
7.12 Admissibility at Adjudication of Results of Capacity Evaluation

The admissibility at the adjudicatory hearing of the results of a court-ordered capacity examination is a complicated topic, reviewed only briefly here. Several arguments, legal and factual, exist for excluding or at least limiting the use of the examination, including the juvenile's statements to and the opinions formed by the examiners. Nevertheless, counsel should anticipate the possibility that the results of a court-ordered examination of capacity to proceed may be admitted. *See supra* § 7.9E, Limiting Scope and Use of Examination.

A. Doctor-Patient Privilege

The doctor-patient privilege does not protect the results of a court-ordered evaluation of capacity to proceed. *See State v. Williams*, 350 N.C. 1, 20–21 (1999); *State v. Mayhand*, 298 N.C. 418, 429 (1979).

B. Fifth and Sixth Amendment Protections

Subject to certain key exceptions (discussed in C., below), the Fifth Amendment privilege against self-incrimination generally applies to capacity evaluations and precludes the admission of evaluation results during the guilt and sentencing phases of criminal trials. *See Estelle v. Smith*, 451 U.S. 454, 468 (1981). The Sixth Amendment right to counsel also precludes the admission of evaluation results during criminal trials if the defendant's counsel does not have notice of the scope and nature of the examination. *Estelle* relied on this additional ground in holding that the results of a capacity examination were inadmissible at trial, reasoning that the defendant was denied the assistance of an attorney in deciding whether to submit to the examination. 451 U.S. at 471. This protection is also subject to certain key exceptions (discussed in C., below).

C. Rebuttal of Mental Health Defense

If the juvenile presents a mental status defense and introduces expert testimony in support of the defense, the results of a capacity evaluation are not protected by the Fifth Amendment and may be admitted to rebut the expert testimony. *Buchanan v. Kentucky*, 483 U.S. 402, 422–23 (1987); *State v. Huff*, 325 N.C. 1, 44 (1989), *vacated on other grounds*, 497 U.S. 1021 (1990); *State v. Atkins*, 349 N.C. 62, 107–08 (1998). A mental status defense includes not only a mental disease or defect, but also an inability to form

the requisite intent to commit a crime, which includes the defense of voluntary intoxication. *Kansas v. Cheever*, ___ U.S. ___, ___, 134 S. Ct. 596, 602 (2013). In addition, the Sixth Amendment does not bar the use of the evaluation results because counsel should have anticipated and advised the client that the examination could be used to rebut a mental health defense. *Buchanan v. Kentucky*, 483 U.S. at 425; *State v. Davis*, 349 N.C. 1, 43–44 (1998); *State v. McClary*, 157 N.C. App. 70, 79 (2003). *But see Delguidice v. Singletary*, 84 F.3d 1359 (11th Cir. 1996) (defense counsel did not have notice that an evaluation report from a separate case against the defendant would be used to rebut an insanity defense to unrelated charges).

Under the reasoning of the above decisions, the Fifth Amendment may protect the examination results if the juvenile relies on a mental status defense but does not introduce expert testimony. For example, the U.S. Supreme Court held in *Cheever* that the State may present psychiatric evidence when a defense expert "testifies" or the defendant "presents evidence through a psychological expert . . . ." 134 S. Ct. at 601.

D. Waiver

The U.S. Supreme Court suggested in dicta in *Estelle* that the State might be able to obtain, through *Miranda* warnings, a waiver of the defendant's Fifth Amendment rights for statements made during a capacity evaluation. *Estelle*, 451 U.S. at 469. However, a review of federal and state case law indicates that such waivers are uncommon and, even if obtained, are not a basis for admitting evidence from a capacity evaluation. *See* 1 NORTH CAROLINA DEFENDER MANUAL § 2.9F, Waiver (2d ed. 2013).