

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

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Court Rules Sentence of Life Without Parole Is Unconstitutional for “Emerging Adults”

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In *Commonwealth v. Mattis*, 493 Mass. 216 (Mass. 2024), the Supreme Judicial Court of Massachusetts considered whether a mandatory term of life in prison without the possibility of parole is constitutional under Article 26 of the Massachusetts Declaration of Rights (Mass. Const. Pt. 1, art. 26) for individuals categorized as “emerging adults,” which the court defined as persons aged 18, 19, and 20 years at the time of their offense. The court concluded that sentencing emerging adults to life in prison violates state law.

Facts of the Case

On September 25, 2011, 18-year-old Sheldon Mattis perpetrated the killing of Jaivon Blake and the shooting of Kimoni Elliott with his codefendant, 17-year-old Nyasani Watt. On that afternoon, Mr. Elliott and Mr. Blake, both unknown to Mr. Mattis, were outside a local convenience store in Dorchester, Massachusetts. This area was operated by the “Flatline” gang, of which Mr. Mattis was a member. Mr. Mattis approached Mr. Elliott, who stated that he was from “Everton.” Mr. Mattis interpreted this statement to mean Mr. Elliott was a member of an opposing gang. Thereafter, Mr. Elliott and Mr. Blake convened nearby and walked to Mr. Blake’s home. At the same time, Mr. Mattis encountered Mr. Watt and identified the victims to Mr. Watt. He gave Mr. Watt his bicycle and gun. Mr. Watt cycled toward the victims and shot them several times from behind, killing Mr. Blake and injuring Mr. Elliott.

Mr. Mattis and Mr. Watt were charged with first-degree murder, among other charges. Mr. Mattis was convicted of all charges and sentenced to mandatory life without parole (LWOP), whereas Mr. Watt was convicted and sentenced to life with the possibility of parole after 15 years, given his age at the time of the offense. Mr. Mattis filed a motion arguing that his LWOP sentence violated the prohibition of cruel and unusual punishment under the Eighth Amendment,

as well as art. 26, which affords greater protections than the Eighth Amendment. Mr. Mattis asserted that, because he was 18 years old at the time of the offense, he was entitled to the protections given to juvenile offenders aged 14–17 years, who are sentenced to life with the possibility of parole for first-degree murder. The trial court denied this motion, which Mr. Mattis appealed.

In a previous proceeding, the Supreme Judicial Court of Massachusetts upheld the denial of the appeal but remanded the case to the trial court to develop the record regarding brain development after the age of 17 to inform its decision on the matter. Following testimony from several experts at the trial court, the case was transmitted to and then again remanded by the state supreme court to the trial court to determine “whether the imposition of a mandatory sentence of life without possibility of parole for. . . those convicted of murder in the first degree who were eighteen to twenty-one at the time of the crime, violates [art.] 26” (*Mattis*, p 220). The trial court ruled that mandatory sentences of LWOP for defendants aged 18–20 years at the time of their crimes violates art. 26, finding that “emerging adults are ‘less able to control their impulses’ and that ‘their reactions in [emotionally arousing] situations are more similar to those of [sixteen and seventeen year olds] than they are to those [twenty-one to twenty-two] and older’” (*Mattis*, p 221). The case and its evidentiary record then reached the Supreme Judicial Court of Massachusetts for review. The Commonwealth argued that a sentence of LWOP is constitutional if imposed after an individual hearing, and Mr. Mattis argued that it was unconstitutional to sentence an emerging adult to LWOP in any circumstance.

Ruling and Reasoning

The state supreme court upheld the lower court ruling and remanded the case for resentencing. In its decision, the court referenced the U.S. Supreme Court cases of *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); and *Miller v. Alabama*, 567 U.S. 460 (2012), all of which determined that youth matters in relation to sentencing practices. To briefly summarize, in *Roper*, the Court determined that the death penalty for offenders under the age of 18 violated the Eighth Amendment because of those offenders’ lessened culpability. In *Graham*, the Court concluded the imposition of a LWOP sentence on a juvenile offender for a

nonhomicide crime was unconstitutional under the Eighth Amendment and likened the sentence to the death penalty. In *Miller*, the Court ruled that it violated the Eighth Amendment to impose a mandatory LWOP sentence on those under age 18 at the time of the crime, even in homicide cases. The Court ruled that failure to consider the “mitigating qualities of youth,” including the juvenile’s chronological age, family and home environment, familial and peer pressure, and the possibility of rehabilitation, was unconstitutional (*Mattis*, p 223, citing *Miller*, p 476).

Following the *Miller* ruling, the Supreme Judicial Court of Massachusetts concluded that sentencing a juvenile to LWOP in any circumstance would violate art. 26 in *Diatchenko v. Dist. Atty. for the Suffolk Dist.*, 1 N.E.3d 270 (Mass. 2013) (*Diatchenko I*). The court determined it was not possible to demonstrate that a juvenile defender was “irretrievably depraved,” and thus, a sentence of LWOP constituted cruel and unusual punishment under art. 26. Based on precedent and contemporary standards of decency in Massachusetts and elsewhere, the court concluded in *Mattis* that the holding in *Diatchenko I* should be extended to emerging adults aged 18 to 20 years.

The court in *Mattis* said that the brains of emerging adults are similar to those of juveniles, and therefore, emerging adults should be treated the same as juveniles with regard to sentencing practices. The court cited scientific research that found emerging adults have a lack of impulse control similar to 16 and 17 year olds in emotionally arousing situations, are more prone to risk-taking in pursuit of rewards than those under 18 years and those over 21 years, are more susceptible to peer influence than individuals over 21 years, and have a greater capacity for change than older individuals because of the plasticity of their brains. The court cited other states and jurisdictions that treat emerging adults differently than older adults, including laws and programs in the District of Columbia, Illinois, California, Colorado, and Wyoming. The court also acknowledged that emerging adults are granted rights, and responsibilities are imposed, in a graduated manner. The court cited the different age requirements to purchase and sell alcohol, to gamble, and to be a police officer, among others.

