SPECIAL FOCUS: DISABILITY LAW

STATE V. BEAN: THE INSANITY DEFENSE AND THE RIGHT TO PROCEED *PRO SE*

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This article briefly describes the law pertaining to the representation of probably insane defendants who may object to raising the insanity defense and who wish to represent themselves. In 1989, a defendant argued in the Vermont Supreme Court that once an insanity defense has been raised, a waiver of the defense had to be made voluntarily and knowingly by the *defendant* (and not the attorney) on the record.[1] Justice Dooley, writing for the Court, rejected the argument, in part because "the defendant had experienced trial counsel and there is nothing to suggest that counsel was acting against the wishes of the client."[2]

Eleven years later, the Court held that a competent defendant has the right to decide whether to use the insanity defense.[3] The decision whether to pursue an insanity defense is not the attorney's, but the defendant's. Justice Dooley, writing for the majority held that the "forced imposition of the insanity defense over defendant's objection is grounds for reversal."[4] The facts of this intriguing case offer insight into the Supreme Court's decision.

In 1993, Ron Bean was charged with violation of an abuse prevention order for tying his mother up. Apparently, Mr. Bean tied her up and built a funeral pyre, using an ax to chop up furniture. He also threw bleach in her eyes. His mother was able to escape out a window when he permitted her to go to the bathroom. The police officer noted in his affidavit that the defendant believed he was the reincarnation of Christ. At his first appearance before the court, Bean admitted that he was planning to kill his mother with the ax and burn her body, although these statements were later suppressed.[5] They were suppressed because they were made without a valid waiver of counsel.[6] Justice Dooley writing for the Court noted that Bean's statements at the initial hearings "were inconsistent and often bizarre, indicating an inability to comprehend what was occurring."[7]

Mr. Bean was then charged with kidnapping for the same events. Mr. Bean was not represented by counsel, but he wanted to plead guilty. The trial court would not accept the plea. Bean was then assigned a public defender despite his objections. After about a year of representing Bean, this attorney was permitted to withdraw. Bean told one of the evaluators that he believed that he was the father of the public defender's children and that she was the author of a comic strip. He said she was a cross between Janet Reno and Janet Jackson. He wanted to represent himself or have private counsel.

He was then assigned to Matt Valerio, who represented him for the next eight years. During that time, Bean never discussed any of the facts of the case with his attorney. Instead, he held long monologues about his powers, the devil, and angels. According to Valerio, Bean was actively delusional throughout the many years of representation. Valerio repeatedly raised competency because he believed that Bean was incompetent throughout the many years of representation.

Bean was evaluated by Dr. Linder, who, while admitting that Bean's competency fluctuated, found him competent. Bean told the court he would rather be in jail than in an insane asylum and did not want the insanity defense. Despite Bean's repeated assertions that he did not want to pursue an insanity defense, Dr. Linder concluded that Bean was manipulating the system by faking psychiatric symptoms. The court found Bean competent.

At a second competency hearing, the defense psychologist, Dr. Farrell, thought Bean was incompetent and noted that Bean reported that he had computer chips inside him and was being programmed. Farrell reported that Bean's thinking was delusional, grandiose and persecutory. Dr. Cotton evaluated Bean and found him psychotic but possibly competent. Dr. Linder reaffirmed his earlier conclusion. The trial court once again found him competent.

At the beginning of trial, counsel related to the court that Mr. Bean instructed him not to use an insanity defense and that he wanted to proceed *pro se*. Counsel did not abide by his wishes, as he related to the court that insanity was the only defense. The trial court did not order the attorney to modify his defense or discharge him. Bean was often so disturbed that he could not sit in the courtroom, but was permitted to watch the proceedings on television. He became agitated and told his attorney that he was seeing serpents coming out of a person's head in the courtroom. During the defense counsel's cross-examination of his mother, Bean interrupted every question by yelling "Matt." During the prosecution's re-direct, Bean continued interrupting and yelling. Counsel explained to the trial court that the defendant believed that angels were controlling the witness and the defense attorney. The angels, Bean believed, were conspiring to prevent Valerio from doing what Bean wanted him to do.

