According to an eyewitness, Mr. Sylva was “looking at [Mr. Cerezo] mean” on the bus to the shopping center earlier, and referred to Mr. Cerezo being a demon during the attack (*Sylva*, p 1213). Mr. Sylva was apprehended nearby and charged with second degree murder. He admitted killing the decedent but asserted that, by virtue of mental disease, disorder, or defect, at the time of the offense, his capacity was impaired to an extent that it precluded penal responsibility under the state’s insanity law, Haw. Rev. Stat. § 704–400 (1984).

Following Haw. Rev. Stat. § 704-407.5 (2020), three qualified examiners were appointed to opine on criminal responsibility. All three examiners agreed Mr. Sylva was affected by a mental disorder. Two examiners further opined Mr. Sylva was so impaired during the offense that he lacked substantial capacity to appreciate the wrongfulness of his actions and met the legal standard for insanity; the third disagreed.

At trial, the court struck two portions of testimony from a psychiatrist, Dr. Martin Blinder, who testified for the defense. Dr. Blinder testified that Mr. Sylva had only “a very superficial reason” to kill Mr. Cerezo absent his “mission to rid the world of demons” (*Sylva*, p 1214). Dr. Blinder continued, “And that’s nutty and it’s crazy, and absent for that nutty, crazy thing, he wouldn’t have hurt anybody. He’s not, you know, a bad man who goes around hurting people” (*Sylva*, p 1214). The prosecutor’s objection to Dr. Blinder’s “last phrase” was sustained, and the court instructed the jury to “disregard Dr. Blinder’s last response” (*Sylva*, p 1212). The court also sustained the prosecutor’s objection to Dr. Blinder’s testimony that “to a reasonable degree of medical probability. . . but for this psychotic illness, [Mr. Sylva] would not have taken the life of this man” (*Sylva*, p 1215).

Contrasting Dr. Blinder’s opinion, the state’s expert, George Choi, PsyD, testified “it appeared [Mr. Cerezo] provoked [Mr. Sylva] on the bus and

that [Mr. Sylva] wanted to teach [Mr. Cerezo] a lesson, indicating goal-oriented behavior” (*Sylva*, p 1216). On cross-examination, Dr. Blinder testified he would consider whether there was a “rational or reasonable basis for a killing” as a key part of his opinion’s basis regarding insanity in a “hypothetical setting” (*Sylva*, p 1215). Dr. Blinder did not again directly testify to his opinion that, outside of his psychotic delusions, Mr. Sylva had only a “very superficial” reason to kill Mr. Cerezo (*Sylva*, p 1222).

The judge instructed the jury, if they unanimously found the state proved all elements of second degree murder beyond a reasonable doubt, they were to consider whether the defendant proved the elements of the affirmative defense of insanity by a preponderance of the evidence. The jury was further instructed, if they found the defendant had not proven the elements necessary for an insanity defense, they were to consider the EMED affirmative defense.

Mr. Sylva was convicted of the reduced charge of manslaughter based on EMED and sentenced to 20 years’ incarceration. In his appeal to the Intermediate Court of Appeals (ICA), Mr. Sylva asserted the circuit court erred in two ways, by erroneously instructing the jury to disregard portions of Dr. Blinder’s testimony and by failing to instruct the jury if they found Mr. Sylva guilty of manslaughter, they must consider the insanity affirmative defense.

The ICA affirmed Mr. Sylva’s conviction. They found no error in the jury instructions to consider the insanity affirmative defense before the mitigating defense of EMED. Regarding Dr. Blinder’s testimony, the ICA concluded “no reasonable juror” could have understood the circuit court instructed them to disregard Dr. Blinder’s entire explanation when instructed to disregard his “last response” (*Sylva*, p 1218). Citing *Wakabayashi v. Hertz Corp.*, 600 P.2d 1309 (Haw. 1983), the ICA further reasoned, even if Dr. Blinder’s testimony was erroneously struck, the error was harmless because his testimony was cumulative.

