

COMPETENCY AND THE INSANITY DEFENSE

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CONSTITUTIONAL MANDATE



- “Due Process precludes placing a defendant on trial while she is incompetent.”
 - *Drope v. Missouri*, 95 S.Ct. 896 (1975)
- Constitutional Right: “Not to be tried if he does not have the ability to comprehend the proceedings or to assist his defense.”
 - *State v. Davis*, 898 N.E.2d 281 (Ind. 2008)

COMPETENCY TEST FOR DEFENDANT

- “Whether the defendant has sufficient present ability to consult with defense counsel with a reasonable degree of rational understanding, and whether the defendant has a rational as well as factual understanding of the proceedings against him.”
 - *Adams v. State* 509 N.E.2d 812 (Ind. 1987)
 - *Brown v. State* 516 N.E.2d 29 (Ind. 1987)

WHAT COMPETENCY MEANS

- Ind Code 35-36-3-1(1)(a)
- The defendant must be able to understand the proceedings
- The defendant must be able to assist in the preparation of the defense

COMPETENCY STATUTES

- Ind. Code § 35-36-3-1 [Procedure]
 - The Court/ at any time
 - Reasonable Grounds to believe
 - Defendant lacks ability to understand & assist
 - SHALL
 - Immediately
 - Set a Hearing
 - Purpose: to determine defendant's ability

COURT'S MEDICAL APPOINTMENTS

- Court shall appoint 2 or 3 competent/ disinterested
- Psychiatrists, psychologists, or physicians
 - One must be a psychiatrist
- Expertise in determining Competency
- Examine and testify as to defendant's ability to understand and assist in preparation of defense
- Any other evidence relevant to competency may be admitted at hearing



HEARING IS NOT AN ABSOLUTE RIGHT

- Competency Hearing required by IC 35-36-3-1
- ONLY with evidence
- Creating Reasonable/bona fide doubt/competency
- Evaluation of Competency by Trial Judge
- Trial Court Discretion
 - *Campbell v. State*, 732 N.E.2d 197 (Ind. Ct. App. 2000)
 - *Brown v. State*, 485 N.E.2d 108 (Ind. 1985)



“REASONABLE GROUNDS”/COMPETENCY

- Trial Court must determine whether “reasonable grounds” exist to order evaluation of competency
- Defendant has burden/ establish “reasonable grounds”
- Stress from Felony Trial/ not sufficient
- *Campbell v. State*, 732 N.E.2d 197 (Ind. Ct. App. 2000)

COMPETENCY HEARING

- “Observations of the defendant’s demeanor during pretrial hearings are an adequate basis for finding that a competency hearing is not necessary.”
 - *Anthony v. State*, 540 N.E.2d 602 (Ind. 1989)
- If Court finds “reasonable grounds”
- Must immediately stop proceedings
- Hold a Competency Hearing
 - *Culpepper v. State*, 662 N.E.2d 670 (Ind. Ct. App. 1996)

“REASONABLE GROUNDS” BURDEN

- If court does not order hearing *sua sponte*, Defendant has burden of establishing reasonable grounds for incompetency
 - *Brown v. State*, 485 N.E.2d 108 (Ind. 1985)
 - *Campbell v. State*, 732 N.E.2d 197 (Ind. Ct. App. 2000)
- Plea of insanity in itself is insufficient for “reasonable grounds”
 - *Baum v. State*, 379 N.E.2d 437 (Ind. 1978)
 - *Harris v. State*, 314 N.E.2d 45 (Ind. 1974)
 - *Dragon v. State*, 383 N.E.2d 1046 (Ind. 1979)

NO COMPETENCY HEARING REQUIRED

Supreme Court Holding:

- “No competency hearing was required where two (2) court-appointed psychiatrists examined the defendant and reported that he was competent to stand trial.”
 - *Montague v. State*, 360 N.E.2d 181 (Ind. 1977)
 - *Hadley v. State*, 496 N.E.2d 67 (Ind. 1986)



IC 35-36-3-1(I)(B)

- If Defendant lacks the ability to stand trial
- Court must continue the trial
 - Commit: Division of Mental Health and Addiction
 - DMHA will provide competency restoration services
 - If defendant is serving unrelated sentence at Dept. of Corrections, services will be rendered there



**Division of
Mental Health
and Addiction**

IC 35-36-3-2

- Attainment of ability to stand trial
 - Defendant attains ability to understand proceedings
 - DMHA certify fact to proper court
 - Court shall order sheriff to return defendant
 - Court shall hold trial as if no delay occurred