The jury convicted Bean after trial. At sentencing, Bean's allocution was incomprehensible and delusional:

> I did that for five years until my heart was removed from my body because the cat didn't want to give any more money. That was in 1988 in Riverside Park. They put up a memorial stone there in the name of the Freddy Mercury Foundation. I watched Freddy Mercury kill a Catholic priest. 1977. With Tony Curtis. Tony Curtis took a very special interest in me after that. I was only twelve or thirteen years old. He decided he was going to be my faster [sic?] father and use the great power of Simon the pig. Same power that created the Nazi government. To bring me into his house. And he fed me a lot of human flesh while I lived with him.
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> And I met Newt Gingrich while I was living with Tony Curtis. I was in

New York City because the cat used to talk to me subliminally whispering to me with the blood.

Bean went on like this for pages and pages of transcript. During his lengthy confinement, Ron Bean was frequently in solitary confinement and his behavior in the courthouse was often violent. He tore the radiator out of the wall, threw the court television, and got hold of one of the officer's guns. He managed to kick out the back window of the police cruiser when he was being transported and tried to escape.

On appeal of his conviction, he argued that he was incompetent to stand trial as a matter of law, but the Court rejected that claim, despite its earlier acknowledgement that his statements indicated an inability to comprehend the proceedings. The defense argued that Bean was similar to the defendant in *State v. Pollard*[8] in which the Court reversed a finding of competency where the defendant had garbled speech, bizarre behavior, stated he did not want to go to the state hospital, wanted to plead guilty to avoid that event, and refused to cooperate with his attorney. The *Bean* Court distinguished *Pollard* by stating that Bean's bizarre behavior was intentional and his refusal to cooperate with counsel was volitional.

Bean also argued that he had the right to represent himself and to reject the insanity defense. These arguments the Court found persuasive. The Court reasoned that the affirmative defense of insanity was essentially a plea of not guilty by reason of insanity and the decision of what plea to enter belongs to the defendant. The Court wrote that a successful insanity defense often leads to civil commitment and a stigma of mental illness. Furthermore, an insanity defense is often inconsistent with a defense on the merits of the case. The Court concluded that forcing a competent criminal defendant to pursue an insanity defense was reversible error. Here, the majority of the Court found the defendant was adamant in rejecting the insanity defense and his preference for jail over a mental hospital.

On the second point, the Court, recognizing that a criminal defendant has the constitutional right to represent himself under *Farretta v. California*,[9] held that the trial court should have granted the defendant's motion to proceed *pro se*. The Court reversed and remanded.

Justice Morse dissented on this last point based upon his reading of the transcript. Justice Morse concluded that Bean just wanted to represent himself and was not objecting to the insanity defense. Justice Morse noted that once trial has commenced with counsel, it is within the trial court's discretion to decide whether the defendant may proceed *pro se.*

Upon remand, competence was again raised and this time, eight years later, Mr. Bean was found incompetent by Dr. Weker and the judge agreed. After eight years of confinement, why was Bean now seen as incompetent? Perhaps the judge was convinced by the length of time that Mr. Bean remained delusional. Perhaps Bean's condition had worsened in jail. Perhaps the specter of ensuring a fair trial of a *pro se* delusional and potentially violent defendant influenced the decision. He is currently residing at the Vermont State Hospital.

Bean bears comparison with the more famous "Unabomber" case. In *United States v. Kaczynsky*,[10] the defendant objected to the use of mental health evidence in his defense and, after jury drawing, entered into a plea agreement in which the government waived the right to seek the death penalty. Kaczynsky then moved to vacate his conviction, arguing that his plea was involuntary because he was denied his right to represent himself and because he had a constitutional right to prevent his counsel from presenting mental state evidence. Although Kaczynsky's claims were similar to Bean's, Bean had a stronger case. The Ninth Circuit found that Kaczynsky's plea was voluntary and that his request for self-representation was for tactical reasons such as delay, and, therefore, his Sixth Amendment rights were not violated. The court found that Kaczynsky never suggested that his disagreement with counsel over the use of mental state evidence affected the voluntariness of his plea and that he showed no signs of distress at the change of plea hearing.

