

Section V

Forensics

Miranda Rights, Interrogation, and Competency to Confess

14

HAROLD V. HALL
SANDRA B. MCPHERSON
STUART W. TWEMLOW
ERROL YUDKO

Miranda Rights and Methamphetamine

Psychological and psychiatric experts are occasionally called upon to assess the ability of the defendant to render incriminating statements. The key *Miranda* question concerns whether a defendant can rationally and intelligently choose to waive or invoke rights to self-incrimination. Methamphetamine intoxication at the time of police questioning or interrogation, to the extent that it interferes with these cognitive capacities, raises the question of voluntariness.

Yet, voluntariness depends on the totality of the circumstances, not just the condition of the accused at the time of the questioning. It includes such factors as the context in which the questioning takes place, the officers' conduct, and the extent to which the officers utilize prior incriminating statements to extract more information. Under this reasoning, it becomes highly relevant whether the questioning officers are aware that the accused is methamphetamine intoxicated.

In State v. Samson Pebria, Jr. (1997), a methamphetamine-intoxicated, recently released prison inmate was questioned at a hospital by the arresting officer, who asked, "Do you know why you are being detained?" The accused responded, "I went grab the girl" and later stated, "I like rape her." One finding of fact from the Intermediate Court of Appeals (ICA, No. 19) was that the noted confusion on the part of the accused did not arise from the questioning by the officer. The confusion arose "because of [Pebría's] inability to recall what had occurred previously because at the time of the incident he was under the influence of ice." Other findings of fact (Nos. 20, 21, 22) included the knowledge on the part of the detective taking the formal statement of the alleged spontaneous statement, an attempt to lead the defendant into

making those statements again and to admit the motive for the alleged offense was to rape the victim. The ICA held that the original statements were obtained in violation of *Miranda* and that the later confession was inadmissible under the “fruit of the poisonous tree” doctrine.

What is missing from most interrogations involving methamphetamine intoxication, and what would be most convincing to the expert, is for the arresting officer or (later) a detective to obtain feedback from the defendant regarding whether or not the subject understood and remembered the *Miranda* rights or whether interfering factors substantially prevented competency to confess. The expert should make every attempt to answer these questions in cases in which methamphetamine use is an issue.

Interrogation and Methamphetamine Use

Investigative interviewing takes place under conditions that vary widely in terms of procedure, experience and capacity of the interviewer, and environmental aspects. Studies of the interview procedure have shown considerable impact as a function of the use of leading questions and prebiased interviewer conditions (Loftus and Palmer, 1974; Loftus and Zanni, 1975; Pirolli and Mitterer, 1984; Memon and Kohnken, 1992; Mount and Perlini, 1995). False confessions occur with complex antecedents. They may be entirely voluntary, and some false confessions may reflect mental problems. False confessions may proceed in consequence of certain later-identified personality traits. Specified pressures can lead to false confessions, which have been classified as “coerced-compliant” and “coerced-internalized.” In the former, a knowing incorrect admission is made to gain relief from interrogation pressure. In the latter, individuals predisposed to guilt come to falsely believe in and admit to an act they did not commit (Gudjonsson and Petursson, 1991; Gudjonsson, 1992a,b; *Commonwealth v. Cosmello*, 1993; Kassin, 1997, 1998; McCann, 1998; Reitman, 1998).

In investigative interviews in the U.S., certain deceptive procedures are often the rule, including the provision of misinformation in order to obtain confessions by trickery (Inbau et al., 1986). In contrast, in the U.K., police are not allowed to use deceptive methods. All interrogations are videotaped to reduce coercive and illegal methods as well as to secure good evidence when confessions do occur under questioning (Gudjonsson, 1992b). Whether in the U.K. or the U.S., the above studies have shown a limited impact of interview, content, and style of police interrogation on the production of false confessions. In general, although false confessions occur, no convincing data exist that show that guilty parties will confess falsely to

crimes in greater numbers than would be expected by chance. Other case factors have been found to be more important, including the evidence, the level of the offense, and the presence of legal advice (Moston et al., 1992). In a few criminal cases, substances have been used to assist in the recovery of details or repressed material, to reduce the capacity to cover up information that has been denied, or to expose false facts that were “admitted” on a malingered basis. In general, the use of drug-assisted interviews is not recommended. Subjects are able to continue to dissimulate when under the influence of various substances, including methamphetamines. However, with methamphetamines, there are more changes in perception. These changes may involve reports of either positive or negative experiences and anxiety. There may be higher levels of attentiveness than are found among those who are given other substances, such as amobarbital. Suggestibility has not been demonstrated for amphetamines, whereas it has been shown with sedatives (Rogers and Wettstein, 1977).