IC 35-36-3-3

- Probability of Attaining Competency
 - Within ninety (90) days/ DMHA or other agency
 - Shall certify whether there is a substantial probability defendant will attain competency
 - Within foreseeable future
 - If no: initiate civil commitment proceedings
 - If yes: agency retains defendant until competent OR for 6 months from start of services
 - Whichever is First

IC 35-36-3-4

- **Failure to attain competency**
 - *State v. Davis*, 898 N.E.2d 281 (Ind. 2008)
 - Violation of Right to Due Process if:
 - Determination that it is unlikely that defendant will ever regain competency, and
 - Pre-trial confinement past the statutory maximum for crime charged
 - Dismissal of Charging Information
 - Unless State's substantial interest does outweigh liberty interest of defendant



MATLOCK V. STATE
944 N.E.2D 936 (IND. CT. APP. 2011)

- 2011 Court of Appeals decision
- OWI arrest
- Defendant determined to be incompetent
- Detained in excess of maximum sentence
 - No determination: Unlikely regain Competency
- OWI: State has Substantial Interest in Collateral Consequences
 - Suspension of License/ Habitual Traffic Offender
- Motion to Dismiss: DENIED

NO PROBABILITY OF COMPETENCE

- *State v. Coats*, 981 N.E.2d 1273 (Ind. Ct. App. 2013)
- IC 35-36-3-3 requires 90 day report
- If no substantial probability of competence, DMHA must begin regular commitment proceedings
 - Defendant had Dementia (progressive disease) – competency will never be restored
 - Normally State would be required to commit to DMHA
 - State's interest in restoring competency cannot be realized
 - Court DENIED Motion to Commit defendant



GENERAL QUESTIONS ON COMPETENCY

- When can a defendant raise the competency issue?



ANSWER

- Competency can be raised at anytime!!!
- *Evans v. State*, 300 N.E.2d 882 (Ind. 1973)
- *Tinsley v. State*, 298 N.E.2d 429 (Ind. 1973)
- *Smith v. State*, 443 N.E.2d 1187 (Ind. 1983)
 - Competency may be raised long after trial and conviction have occurred.

GENERAL QUESTIONS ON COMPETENCY

- WHO can request a Competency Hearing??



ANSWER

- “The court, either from his own knowledge or upon the suggestion of any person, has reasonable ground for believing the defendant to be insane. . .”
- Shall immediately set a hearing date, and
- Shall appoint two (2) competent disinterested physicians
 - *Harris v. State*, 314 N.E.2d 45 (Ind. 1974)

INSANITY DEFENSE STATUTES

- Ind. Code § 35-41-3-6
- Mental Disease or Defect (MDD)
 - Not responsible: if as a result of mental disease or defect, unable to appreciate wrongfulness of conduct at the time of the offense
 - Definition MDD: severely abnormal condition that grossly and demonstrably impairs a person's perception
 - MDD does not include abnormality manifested only by repeated unlawful/ antisocial conduct.



SCHMID V. STATE

804 N.E.2D 174 (IND. CT. APP. 2004)

- A diagnosis of Mental Disease or Defect is not a defense to a crime!
- Illness must be so severe as to render defendant unable to appreciate wrongfulness of criminal conduct

IC 35-36-1-1

- “**Insanity**” refers to the defense set out in IC 35-41-3-6.
- “**Mentally ill**” means having a psychiatric disorder which substantially disturbs a person's thinking, feeling, or behavior and impairs the person's ability to function; “mentally ill” also includes having any mental retardation.

MARLEY V. STATE
747 N.E.2D 1123 (IND. 2001)

Indiana General Rule:

“Indiana has long held that a defendant may not submit evidence relating to a mental disease or defect except through an insanity defense.”

ANKNEY V. STATE
825 N.E.2D 965 (IND. CT. APP. 2005)

- Defendant’s Offer to Prove: Proffer psychiatric history for the following purpose: to help the jury better understand his testimony.
- Insanity Defense was not filed
- Defendant is Competent to stand trial
- Court of Appeals upheld trial court’s ruling that excluded evidence of defendant’s mental illness

BURDEN OF PROOF

- Ind. Code § 35-41-4-1(b)
- Burden of Proof of establishing insanity on Defendant by preponderance of evidence



IC 35-36-2-1

• Time of filing/ Notice of Defense

- 20 days prior to omnibus date for felony;
- 10 days prior to omnibus date for misdemeanor;
- Or when it is in the interest of justice and upon a showing of good cause, the court may permit the filing -- anytime before trial

LATE FILING OF REQUIRED NOTICE

- Where defense gives no showing of good cause why notice of insanity defense is late, the court has discretion whether to accept it.
- *Ankney v. State*, 825 N.E.2d 965 (Ind. Ct. App. 2005)