#### Ruling and Reasoning

In Hawaii’s highest court, Mr. Sylva argued the ICA erred, concluding the circuit court did not erroneously strike parts of Dr. Blinder’s testimony and did not commit instructional error regarding the order in which to consider insanity and EMED defenses.

The Supreme Court of Hawaii had not previously considered the order in which a jury should be

instructed to consider the insanity and EMED affirmative defenses. They affirmed the ICA ruling that the circuit court properly instructed the jury to consider the insanity defense prior to the EMED defense because, if the jury accepted an insanity defense, they would have to acquit Mr. Sylva, negating the EMED defense.

The court agreed with Mr. Sylva that the circuit court committed error by striking portions of Dr. Blinder's testimony. The court noted Haw. Rev. Stat. § 704-410(4) (1988) provides, "When an examiner testifies, the examiner shall be permitted to make any explanation reasonably serving to clarify the examiner's diagnosis and opinion" and the associated commentary explains the legislative intention was to assure that experts "will have an adequate opportunity to state and explain. . . [their] opinion as to the impairment of the defendant's relevant capacities without being restricted to examination by means of the hypothetical question."

The court concluded most of Dr. Blinder's testimony (absent his opinion Mr. Sylva "was not a bad man") (*Sylva*, p 1214) was admissible because it clarified his opinion regarding Mr. Sylva's capacity during the offense. Concluding the circuit court committed error, the court considered whether the error was harmless beyond a reasonable doubt. The court disagreed with the ICA's assertion "no reasonable juror" could have believed they had been instructed to disregard Dr. Blinder's entire answer explaining his opinion's basis (*Sylva*, p 1218). The court additionally clarified the "harmless error" ruling in *Wakabayashi* did not apply in criminal cases and the correct criminal standard is "whether there is a reasonable possibility that the error might have contributed to conviction" (*State v. Aplaca*, 25 P.3d 792 (Haw. 2001), p 800).

Although the court agreed portions of Dr. Blinder's testimony were cumulative, they noted instructional error must be examined in light of the entire proceedings. The court noted Dr. Choi's testimony that Mr. Sylva engaged in intentional and goal-oriented behavior to "teach Mr. Cerezo a lesson" (*Sylva*, p 1216). It also identified a reasonable probability the circuit court's erroneous instruction to disregard Dr. Blinder's contrary testimony contributed to Mr. Sylva's EMED conviction. Given the state did not prove the error was harmless beyond a reasonable doubt, Mr. Sylva's conviction was vacated.

## Discussion

This case describes a trial primarily focused on a defendant's assertion of two different affirmative defenses, insanity and EMED, relating to his mental or emotional state at the time of his alleged offense. The three appointed examiners all agreed that Mr. Sylva was experiencing a psychotic illness at the time of his alleged offense but disagreed as to the defendant's criminal capacity.

Regarding Mr. Sylva's criminal capacity, expert witnesses for the prosecution and defense provided differing opinions at trial about whether there was a reasonable explanation for the defendant's actions. Although this testimony was framed in the context of the insanity defense, the language of "reasonable explanation" is also a key portion of Hawaii's statutory language related to the other affirmative defense of EMED, which applies to a defendant who was "under the influence of extreme mental or emotional disturbance for which there is a reasonable explanation" at the time of the offense (Haw. Rev. Stat. § 707-702(2) (2019)).

Although this ruling did not expand the standard for admissibility of expert testimony, it underscores Hawaii's statutorily high bar for exclusion of expert testimony relevant to an insanity defense and illustrated a situation in which erroneous exclusion resulted in a defendant's conviction being vacated. Experts testifying on a lack of capacity defense may be asked to address not only that defense but also whether there is a lack of responsibility because of an extreme mental or emotional disturbance for which there is no reasonable explanation.

## Constitutionality of Sentencing "Emerging Adults" to Life Imprisonment Without the Possibility of Parole

**Chinwe Erike, MD**  
Fellow in Forensic Psychiatry

**Jessica Powlinski, MD**  
Fellow in Forensic Psychiatry

**Kathleen Kruse, MD**  
Clinical Assistant Professor  
Program in Psychiatry, Law, and Ethics