It should be known whether a suspect is methamphetamine intoxicated when he or she is interviewed. At relatively low doses, amphetamines improve one’s capacity to attend, cause an inflated sense of self-efficacy and invulnerability, and increase motor and speech activity and anxiety (Dodgen and Shea, 1997). At high doses, the individual becomes cognitively disorganized. Theoretically, vulnerability to coercion may increase. Certainly, a defense attorney should raise this issue. Further study is needed to determine the interaction of suggestibility, anxiety, attentional focus, and coercion. Given the powerful impact of a confession as evidence, any increased potential for false statements poses a risk for miscarriage of justice.

Studies in many contexts have demonstrated that when learning occurs in a chemically altered state, it may not be possible to access that material unless the person is again under the influence of the drug. Methamphetamine has been used in studies of such state-dependent learning. In common with other chemicals, methamphetamine will produce state-dependent retrieval (SDR). However, careful evaluation of studies in this area has shown that SDR occurs on a free-recall basis, but tends to disappear with cued or recognition-based recall regardless of the kind of substance involved (Brown et al., 1998). By extension, if questioning is managed correctly, the presence of methamphetamine in the system of a suspect or a witness may not necessarily damage that person’s capacity to describe accurately experienced criminal events. In such cases, the use of cued and recognition tasks, as well as other safeguards as discussed above, should be built into the interrogation strategies. Diminished capacity plea at sentencing under the current guidelines is specifically disallowed if voluntary drug ingestion is involved.

Methamphetamine Abuse and Competency to Proceed

Reviews of the forensic literature on competency to proceed are found in Blau (1984), Curran et al. (1986), Ewing (1985), Gutheil and Appelbaum (1982), Melton et al. (1987), Shapiro (1984), Weiner and Hess (1987), and Ziskin and Faust (1988). Works devoted exclusively to competency to stand trial include those of Grisso (1986, 1988), McGarry (1973), and Roesch and Golding (1980). Although none of these sources deals primarily with methamphetamine abuse, their contents address means to assess and evaluate competency to stand trial based on behavior.

The legal requirement of competency to stand trial is an extension of the general rule that no one should be tried for a crime in his or her absence. If a defendant must be physically present to defend against criminal charges, that defendant must also be “mentally present.” Disorders that interfere with the psychological participation of a defendant at trial may render that defendant incompetent to stand trial and require that the proceedings be postponed until effective participation can be assured. Symptoms of methamphetamine use may compromise the defendant’s competency to stand trial. As discussed above, chronic methamphetamine abuse may cause severe confusion, apathy, short-term memory problems, executive dysfunction, auditory hallucinations, and other significant problems that may persist for a considerable length of time after abstinence commences.

Several competency questionnaires are available for use in evaluating trial competencies: the Competency Assessment Instrument (Grisso, 1986; 1988), the Interdisciplinary Fitness Interview (Golding et al., 1984), the Competency Screening Test (McGarry, 1973), Georgia Competency Test (Gothard et al., 1995), and MacArthur Competence Assessment Tool — Criminal Adjudication (1996). The forensic evaluator should utilize these methods within a broad-spectrum assessment approach that also evaluates psychopathology, skills, and response styles. Most jurisdictions use a variation of the rule to define competency to stand trial outlined by the U.S. Supreme Court in *Dusky v. United States* (1960). *Dusky* requires that defendants have the ability to (1) understand rationally and factually the legal proceedings and (2) cooperate with their attorney in their defense. A methamphetamine-induced disorder that interferes with either of these capabilities is sufficient to render the defendant incompetent to stand trial. However, incompetency to stand trial is not to be equated with the mere presence of mental illness (*Feguer v. United States*, 1962; *United States v. Adams*, 1969), or amnesia (*United States v. Wilson*, 1966), or of a need for treatment. The claimed disorder must be of the kind and severity that impair the functional capacities outlined in *Dusky*.

Usually, the question of competency to stand trial is raised by the defense attorney, who has the most frequent contact with the defendant and who has

the professional and legal obligation to raise the question in appropriate cases. However, case law suggests that the question must be raised, even by the prosecution or the court itself, whenever a “bona fide doubt” exists regarding the defendant’s capacity to mount a defense (see *Drope v. Missouri*, 1975). The question of a defendant’s competency to proceed may be raised at any time from the defendant’s first appearance in court to the time of sentencing.

