

that, although their actions did not amount to a constitutional violation, there were possible acts or omissions that might have been negligent.

Forensic psychiatrists are routinely retained in wrongful death lawsuits to review similar cases of suicide in correctional facilities. It behooves forensic psychiatrists to be aware of the different legal standards they are being asked to apply in rendering opinions, such as distinguishing negligence from subjective recklessness standards when appropriate.

Ultimately, this case, regardless of any potential legal liability, underscores the need for correctional facilities to implement clear protocols for managing detainees with serious psychiatric conditions. These protocols should involve making informed housing decisions, ensuring effective communication between staff, and providing all personnel with adequate training to recognize and respond to psychiatric crises.

NGMI and Double Jeopardy

Marissa A. Hirsch, MD

Fellow in Forensic Psychiatry

William Connor Darby, MD

Health Sciences Assistant Clinical Professor

Department of Psychiatry and Biobehavioral Sciences

David Geffen School of Medicine

University of California, Los Angeles

Los Angeles, California

Court Affirms Rejection of NGMI Defense and Rules No Double Jeopardy Violation

DOI:10.29158/JAAPL.240127L3-24

Key words: NGMI; mental illness defense; double jeopardy; attempted second-degree murder; aggravated assault; methamphetamine intoxication

In *Bolen v. State*, 547 P.3d 961 (Wyo. 2024), the Wyoming Supreme Court examined whether Solomon Bolen could invoke a not guilty by reason of mental illness (NGMI) defense despite the fact that his delusions were methamphetamine induced. The court ruled that Mr. Bolen's drug-induced mental state did not meet the legal threshold for NGMI under Wyoming law. Additionally, the court rejected Mr. Bolen's claim of double jeopardy, affirming his convictions for attempted second-degree murder and aggravated assault.

Facts of the Case

On the day of the offense, Mr. Bolen, under the influence of methamphetamine, exhibited erratic and paranoid behavior, ultimately firing a rifle at a group of men, seriously injuring two of them. The victims, brothers Richard and John Cleary, along with their friend George Heger, were packing their hunting gear when Mr. Bolen confronted them with a firearm. Following a series of delusional accusations, Mr. Bolen fired a single shot that struck two of the men, causing severe injuries.

The police arrested Mr. Bolen, who raised an NGMI defense, claiming that his actions were the result of a severe mental illness. But a court-appointed forensic psychiatrist, Dr. Renee Wilkinson, evaluated Mr. Bolen and concluded that his mental state was influenced by methamphetamine intoxication rather than an underlying mental illness, disqualifying him from asserting the NGMI defense under Wyo. Stat. Ann. § 7-11-305(c) (2023).

Mr. Bolen was convicted of 13 of 15 criminal offenses and sentenced to 30 to 40 years in prison. Mr. Bolen filed a motion for a new trial, asserting that his trial attorneys were ineffective because they did not pursue NGMI jury instructions and a special verdict form after pleading NGMI. Mr. Bolen asserted that he had been prejudiced by this ineffective counsel because the jury was not permitted to consider whether his conduct was the result of mental illness rather than voluntary intoxication. The district court denied Mr. Bolen's motion, finding that the trial counsel for Mr. Bolen made a strategic decision not to pursue the NGMI defense and to focus instead on the voluntary intoxication defense. Mr. Bolen appealed to the Supreme Court of Wyoming.

Ruling and Reasoning

The Supreme Court of Wyoming, in a ruling authored by Chief Justice Fox, upheld the district court's decision, ruling that an instruction on statutory defense of NGMI was not warranted and that Mr. Bolen was not prejudiced by his attorneys' allegedly deficient failure to renew a request for NGMI jury instructions because Mr. Bolen did not meet the statutory criteria for an NGMI defense under Wyo. Stat. Ann. § 7-11-305(b). This statute places the burden on the defendant to disprove the presumption of mental responsibility by demonstrating by greater weight of the evidence that he had a severe mental illness or deficiency during the instant offense that

caused him to lack substantial capacity to either appreciate the wrongfulness of his actions or conform his conduct to the requirements of law. Dr. Wilkinson opined that methamphetamine intoxication, not mental illness, caused Mr. Bolen's delusions, which excluded Mr. Bolen from NGMI eligibility.