IC 35-36-2-2

- Admissibility of evidence; psychiatrists, psychologists, and physicians
 - (a) Evidence may be introduced to prove sanity/insanity at time of offense
 - (b) Court shall appoint 2 or 3 disinterested psychiatrists, psychologists, or physicians to examine defendant and testify at trial.
 - This testimony follows presentation of all other evidence
 - (c) If defendant fails to cooperate after court order, defendant may not present testimony of any medical witness unless failure to cooperate was a result of MDD
 - (d) Medical witnesses may be cross-examined by both sides and both sides may introduce evidence in rebuttal

FUNDS FOR EXPERT WITNESS

- United States Supreme Court holding:
 - Due Process requires State to provide indigent defendants with access to psychiatric assistance.
- Requires threshold showing to trial court that sanity is likely to be a significant factor in his defense – before defendant acquires the right to an expert.
 - *Ake v. Oklahoma*, 105 S. Ct. 1087 (1985)

FUNDS FOR EXPERT WITNESS

- “We find that a defendant is entitled to access to an expert, not access to an expert who sees the case his way. He is not entitled to the funds necessary to go out and find a favorable witness.”
- The defendant does not have the right to receive funds to hire a psychiatrist of his own choosing.
 - *Palmer v. State*, 486 N.E.2d 477 (Ind. 1985)



“CRITICAL STAGE”/ RIGHT TO ATTORNEY

- Sixth Amendment right to counsel applies to “critical” stages of the proceedings
- Test: Whether defendant is confronted with the intricacies of the law or the advocacy of the prosecutor.
- Holding: Defendant is not facing his adversary with a court-appointed doctor. “The defendant was not entitled to the presence of his counsel.”
 - *Williams v. State*, 555 N.E.2d 133 (Ind. 1990)

MIRANDA WARNINGS + STATEMENT

- “Defendant is not entitled to *Miranda* warnings when he raises the issue of his own sanity at the time of the offense.”
- “A defendant is entitled to consult with counsel before submitting to a psychiatric exam by the State.”
- Sixth Amendment requirements are satisfied so long as testimony of State’s physician goes to mental capacity.
 - *Taylor v. State*, 659 N.E.2d 535 (Ind. 1995)

INCRIMINATING STATEMENTS

- The State may not use a defendant’s statements during a psychiatric exam to demonstrate his guilt.
- The purpose of the exam is to evaluate the defendant’s mental health, not to gain evidence of guilt.
- If the Court finds that the State is abusing its access to defendant and using his statements to prove guilt, the Court should not hesitate to exclude such statements.
- *Taylor v. State*, 659 N.E.2d. 535 (Ind. 1995)



DOCTOR-PATIENT PRIVILEGE

- The Indiana Supreme Court has repeatedly held that a defendant who pleads not guilty by reason of insanity waives the doctor-patient privilege as to all physicians who might testify at trial.
- Compulsory psych exam/ incriminating statements admissibility -- determined by purpose for evidence.
 - Admit: demonstrate mental condition
 - Exclude: demonstrate defendant’s guilt
 - *Phelan v. State*, 406 N.E.2d 237 (Ind. 1980)

ORDER OF WITNESSES

- “It is the clear intent of the statute that an expert appointed by the court shall not be permitted to testify on the subject of sanity or insanity of the accused until after the presentation of the evidence of the prosecution and the defense.”
- It relieves both parties of the burden of having the court-appointed physicians become their witnesses with the result that they are bound by such testimony.”
 - *Crawford v. State*, 770 N.E.2d 775 (Ind. 2002)

ORDER OF WITNESSES

- Expert Testimony SHALL follow the presentation of evidence. *Crawford v. State*, 770 N.E.2d 775 (Ind. 2002)
- It is an error for the court to vary this procedure without mutual waiver. *Phelan v. State*, 406 N.E.2d 237 (Ind. 1980)
- Error for appointed physician to testify in State’s case in chief. *Henderson v. State*, 122 N.E.2d 340 (Ind. 1954)
- However, not necessarily prejudicial. No showing that the defendant’s substantial rights were prejudiced by this irregularity. *Phelan v. State*; *Blackburn v. State*, 291 N.E.2d 686 (Ind. 1973)

**EXAMINATION
PROCEDURE**

- IC 35-36-2-2 (d)
 - It is proper for court to conduct direct examination then allow parties to cross. *Musick v. State*, 352 N.E.2d 717 (Ind. 1976).
 - The intent of the statute is clear that the trial judge may conduct the direct exam of the court-appointed psychiatrists and the parties may cross-examine them
 - Both state and defense have the right to present evidence

ULTIMATE FACT IN ISSUE

- Purpose of Statute re: Court appointed psychiatrist testify at trial – to provide trier of fact w/ expert testimony to assist in resolving the legal sanity issue.
 - *Lee v. State*, 392 N.E.2d 470 (Ind.1979).
- An expert witness' testimony is admissible on the issue of sanity (ultimate fact issue) because of his specialized knowledge of the subject matter.
 - *Freed v. State*, 480 N.E.2d 929 (Ind. 1985).

