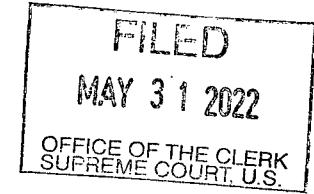


No. 21-8087

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Zachary S. Keeter — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Eighth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Zachary S. Keeter #31701-045

(Your Name)

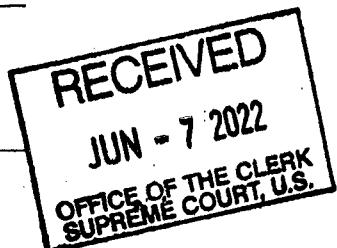
FCI Forrest City-Low P.O. Box 9000

(Address)

Forrest City, AR 72336-9000

(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

1. Should a person whose addiction is the result of improperly prescribed medication be allowed an involuntary intoxication defense?
2. Petitioner developed an addiction to improperly prescribed medication. Did the district court err by characterizing his subsequent drug use as voluntary and abuse its discretion by ignoring expert opinions regarding petitioner's psychosis?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Keeter v. United States of America No. 20-00978-CV-W-GAF-P

United States District Court for the Western District of Missouri

Judgment entered July 21, 2021

Keeter v. United States of America No. 21-2838

United States Court of Appeals for the Eighth Circuit

Judgment entered January 14, 2022 Rehearing denied March 15, 2022

United States of America v. Keeter No. 16-0240-01-CR-W-GAF

United States District Court for the Western District of Missouri

Sentencing December 19, 2019

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was January 14, 2022.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: March 16, 2022, and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment VIII:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments be inflicted.

United States Code, Title 18 §17. Insanity Defense:

(a) **Affirmative defense.** It is an affirmative defense to a prosecution under any Federal statute that, at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense.

STATEMENT OF THE CASE

In early 2014, Zachary Keeter returned to Dr. Gordon Risk, psychiatrist, who had briefly treated him, two years earlier, for symptoms he diagnosed as Attention Deficit Hyperactivity Disorder (ADHD) symptoms. Dr. Risk also felt that, in 2014, in addition to the ADHD symptoms, Keeter was suffering from depression, and prescribed him Adderall, an amphetamine mixture, to "kick start" him out of his depression. Keeter was given 90 days worth of prescriptions for Adderall and told to return in three months. Keeter had no reason to question Dr. Risk's judgement or diagnosis at that time. Keeter would not learn that this diagnosis, and subsequent treatment with amphetamines, were in error until late 2015.

Tragically, this misdiagnosis resulted in Keeter developing an addiction to amphetamines. Lacking the means to pay for drug treatment (as he was a full time pre-medical student), he reached out to his family for help in finding a way out of addiction. Due to misunderstandings and a lack of financial resources, they were unable to help him with his request. Soon, Keeter turned to methamphetamine to quell the suicidal thoughts and mental distress of his unaided and unsupervised amphetamine withdrawal.

Once his methamphetamine use started, his behavior and mental condition deteriorated into a cycle of drug use and sleep deprivation that would lead to psychosis. During these periods of psychosis, Keeter began viewing, downloading, and, eventually, distributing material depicting the sexual abuse of children, commonly known as "child pornography"- behavior that (confirmed by forensic computer exams) Keeter had not previously engaged in.

This conduct led to the FBI executing a search warrant at his residence on May 12, 2015. Keeter fully cooperated with authorities, giving a full statement and permission to assume his online identity.

Keeter began attending therapy and 12 step meetings immediately following the FBI raid. In approximately November of 2015, Keeter returned to the clinic from which Dr. Risk had retired. The physician who had taken over the care of Dr. Risk's patients, Dr. Ala Elhaj, informed Keeter that he had been misdiagnosed and subsequently changed his primary diagnosis to Post Traumatic Stress Disorder (PTSD), due to Keeter's history of childhood trauma.

Keeter was arrested and arraigned on August 8, 2016. He engaged attorney Tom Bath, Jr. to represent him. Keeter informed Bath of his misdiagnosis and provided him with medical records from Drs. Risk and Elhaj on his own initiative. Bath refused to contact either Dr. Risk or Dr. Elhaj, or to investigate Keeter's mental condition.

Only after plea negotiations broke down, 16 months into his representation of Keeter, did Bath send Keeter for a cursory mental evaluation, to be abbreviated at his specific instruction. Upon receipt of the forensic psychiatrist's report, containing more than 40 major inaccuracies in the biographical information, Keeter objected to the assessment. He immediately informed Bath of these errors and inaccuracies.

Bath then instructed Keeter to find his own forensic psychiatrist. After providing him with the contact information for Dr. Brian Holoyda in early February, 2018, Bath instead sent Keeter to Dr. Bruce Cappo for the limited purpose of determining whether Keeter had been misdiagnosed, a finding that Dr. Cappo supported.

The government, in response to Dr. Cappo's report, filed a Motion in Limine to prevent a voluntary intoxication defense. Keeter's attorney never filed or discussed filing a response to this motion with Keeter, nor did the district court ever rule on the motion.