The court emphasized that Dr. Wilkinson was the only court-designated examiner of Mr. Bolen and was the only person who could testify as to Mr. Bolen's mental responsibility. Dr. Wilkinson clearly testified that Mr. Bolen was not statutorily eligible for an NGMI defense because his behaviors, delusions, and paranoia were caused by methamphetamine intoxication. Despite Dr. Wilkinson's testimony, Mr. Bolen argued that other evidence from victim testimony and law enforcement that described him as paranoid and delusional could have persuaded the jury to find him NGMI. The court explained, however, that the statute provides that the observations and testimony of lay witnesses is not competent evidence of a defendant's mental responsibility.

The court also rejected Mr. Bolen's ineffective assistance of counsel claim regarding his defense attorneys' decision not to renew their request for NGMI instructions or a special verdict form. The court relied on prior case law that Mr. Bolen must demonstrate both that his attorneys' performance was deficient from what would be offered by a reasonably competent attorney and, as a result of that deficiency, he was prejudiced. The majority opinion focused solely on the prejudice prong to find that there was no ineffective assistance of counsel as Mr. Bolen did not present evidence necessary to support an NGMI because Dr. Wilkinson testified his psychiatric symptoms were the result of substance intoxication.

Justice Fenn, in his "specially concurring opinion," emphasized that Mr. Bolen's trial attorneys' decision to leave the NGMI plea in place to elicit testimony from Dr. Wilkinson to support a voluntary intoxication *mens rea* defense (i.e., Mr. Bolen's methamphetamine-induced psychotic state caused him to be unable to form the specific intent to commit attempted second-degree murder) was strategic and thus not evidence of deficient performance.

Finally, the court addressed Mr. Bolen's claim that his convictions for attempted second-degree murder as well as aggravated assault and battery violated double jeopardy protections under *Blockburger v. United States*, 284 U.S. 299 (1932). In *Blockburger*, the U.S.

Supreme Court established that double jeopardy protection only applies when multiple charges require proof of the same elements. In Mr. Bolen's case, the Supreme Court of Wyoming applied the *Blockburger* test, ruling that the intent elements of attempted second-degree murder and aggravated assault and battery with an attempted injury are distinct from one another. For example, attempted second-degree murder requires proof that Mr. Bolen intentionally or deliberately took a substantial step toward killing a human being, which is not an element in the other counts.

Discussion

The rejection of Mr. Bolen's insanity defense underscores the significance of the voluntary intoxication exclusion within Wyoming's statutory framework. This is particularly relevant for forensic psychiatrists who must distinguish between substance-induced mental states and primary psychiatric conditions. In Mr. Bolen's case, the forensic evaluator, Dr. Wilkinson, opined that his delusions and other psychiatric symptoms were the result of methamphetamine intoxication, thereby excluding him from NGMI eligibility in accordance with Wyoming's statute.

This decision is consistent with other U.S. jurisdictions, as currently no state permits voluntary intoxication as a basis for insanity (MacIntyre MR, Darby WC, Sones AC, *et al.* Voluntary intoxication, homicide, and *mens rea*: Past, present, and future. *Behav Sci & L.* 2021 Apr; 39(2):150–69). In Wyoming, as well as several other states, statutes allow defendants to introduce evidence on voluntary intoxication to negate the existence of a specific intent that is an element of the crime (Wyo. Stat. Ann. § 6-1-202 (2023)). In fact, this is what Mr. Bolen's defense team at trial attempted to do by not withdrawing the NGRI plea and eliciting testimony from Dr. Wilkinson that, although not supporting an insanity defense, could support a defense that Mr. Bolen's methamphetamine intoxication, albeit voluntary, caused him to lack the specific intent necessary for attempted second-degree murder.