EXPERT TESTIMONY/ NON-BINDING

- Fact-finder is free to disregard expert testimony
 - *McCoy v. State*, 393 N.E.2d 160 (Ind. 1979)
 - "Expert testimony is not conclusive on the issue of sanity. Lay testimony, including opinion testimony, is competent evidence on this issue, as is all evidence which has a logical reference to the issue, including the defendant's sobriety and behavior on the day of the offense."
 - Experts disagreed re: diagnosis of defendant's condition
 - Family testimony show defendant knew what he was doing
- State's Proof:
 - No Mental Disease or Defect or
 - Substantial capacity to appreciate wrongfulness/ conduct and capable of conforming his conduct

EXPERT WITNESS FUNCTION

- "The function of an expert witness in cases concerning one's sanity or insanity is **advisory** in nature. He does not state a fact, but gives an opinion; the trier of fact must make the ultimate decision on this issue."
 - *France v. State*, 387 N.E.2d 66 (Ind. Ct. App. 1979)

FOUNDATION FOR EXPERT'S OPINION

- Once a plea of insanity is offered by the defendant, all *relevant* evidence is deemed admissible.
- A plea of insanity opens wide the door to all evidence relating to the defendant and his environment. Evidence that would normally not be material except for showing the mental state of the defendant.
 - *Wilson v. State*, 217 N.E.2d 147 (Ind. 1966)

ADMISSIBLE EVIDENCE FOR EXPERTS

- “The fact that a psychiatric expert bases his opinion in part on reports from mental hospitals or other psychiatrists does not make the opinion and testimony of the expert excludable.”
- Medical reports containing observations + expert opinions relating to defendant’s insanity should not be admitted directly into evidence – but can be used by expert in render an opinion.
 - *France v. State*, 387 N.E.2d 66 (Ind. Ct. App.1979)

CATE V. STATE
644 N.E.2D 546 (IND. 1994)

- Cate found guilty but mentally ill re: murder of his 2-year-old daughter
- FIVE (5) experts (including State’s expert) agreed that Cate was legally insane
- Issue: Verdict contrary to law??
- Supreme Court (CJ Shepard) opinion: “We have never held expert testimony to be conclusive.”

CATE V. STATE
644 N.E.2D 546 (IND. 1994)

- Expert Opinion is Unanimous/ but, the evidence was contrary to that opinion
- Evidence: Cate is lucid after arrest + showed awareness of what he had done + deliberation in killing
- Expert evaluation *after* killing/ strong incentive to lie: "could have told his doctors a tall tale to avoid a guilty verdict."
- Ruling: minimal evidentiary justification to find Cate sane enough to be held legally accountable.

EXPERT V. LAY OPINION

- *Moler v. State*, 782 N.E.2d 454 (Ind. Ct. App. 2003)
- Expert Opinions were unanimous that Moler was Insane at the time of the crimes.
- Lay Evidence contradicted Expert Opinions
- Jury rejected Expert Opinions
- Court of Appeals *reluctantly denied* Moler's appeal
- Petition to Transfer Denied
- Examination of the *Barany* Ruling

BARANY V. STATE
658 N.E.2D 60 (IND. 1995)

- **Expert Opinions** -Unanimous that Barany was Insane at the time of the crimes
- **Lay Evidence** contradicted Experts' Opinions
- "The jury could have decided that this testimony about (Barany's) behavior was more indicative of his actual mental health at the time of the killing than medical examinations conducted 4 weeks after the arrest. Given this conflicting evidence, we will not invade the jury's fact-finding province."

GAMBILL V. STATE
675 N.E.2D 668 (IND. 1996)

- Four experts agreed that defendant was legally insane
- Two lay witness testified defendant knew/ wrong
- *Barany*: A determination of insanity is a question for the trier of fact. The jury is free to disregard the testimony of experts and rely on lay witnesses.
- A jury is not obligated to believe expert testimony on the issue of insanity, and may consider lay opinion testimony on the issue of sanity.