The *Bean* case was rightly decided, but it is also significant for what it did not decide: "whether the trial court may direct the presentation of an insanity defense over the defendant's objection."[11] Attorneys representing criminal defendants with mental disabilities are often faced with difficult ethical dilemmas. The attorney's duty of advocacy may conflict with the arguably insane client's wishes. If the attorney believes that the insanity defense is the only viable defense and the defendant rejects it, the options are limited. In many cases, competency may be the real underlying issue.

What guidance does *Bean* offer trial judges? After *Bean,* trial judges faced with an insanity defense and a defendant who wants a new attorney or to proceed *pro se* must inquire as to the basis of the defendant's wishes. If the defendant does not want to pursue an insanity defense, does the court direct the defense counsel to change trial strategy in midstream? Or does the trial judge grant a motion to proceed *pro se*? In what situations should a trial court consider directing the presentation of the insanity defense over the defendant's objections? Is it a function of how insane the defendant appears or does the judge perform an analysis of whether other viable defenses exist?

Cases from other jurisdictions have generally taken one of two approaches. The first is the approach taken in *Frendak v. United States*.[12] The *Frendak* decision looks to the quality of the defendant's choice. If the defendant can intelligently and voluntarily waive the insanity defense, the trial court should respect the defendant's wishes. The trial court should inquire in a careful colloquy as to whether the defendant has been informed of the alternatives to an insanity defense, understands the consequences of waiving the defense, and is competent to waive.

The Court in *Bean* did not decide whether a higher standard of competence is required for the defendant knowingly to waive an insanity defense. Although the Court rejected the requirement of a colloquy to waive insanity in *Davignon,* certainly the language in *Bean* must require a voluntary and intelligent waiver of the defense.

The other approach addressing the issue of a defendant who refuses to rely on a potentially successful insanity defense is outlined in *Whalem v. United States.*[13] There the Court held that society has an interest in preventing the conviction of an "obviously mentally irresponsible defendant."[14] Under this approach, courts have the discretion to impose the insanity defense in certain situations. The courts must look to the quality of the defendant's decision not to raise the defense, including: the reasonableness of his motives in opposing the defense; the court's personal observations of the defendant; and the quality of the evidence supporting the

defense.[15]

Whether a more extreme case than Ron Bean will justify imposition of the insanity defense over the defendant's objection is unknown. It is hard to imagine a case in which the defendant is so floridly psychotic or so severely depressed that the court would want to impose the insanity defense, at the same time finding the defendant competent. Also, if the defendant represents himself, then how would the court impose the insanity defense? One way to avoid these legal entanglements and complexities would be to promote more accurate or fairer competency decisions. Are trial judges leery of finding a defendant incompetent if he or she is charged with a violent crime? If so, is the reluctance based upon a distrust of the mental health institutions or a fear of the media? Is there a lower standard of competency for these cases? What are the costs of trying arguably incompetent defendants? As attorneys and judges learn more about mental disabilities, perhaps we will see answers to these questions.

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[1] State v. Davignon, 152 Vt. 209, 565 A.2d 1301 (1989).
[2] *Id.* at 221.
[3] State v. Bean, 171 Vt. 290, 762 A.2d 1259 (2000).
[4] *Id.* at 303.
[5] State v. Bean, 163 Vt. 457, 658 A.2d 940 (1995).
[6] *Id.* at 461.
[7] *Id.*
[8] State v. Pollard, 163 Vt. 199, 657 A.2d 185 (1995).
[9] Faretta v. California, 422 U.S. 806 (1975)
[10] United States v. Kaczynsky, 239 F.3d 1108 (2000)
[11] *Id.* at 302.
[12] 408 A.2d 364 (D.C. 1979).
[13] 346 F.2d 812 (D.C. Cir. 1965).
[14] *Id.* at 818.
[15] United States v. Moody, 763 F. Supp. 589, 603 (M.D. Ga. 1991).