In actual practice, most mentally disturbed defendants are easily identified by participants in the criminal process. Actively psychotic, demented, and severely mentally retarded persons are usually recognized by arresting officers, jail personnel, and defense attorneys, and they may be transferred to treatment facilities prior to any court appearances. Clinically, the chronic methamphetamine abuser is the defendant who has lost weight; looks malnourished, disheveled, and unhealthy; is reticent or loose in verbal responses; appears aphasic or has word-finding problems; is generally confused; shows impulsiveness with a low frustration tolerance. Often, the individual exhibits a blank stare. Such an abuser is often unable to answer simple questions that require orientation (to person, place, date, and circumstances of the evaluation), attention, and memory.

In *State v. Melvin Hashimoto* (1989), the 30-year-old defendant was charged with holding captive and robbing several people in Mililani. He had smoked ice for 5½ years before, as well as during, the instant offenses. In his Hawaii Revised Statutes (HRS) §707-404 sanity report, the senior author stated:

The Defendant is presently unfit to proceed. [The Defendant was expressionless and not oriented to date, claiming that it was 2 months earlier.] He claims no recall of his attorney and has no stated idea of possible legal consequences if convicted of the charges. He stated that he is facing the charge of “running away” and [talked about seeing the devil laughing at him in the rearview mirror of the car as he approached the scene of the alleged crime]. He could not recall the function of the judge and the defense attorney, but stated the prosecutor was on his side. He claims no knowledge of the legal process, stating that he has never been to court previously. [Oahu Community Correctional Center] medical records revealed that he is partially stabilized on antidepressant and antipsychotic medication. These same records suggest (a) the reporting of visual and auditory hallucinations, noncommand in quality; (b) anhedonia and depression; (c) distractibility; (d) blank spells; and (e) other psychological symptoms.

The defendant was reexamined 1 year later. He showed a substantial improvement in the criteria for competency and was found to be fit to proceed.

Defendants who are heavy methamphetamine users or who decompensate while awaiting trial often require professional treatment before criminal proceedings can occur. From a fitness perspective, if a person is disorganized and psychotic, it does not matter if the psychosis is secondary to voluntary substance abuse or to some other condition. If the *Dusky* criteria are violated (or if relevant state cases suggest other competency criteria are violated), the expert should report that the defendant is incompetent to stand trial.

Defense attorneys sometimes raise questions of competency to stand trial for their apparently competent clients as a “fishing expedition” to secure a court-ordered professional evaluation of their clients which would otherwise be unavailable. These evaluations usually produce data from the expert relevant to an insanity plea, to the question of mitigation, or to dangerousness factors that may be considered at the time of sentencing. Yet, the vast majority of defendants evaluated for competency to stand trial are found to be competent. This reflects the very basic cognitive and behavioral skills required in *Dusky*. In addition, assuming that the clinical data obtained are valid and reliable, the fishing expedition may actually save the court time and money in the event that these other issues are raised by the defendant or are abandoned as trial strategies. Findings from a competency evaluation may also serve as a basis for a plea bargain as in the aforementioned *State v. Hashimoto* case.

In summary, the question of competency to stand trial in methamphetamine cases involves three separate questions: (1) Does the defendant exhibit methamphetamine symptoms sufficiently severe to justify a finding of incompetency (diagnosis)? (2) Is the defendant unable (a) to understand rationally and factually the legal proceedings, or (b) to assist counsel in defense (incapacity)? (3) Is this incapacity caused by the mental disorder (causation)? The answers to these three questions lead to several possible scenarios:

- Methamphetamine alone or in combination with another mental disorder causes a defendant to be incapacitated.
- Methamphetamine alone or with another mental disorder does not cause a defendant to be incapacitated.
- The defendant has a genuine condition that causes an insufficient incapacity to stand trial (e.g., circumscribed delusions about the “facts” of the alleged crime, but an impairment in trial capacity).
- The defendant has a genuine mental disorder and his or her impaired capacity to stand trial is due to fabrication or exaggeration (e.g., malingering in the context of a genuine disorder), or the defendant may have a genuine mental disorder and be incapable of standing

trial, but the mental disorder is not severe enough to justify a finding of incompetence (e.g., depressed defendant whose guilt over killing his wife leads to disinterest or lack of cooperation in putting on a defense).

In some jurisdictions, a finding of incompetence to stand trial is not restorable and can lead to continuing criminal court jurisdiction in the same way that a “not guilty by reason of insanity” finding allows (see Ohio, Senate Bill 285, effective July 1, 1997). In Hawaii, competency to stand trial (i.e., fitness) is covered in HRS §704-406. Fitness is not defined.

