Competency Decisional Capacity

Overview

Competency to stand trial and how it works
NGRI/ Provocation defenses often confused with Competency
Capacity to make medical decisions

Why it matters

Garner v. Mitchell, 502 F.3d 394 (6th Cir. 2007),

- 19 yo male burglarized a home and set it on fire afterwards to destroy evidence he had been there. 5 children sleeping in the home died as a result.
- Defendant had borderline intellectual functioning, poor education, but waived miranda rights and confessed in a police interview.
- He was convicted based on his confession, but later appealed, with his lawyer stating that he did not have the capacity to waive his miranda rights, so his confession should be thrown out.

Why it matters

IT WORKED

- Court ruled defendant “did not knowingly and intelligently waive his miranda rights” due to his age, low intellectual functioning, lack of education and other factors
- Confession was thrown out.
- **A worst case scenario, but it demonstrates the potential impact of this issue**

Competency to stand trial:

Based off due process clause of the constitution from 14th and 5th amendments:

“No person shall ... be deprived of life, liberty, or property, without due process of law”
“[N]or shall any State deprive any person of life, liberty, or property, without due process of law”

Competency to stand trial: Dusky Standard

Individual must :

1. **Understand the charges against him or her ie: “Rational and Factual understanding”**
1. **Have the ability to aid his or her attorney in his or her own defense.**
1. **Deals with individual’s CURRENT state of mind.**

Competency to stand trial: Dusky Standard

1. Can be due to mental illness, intellectual disability

1. Can be raised over defendant's objections

1. Competence is raised as an issue in 5-8% of all cases, of which about 15 % are deemed incompetent.

Versus Insanity/Self Defense/Provocation defense:

Insanity:

- **Currently functions under insanity defense reform act of 1984**
- **Changed due to Hinkley's assassination attempt of Reagan, and successful insanity defense**
- **"at the time of the offense...as the result of a severe mental disease or defect, (defendant) was unable to appreciate the nature and quality or wrongfulness of [her] acts."**

Provocation:

- **Argues "sudden and temporary loss" of self control due to emotional state is "being provoked"**
- **Focuses on defendant's state of mind at the time of the offense**
- **If affirmed, essentially argues that defendant was partially or fully not responsible for their crime due to their mental state**

Versus Insanity/Self Defense/Provocation defense:

Self Defense:

- **Use of reasonable force to counter threat of harm to self, others, or in some cases property**
- **Highly dependent on situation, and local laws(castle laws, duty to retreat vs stand your ground)**
- **Mainly focuses on situation, rather than mental impairment of defendant**

Process of Competency Assessment

1. **Concern must be raised that defendant cannot assist his/her lawyer or does not understand the charges against him/her. This can be raised by either the judge or defense lawyer.**

1. **Evidence must be shown to the judge as to why this is the case.**

1. **Proceedings are halted pending assessment of competency.**

Process of Competency Assessment

1. Defendant is assessed by psychiatrist/psychologist, who writes a report, and gives it to the judge as to whether or not the defendant is competent to stand trial.

1. If yes, case proceeds

1. If no, things get more interesting..

Process of Competency Assessment

1. Defendant is sent to a mental health hospital, with the goal being to treat them and restore their competence, as it is an issue of current ability to stand trial.

1. If competence is restored, the trial continues

1. If not, defendant continues to be held and reassessed at regular intervals

Competency/ NGRI Myths:

Competency/ insanity is sometimes viewed as a sneaky way of avoiding responsibility for crimes

- **Time served during restoration of competence is not technically “detention time” and may or may not be counted as time served as patient is being treated, not jailed.**
- **Maximum time for restoration of competency in N.M is 9 months, except for certain felonies, for which the maximum time is the maximum sentence**
- **Some states have NO limit on how long someone can be held**

Competency/ NGRI Myths:

Competency/ insanity is sometimes viewed as a sneaky way of avoiding responsibility for crimes

- **Defendant can still be tried if restored to competence**
- **Legally opens up possibility of guardianship, civil commitment**
- **Majority of insanity defenses are not successful, most competency cases are deemed competent to stand trial**

Medical Decisional Capacity

Patient must understand their illness or condition and how it affects them

- Doesn't have to be sophisticated.
- "I had a heart attack and now my heart is messed up so I get chest pain if I exercise" is acceptable, but the patient must get the general idea.

- "My heart is fine, I just need to eat at garduno's and this chest pain I have every time I exercise will go away" or "I can't pee for the last 24 hours, but that's just because I haven't done my sit-ups today."

- Check to see if anyone has explained the issue to the patient!

Medical Decisional Capacity

Patient must understand the treatments that are being offered and the risks and benefits of those treatments

- “ I need to go in for some study so they can see if my heart is beating right”

- “My meds could make me fat, and I need to let the doctor know if I start thinking about killing myself after I start taking them because that can happen”

- Refusal of treatment should be followed up with questions as to why patient is refusing care

Medical Decisional Capacity

- Refusal of treatment should be followed up with questions as to why patient is refusing care

Medical Decisional Capacity

Patient must understand the consequences of refusing treatment

- Most complicated part of decision making capacity
- Patient must understand the impact of their treatment beyond the immediate effects of it.

For example: A patient refusing medications for mania must understand what being manic could do to their life.

Alleviating side effects is a legitimate reason to want to refuse treatment...to a point...

Medical Decisional Capacity

Patient must understand the consequences of refusing treatment

Becomes challenging with certain groups, such as the elderly, or minors.

What is the risk this person will fall, or not be able to feed themselves? What if they say they will just order pizza, chinese food every day?

Standard here is a judgement call weighing the person's right to make their own decisions against their danger to self/ others.

Medical Decisional Capacity

Standard can turn into a judgement call weighing the person’s right to make their own decisions against their danger to self/ others.

With increasing risk of harm to self/ others, standard of capacity rises

Why it matters

Medical issues/ psychiatric issues

- Patient on CIT team refuses to take medications or go to the psychiatrist
- Patient/ suspect refuses medical care for an injury or other health issue
- **Drug and alcohol intoxication**

Why it matters

If the patient's decision is not making sense, or is highly against their own best interests:

- Do an informal assessment of capacity
- If you have concerns about a patient's ability to make decisions, report it to their psychiatrist
- Additionally, asking questions about why the patient is making decisions that seem at odds with their goals may reveal valid reasons for their behavior
- Even if reasons seem silly, petty, etc to you, they may be a major issue for the patient

Your child is being eaten
by a camel.
Do you...
a) save your child or
b) take a photo.