MOLER V. STATE
782 N.E.2D 454 (IND. CT. APP. 2003)

- **Court of Appeals:** “*Barany* has made it very difficult even for defendants with well-documented mental illnesses to successfully raise the insanity defense. Under the rule in *Barany*, even if all expert testimony regarding a defendant’s state of mind points to the fact that the defendant could not have appreciated the wrongfulness of his actions at the time of the crime, the jury is free to disregard the experts’ opinions in favor of lay evidence of defendant’s behavior before and after the crime.”

THOMPSON V. STATE
804 N.E.2D 1146 (IND. 2004)

- **Justice Sullivan/ Concurring Opinion:** Concern because Court/ Appeals decision reversed -- that *Barany* ruling was expanded and expert testimony is less weighty than before.
- “There will be insufficient evidence to convict where (1) there is unanimous credible, expert testimony that a defendant is insane at the time of the crime at issue and (2) there is no other evidence of probative value from which a conflicting inference can be drawn.”

BERRY V. STATE
969 N.E.2D 35 (IND. 2012)

- If a credible expert opines that a defendant was sane when committing an offense, despite other expert opinions to the contrary, it is reasonable for a trial court to reject a defendant's insanity defense.
- Conflicting credible expert testimony is sufficiently probative of sanity.

IC 35-36-2-3

- Insanity Defense/ Possible Verdicts:
 - Guilty
 - Not Guilty
 - Not responsible by reason of insanity at the time of the offense
 - Guilty but mentally ill at the time of the crime

JURY INSTRUCTIONS

- **Indiana Supreme Court ruling** re: concern that consequences/ verdict is unclear to jurors with possible verdict: not responsible by reason of insanity
- "When verdict options before a jury include not responsible by reason of insanity or guilty but mentally ill, and the defendant requests a jury instruction on the penal consequences of these verdicts, the trial court is required to give an appropriate instruction."
 - *Georgopolus v. State*, 735 N.E.2d 1138 (Ind. 2000); *Schmid v. State*, 804 N.E.2d 174 (Ind. Ct. App. 2004); *Passwater v. State*, 989 N.E.2d 766 (Ind. 2013)

IC 35-36-2-4

- **Finding of not responsible by reason of insanity:**
 - Prosecutor shall file a written petition with the court under IC 12-26-6-2(a)(3) or IC 12-26-7
 - Court shall hold a hearing
 - Defendant shall be detained thru hearing
 - Court may take judicial notice of trial proceedings + call witnesses w/ knowledge re: hearing issues

EVIDENTIARY ISSUES

- A plea of insanity opens door to testimony/ defendant's entire life. *Shepherd v. State*, 547 N.E.2d 839 (Ind. 1989)
- Any evidence, even though remote, which has a logical relevance to sanity is admissible. *Id.*; *Crawford v. State*



DEFENDANT'S Demeanor

- When defendant's sanity is in issue, the jury is entitled to consider defendant's in-court demeanor as well as the defendant's words in appraising sanity. *State v. Van Orden*, 647 N.E.2d 641 (Ind. Ct. App. 1995)
 - Defendant claimed prejudice because she was medicated in the hospital
 - Defendant wanted to proceed to trial without medication so the jury could see her in same condition as time/ murder
 - Testimony re: mental history and fact that remissive state and calm demeanor at trial were result of medication.
 - Courtroom demeanor is probative as to insanity defense, it is not dispositive

MIRANDA SILENCE

- The use of an accused's silence after receiving *Miranda* warnings as evidence of his sanity violated the due process clause of the Fourteenth Amendment.
- A prosecutor is prohibited from using a defendant's post-*Miranda* silence on cross-examination to impeach the defendant's exculpatory explanation of his participation in the crime – as evidence of defendant's sanity.
- *Wainwright v. Greenfield*, 106 S. Ct. 634 (1986)

MIRANDA SILENCE

- The post-*Miranda* silence does not mean only muteness; it includes the statement of a desire to remain silent, as well as a desire to remain silent until an attorney has been consulted.
- The State's elicitation of testimony concerning the defendant's exercise of his right to remain silent and to consult with an attorney (as evidence of sanity) constitutes a violation of due process of law and mandate a reversal of conviction.
- *Wilson v. State*, 514 N.E.2d 282 (Ind. 1987)

QUESTIONS ON INSANITY

Are all mental conditions serious enough to relieve one of criminal responsibility????????????????



ANSWER: NO

- Not all mental conditions are serious enough to relieve one of criminal responsibility. To rise to the level of a defense, the illness must be so severe as to render the defendant unable to appreciate the wrongfulness of the criminal conduct.

- *Gambill v. State*, 675 N.E.2d 668 (Ind. 1996)
- *Higgins v. State*, 601 N.E.2d 342 (Ind. 1992)

QUESTIONS FROM THE AUDIENCE?