The Hawaii Intermediate Court of Appeals attempted to define, if not operationalize, competency to stand trial in *State v. Silverio Soares* (1996). A threefold test requires that the trial court determine whether or not the defendant (1) has sufficient mental ability to consult with his or her defense counsel with a reasonable degree of rational understanding, (2) has the capacity to assist in preparing a defense, and (3) has a rational, as well as factual, understanding of the proceedings against him or her.

Application of the above test appears to go beyond *Dusky v. United States* (1960), *Drope v. Missouri* (1975), and other cases pertinent to competency to proceed. Moreover, the test appears ripe for application of the empirical findings on methamphetamine as those findings apply to cases where the defendant abused methamphetamine, even a substantial period before the instant offense occurred. The test requires a functional ability to develop a working relationship with one’s defense counsel, provide information that can be used to present a coherent defense, and make fundamental defense decisions. These abilities rest on attentional, recall, executive, and other cognitive skills, which are commonly impaired in methamphetamine abusers. The paranoia that results from methamphetamine abuse may cause distrust and withholding of information. Recall of the alleged offense may be distorted and fragmentary. Making fundamental defense decisions requires the synthesis of a wide variety of information, as well as judgment and executive abilities to plan, monitor, and reevaluate legal positions and strategies.

The *Soares* test requires that the defendant have the ability to testify in court, if necessary. Methamphetamine abusers may have significant deficiencies in speech and language processing, as well as in other cognitive dimensions, that could lessen the positive impact of the testimony.

The test also requires that the defendant be able to withstand the pressures of a trial. The data on brain deterioration in methamphetamine abusers suggest that, even after complete abstinence from the drug, the defendant’s ability to withstand the pressures of a trial (as well as other stressors) may suffer. This deterioration, if it in fact does compromise the defendant’s ability

to adapt, may likely affect a broad range of cognitive abilities and may necessitate fitness evaluations at various points in the legal process.

Finally, the *Soares* test requires that the evaluation of fitness to proceed be made with specific reference to the nature of the charge, the complexity of the case, and the gravity of the decisions with which the defendant is faced. Translated into the thinking of forensic mental health experts, this means that no longer can general fitness criteria or standards be applied to specific cases without taking the unique circumstances, strengths, and limitations of the defendant into consideration. This position is reasonably close to the notion that the gravity of the decisions with which the defendant is faced, to take as one example of required skills, be appraised by the evaluator from the viewpoint of the defendant as he or she perceived them to be. Thus, both norm-based and individual (i.e., idiosyncratic) measures may have to be utilized in future evaluations of competency to stand trial where methamphetamine is involved. The *Soares* test, at least in methamphetamine cases, appears to necessitate a thorough forensic neuropsychological or neuropsychiatric evaluation with built-in measures to detect possible malingering and deception. Forensic evaluations of competency to stand trial, rather than reflecting easily measured traits/states of the defendant, should, in methamphetamine cases, at least approximate the “penetrating and comprehensive examination” of the defendant as required by *State v. Kane* (1971).

References

- Blau, T. (1984). *The Psychologist as Expert Witness*. New York: John Wiley & Sons.
- Brown, D., Schefflin, A.Q., and Hammond, D.C. (1998). *Memory, Trauma Treatment, and the Law*. New York: W. W. Norton.
- Commonwealth v. Cosmello*, Ct. Common Pleas, Susquehanna, PA (November 15, 1993).
- Curran, W., McGarry, A., and Shah, S., Eds. (1986). *Forensic Psychiatry and Psychology: Perspectives and Standards for Interdisciplinary Practice*. Philadelphia: F. A. Davis.
- Dodgen, C.E. and Shea, W.M. (1997). *Psychoactive Substance Disorders: A Comprehensive Resource for Clinicians and Researchers*. Florham Park, NJ: C & D Publications.
- Drope v. Missouri*, 420 U.S. 162 (1975).
- Dusky v. United States*, 362 U.S. 401 (1960).
- Ewing, C.P. (1985). *Psychology, Psychiatry and the Law: A Clinical and Forensic Handbook*. Sarasota, FL: Professional Resource Exchange.
- Feguer v. United States*, 302 F.2d 214 (1962).