The state supreme court found that precedent dictated that youthful characteristics must be considered in sentencing, that the brains of emerging adults are not fully developed and are more similar to juveniles

than older adults, and that contemporary standards of decency disfavor the harshest sentence. Thus, the court concluded a sentence of LWOP for emerging adults violated art. 26.

Dissent

The dissent said that drawing the line for what age a LWOP sentence could be imposed was best left to the legislature. It also argued that the line drawn by the majority was inconsistent with the science on which it relied, as some research suggested brains continue to develop until age 25. It cited Commonwealth policies that allow adolescents to make certain decisions regarding their physical and mental health, which was at odds with the notion that juveniles are not able to discern right from wrong.

Discussion

In *Mattis*, the court went one step further than its previous decision, ruling that individuals under the age of 21 cannot be sentenced to LWOP. The ruling extended the protection that convicted juvenile offenders receive, life with the possibility of parole, to emerging adults who are 18 to 20 years old at the time of the offense. Relying on neuroscience research on the brain development of emerging adults with consideration of mitigating factors of youth, the court determined that the sentence of LWOP is cruel and unusual punishment in Massachusetts. This case highlights the evolving standards of decency when sentencing youths and young adults.

In conducting forensic evaluations, age can be an important factor in risk assessments, competency evaluations, criminal responsibility evaluations, and some civil assessments. Age should always be considered when a juvenile is being assessed, but those same considerations should extend to young and emerging adults, as their decision-making may be influenced by a lack of impulse control, increased risk-taking, and their susceptibility to peer pressure. Research also shows that they have a greater capacity to change compared with older adults, which should be taken into consideration when making recommendations to the court (Galván A. Insights about Adolescent Behavior, Plasticity, and Policy from Neuroscience Research. *Neuron* 2014; 83(2):262–5).

Another ongoing consideration for courts is where the hard line exists for determining eligibility for a sentence of LWOP. In *Mattis*, the line was drawn at age 20 years, but the same neuroscience research

referenced in this case can be used to argue drawing the line at age 21 or beyond. This case highlights that neuroscience research continues to evolve and can have significant legal ramifications, underscoring the importance of maintaining familiarity with child and adolescent brain development and research. Although this case may be specific to Massachusetts, more courts nationwide are broadening their understanding and monitoring the neuroscience research regarding emerging adults and how such research affects legal concerns, including sentencing.

Fifth Amendment Protections in Not Guilty by Reason of Insanity Adjudications

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Fifth Amendment's Double Jeopardy Clause Is Violated When NGRI Is Nullified Because of Inconsistent Verdicts

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In *McElrath v. Georgia*, 601 U.S. 87 (2024), the U.S. Supreme Court considered whether the Fifth Amendment's Double Jeopardy Clause was violated when a defendant received verdicts of both not guilty by reason of insanity and not guilty but mentally ill for actions related to the same offense. The Court ruled that a not guilty by reason of insanity adjudication constitutes an acquittal and affords protection under the Double Jeopardy Clause of the Fifth Amendment.

Facts of the Case

Damian McElrath was adopted and raised by his mother, Diane McElrath, from the age of two. Mr.

McElrath was diagnosed with a mental illness from a young age and was noted to be experiencing paranoid delusions, including the belief that his mother was poisoning him with ammonia and pesticides. A few weeks before the death of his mother, Mr. McElrath had been psychiatrically hospitalized and diagnosed with schizophrenia. One week following his discharge from the hospital, on July 16, 2012, Mr. McElrath stabbed his mother to death. It was noted that Ms. McElrath was stabbed more than 50 times during this attack. Mr. McElrath admitted to killing his mother in a written note, when he called the 911 dispatcher, and later during police interrogation. During the interrogation, he stated, "I killed my mom because she poisoned me" (*McElrath* p 91, citing *McElrath v. Georgia*, 839 S.E.2d 573 (Ga. 2020), p 575). The state charged Mr. McElrath with three crimes stemming from his mother's death: malice-murder, felony murder, and aggravated assault.

During his trial, Mr. McElrath did not dispute his actions and set forth an insanity defense. According to Georgia law, if a criminal defendant "did not have mental capacity to distinguish between right and wrong" or committed the crime "because of a delusional compulsion as to such act which overmastered his will to resist committing the crime," then a jury may render a verdict of not guilty by reason of insanity (*McElrath*, p 91, citing Ga. Code Ann. §§16-3-2, 16-3-3, 17-7-131(c)(1) (2019)). On December 11, 2017, a jury rendered a split verdict, finding Mr. McElrath not guilty by reason of insanity for the charge of malice-murder and guilty but mentally ill on the charges of felony murder and aggravated assault, all of which pertained to the same time frame and acts involving the killing of his mother. The Georgia court accepted all verdicts set forth by the jury and subsequently sentenced Mr. McElrath to life in prison on the felony murder conviction.

Following the split verdict, Mr. McElrath appealed to the Supreme Court of Georgia. He argued that the felony murder conviction should be vacated under Georgia's repugnancy doctrine. This doctrine dictates that a state court can vacate a verdict as repugnant when the jury makes affirmative findings that cannot legally and plausibly exist concurrently.

The Supreme Court of Georgia agreed with Mr. McElrath that the verdicts were repugnant because they required him to have different mental states at the same time and that there was no way to reconcile the inconsistent verdicts. Instead of vacating