For forensic psychiatrists, this case highlights the challenges involved in assessing defendants who present with evidence of psychosis and concurrent substance use. Methamphetamine intoxication in particular is known to cause severe paranoia and hallucinations, which can mimic the symptoms of schizophrenia or other psychotic disorders. But,

under Wyoming law, and in many other jurisdictions, such symptoms, when attributable primarily to self-induced intoxication, do not meet the criteria for insanity defenses. This statutory limitation is crucial for forensic evaluators to understand, as it determines whether defendants may meet criteria for an insanity versus a voluntary intoxication *mens rea* defense (e.g., negating specific intent to commit attempted second-degree murder because of self-induced intoxication).

Additionally, the Supreme Court of Wyoming's application of the *Blockburger* test in rejecting Mr. Bolen's double jeopardy claim provides further insight into how courts interpret the legislative intent behind criminal statutes. In Mr. Bolen's case, the court determined that attempted second-degree murder and aggravated assault, although arising from the same incident, constituted separate offenses because each charge required proof of different legal elements. For forensic experts involved in such cases, it is important to understand how multiple charges can arise from a single incident and how they may be asked to opine on whether voluntary intoxication created a diminished capacity to form a specific intent necessary for those separate charges.

The Supreme Court of Wyoming's ruling in *Bolen* reinforces the statutory exclusion of substance-induced mental states from insanity defenses consistent with all other states with insanity defenses and highlights the importance of thorough evaluations to determine the degree to which substance use and intoxication contributed to mental states during the commission of crimes. When forensic experts come to an opinion that the mental state in question is primarily attributable to voluntary intoxication, then they must be aware of the jurisdiction's *mens rea* defense laws and whether they permit the negation of specific intent elements based on mental states arising from voluntary intoxication.

Hospital Liability for Independent Contractors

Elizabeth Oduwo, MD
Resident in Psychiatry

Edward Goldenberg, PhD
Clinical and Forensic Psychologist

Jennifer Piel, MD, JD
*Director, Center for Mental Health, Policy, and the Law
Fellowship in Forensic Psychology
Washington State Department of Social and Human Services*

Department of Psychiatry & Behavioral Sciences
University of Washington
Seattle, Washington

Hospitals Can Be Held Responsible for Nondelegable Duties Performed by Independent Contractors

DOI:10.29158/JAAPL.240128-24

Key words: independent contractor; hospital; civil liability; nondelegable duties

In *Estate of Essex v. Grant County Pub. Hosp. Dist. No. 1*, 546 P.3d 407 (Wash. 2023), the Washington Supreme Court ruled that hospitals are responsible for nondelegable duties regardless of whether those duties are performed by its staff or independent doctors.

Facts of the Case

Cindy Essex went to Samaritan Hospital's emergency room for left shoulder pain that radiated to her abdomen. Dr. Christopher Davis, an independent contractor, evaluated Ms. Essex and learned that she had been experiencing shoulder pain, bloody stool, vomiting, and fever. Dr. Davis ordered pain medication, x-rays, and a computed tomography (CT) scan. Dr. Davis diagnosed Ms. Essex with gastric outlet obstruction and ordered a nasogastric tube (NG tube), which was recommended by Dr. Irene Cruite. Dr. Cruite was a radiologist and independent contractor at Samaritan Hospital like Dr. Davis. Ms. Essex reported feeling better after the NG tube insertion. Dr. Davis consulted a gastroenterologist and ordered Ms. Essex's transfer to Central Washington Hospital at the recommendation of the gastroenterologist. While awaiting transfer, Ms. Essex's pain increased, and nurses gave pain medication but apparently did not tell Dr. Davis about the recurring pain. Then, a nurse reported bruising on Ms. Essex's upper arms for the first time, which was almost five hours since she arrived at the emergency room. According to the records, it does not appear that this was reported to Dr. Davis.

Ms. Essex was transferred to Central Washington Hospital and continued to have severe lower back and abdomen pain. Nurses at Central Washington Hospital noted that Ms. Essex had redness on her inner arm and chest and also new raised areas on her skin. Dr. Stephen Wiest took over her care and reviewed her CT scans and identified "some soft-tissue changes" that Dr. Cruite had not reported.