- Golding, S.L., Roesch, R., and Schreiber, J. (1984). Assessment and conceptualization of competency to stand trial: Preliminary data on the Interdisciplinary Fitness Interview. *Law Hum. Behav.*, 8, 321–334.
- Gothard, S., Rogers, R., and Sewell, K. (1995). Feigning incompetency to stand trial: an investigation of the Georgia Court Competency Test. *Law Hum. Behav.*, 19, 363–373.
- Grisso, T. (1986). *Evaluating Competencies: Forensic Assessments and Instruments*. New York: Plenum Press.
- Grisso, T. (1988). *Competency to Stand Trial: Evaluations*. Sarasota, FL: Professional Resource Exchange, Inc.
- Gudjonsson, G.H. (1992a). The psychology of false confessions and ways to improve the system. *Int. Dig. Hum. Behav. Sci. Law*, 1(2), 49–53.
- Gudjonsson, G.H. (1992b). *The Psychology of Interrogations, Confessions, and Testimony*. New York: John Wiley & Sons.
- Gudjonsson, G.H. and Petursson, H. (1991). Custodial interrogation: why do suspects confess and how does it relate to their crimes, activities, and personality? *Personality Individual Differences*, 12(3), 295–306.
- Gutheil, T. and Appelbaum, P. (1982). *Clinical Handbook of Psychiatry and the Law*. New York: McGraw-Hill.
- Inbau, F.E., Reid, J.E., and Buckley, J.P. (1986). *Criminal Interrogation and Confessions*. Baltimore, MD: Williams & Wilkins.
- Kassin, S.M. (1997). The psychology of confession evidence. *Am. Psychol.*, 52, 221–233.
- Kassin, S.M. (1998). More on the psychology of false confessions. *Am. Psychol.*, 53(3), 320–321.
- Loftus, E.P. and Palmer, J.C. (1974). Reconstruction of automobile destruction: an example of the interaction between language and memory. *J. Verbal Learning Verbal Behav.*, 13, 585–589.
- Loftus, E. P. and Zanni, G. (1975). Eyewitness testimony: the influence of the wording of a question. *Bull. Psychonomic Soc.*, 5(1), 86–88.
- MacArthur Competence Assessment Tool — Criminal Adjudication (1996). Odessa, FL: Psychological Assessment Research, Inc.
- McCann, J.T. (1998). Broadening the typology of false confessions. *Am. Psychol.*, 53(3), 319–320.
- McGarry, A. (1973). *Competency to Stand Trial and Mental Illness* (DHEW Publication ADM. 77-103). Rockville, MD: Department of Health, Education and Welfare.
- Melton, G., Petrila, R., Poythress, N., and Slobogin, C. (1987). *Psychological Evaluations for the Courts: A Handbook for Mental Health Professionals and Lawyers*. New York: Guilford Press.

- Memon, A. and Kohnken, G. (1992). Helping witness to remember more: the cognitive interview. *Int. Dig. Hum. Behav. Sci. Law*, 1(2), 39–48.
- Moston, S., Stephenson, G.M., and Williamson, J. (1992). The effects of case characteristics on suspect behaviour during police questioning. *Br. J. Criminol.*, 32, 23–40.
- Mount, M. and Perlini, A.H. (1995). The effects of source credibility and question working on witness recall: a case of the emperor's clothes. Paper presented at the 103rd Annual Convention of the American Psychological Association, New York.
- Pirolli, P.J. and Mitterer, J.O. (1984). The effect of leading questions on prior memory: evidence for the coexistence of inconsistent memory traces. *Can. J. Psychol.*, 38(1), 135–141.
- Reitman, A. (1998). Social psychology of false confessions: Bern's early contribution. *Am. Psychol.*, 53(3), 320–321.
- Roesch, R. and Golding, S. (1980). *Competency to Stand Trial*. Urbana Champaign, IL: University of Illinois Press.
- Rogers, R. and Wettstein, R.M. (1977). Drug-assisted interviews to detect malingering and deception. In R. Rogers, Ed. *Chemical Assessment of Malingering and Deception*. New York: Guilford Press.
- Shapiro, D. (1984). *Psychological Evaluation and Expert Testimony*. New York: Van Nostrand Reinhold.
- State v. Hashimoto*, First Circuit Court, Cr. Nos. 89-1537, 90-0054, 90-0022 (1989).
- State v. Kane*, 52 Haw. 484, 479 P.2d 207 (1971).
- State v. Pebria*, 85 Haw. 171, 938 P.2d 1190 (1997).
- State v. Silverio Soares*, First Circuit Court, Cr. No. 90-1068 (May 8, 1996).
- United States v. Adams*, 297 F. Supp. 596 (1969).
- United States v. Wilson*, 263 F.Supp. 528 (D.D.C. 1966).
- Weiner, I. and Hess, A. (1987). *Handbook of Forensic Psychology*. New York: Wiley & Sons.
- Ziskin, J. and Faust, D. (1988). *Coping with Psychiatric and Psychological Testimony*, 4th ed. Los Angeles: Law and Psychology Press.