In early June, 2018, Bath filed a notice to pursue an insanity defense. At Keeter's insistence, he also retained Dr. Brian Holoyda for an opinion on

Keeter's mental state at the time of the offense. Holoyda requested that Bath provide him several documents to complete his work. Keeter discovered that Bath had not provided Holoyda with all of the materials he had requested and insisted that Bath send them to Holoyda before he saw Keeter in person. Bath urged Keeter to not postpone his interview with Holoyda, and stated that he would provide the missing documents prior to the interview.

After the interview, Dr. Holoyda was not able to support an insanity defense. Keeter negotiated a plea agreement, and a change of plea hearing was held on October 25, 2018. Because he needed to undergo surgery, Keeter was allowed to remain free on bond pending sentencing.

In April, 2019, Keeter retained Dr. George Savarese to conduct a mitigation assessment. While gathering documents for Savarese's assessment, Keeter discovered that Bath failed to provide Holoyda with the documents he requested, even after Bath assured Keeter that they would be sent.

Ultimately, Dr. Savarese, in conjunction with the findings of Dr. William Blessing, found that Keeter was unable to appreciate the nature and wrongfulness of his acts due to methamphetamine psychosis. After receiving this report, Keeter attempted to fire Bath, but the district court refused to allow his termination. Keeter filed a Motion to Terminate Counsel on October 10, 2019.

Shortly thereafter, Attorney Joseph Borich III entered his appearance as Keeter's attorney. At a hearing on October 24, 2019, the court revoked Keeter's bond and allowed the substitution of counsel.

Borich, armed with Savarese's report, tried to negotiate a better plea agreement, but the prosecutor refused to negotiate. The prosecutor persuaded attorney Borich to not present evidence of Keeter's psychosis at the sentencing hearing.

On December 19, 2019, Keeter was sentenced to 72 months incarceration, followed by 15 years supervised release. Keeter had some lingering objections

to a supervised release condition (that has since become moot) that Borich advised to handle outside of a direct appeal. Keeter took his advice and declined the direct appeal.

On December 14, 2020, Keeter filed a §2255 Motion, in which he alleged many errors!, including claims of ineffective assistance of counsel against Bath and Borich for failing to promptly and adequately investigate a mental health defense, including involuntary intoxication, and present retained expert opinions at sentencing.

On July 21, 2021, the district court denied Keeter's ineffective assistance of counsel claims, primarily due to the claim that voluntary intoxication would not provide a defense in Keeter's case. The district court also refused to issue a Certificate of Appealability (Appendix B).

Keeter timely filed a Motion for Issuance of a Certificate of Appealability in the United States Court of Appeal for the Eighth Circuit on August 24, 2021. The three judge panel declined his Motion on January 14, 2022 (Appendix A).

Keeter filed a Motion for Reconsideration or En Banc hearing on February 22, 2022, which was denied on March 16, 2022 (Appendix C).

Keeter now files this timely Petition for Writ of Certiorari.

REASONS FOR GRANTING THE PETITION

1. Defendants that develop iatrogenic addictions due to their physician's errors should be allowed an involuntary intoxication defense.

- A. Federal case law does not forbid an involuntary intoxication defense in cases of iatrogenic addiction.

The most comprehensive definition of the involuntary intoxication defense is derived from the Hassman article quoted in Bindley:

"Generally speaking, the defense has been recognized in four types of situations: 1) where the intoxication was caused by the fault of another (i.e. through force, duress, fraud, or contrivance); 2) where the intoxication was caused by an innocent mistake on the part of the defendant; 3) where a defendant unknowingly suffers from a physiological condition that renders them abnormally susceptible to a legal intoxicant (sometimes referred to as "pathological intoxication"); and 4) where unexpected intoxication results from a medically prescribed drug...Although these widely varying circumstances make it difficult to formulate a comprehensive definition of the defense, it is apparent that a key component is lack of culpability on the part of the defendant in causing the intoxication" (Supra @ 1242).

While Bindley does not explicitly articulate the scenario of addiction that results from misprescribed Schedule II (carrying a high potential for addiction and abuse) drugs, it does not foreclose the availability of the defense in such circumstances.

- B. Federal case law has long recognized the involuntary nature of addiction.

In Taylor, the court (drawing from Facing Addiction) states: "severe substance use disorders, commonly called addictions, were once viewed as a moral failing or a character flaw, but are now understood to be chronic illnesses characterized by clinically significant impairments in health, social function, and voluntary control (emphasis added) over substance use!" (Supra @ 1266). The Taylor court further finds "Because of the scientific consensus, aided largely by the development and ever increasing abilities of

brain imaging, that treats [addictions] as a disease and recognizes that the disease includes "compulsive substance abuse", perhaps courts need to rethink whether involuntary (i.e. compulsive) intoxication may be an available defense in some cases for defendants....with severe [substance] use disorder"

(Supra @1268)

In Robinson, the Court, in 1962, recognized that "...addiction is an illness. Indeed, it is apparently an illness which may be contracted innocently or involuntarily" (Supra @667). In a footnote to this finding, the Court quotes Linder, from 1927, which states "addicts...are diseased and proper subjects for treatment" (268 US 18).

Advances in medical science have brought increasing clarity and support to the lengthy and consistent history of legal findings that addiction is a chronic disease characterized by compulsive, involuntary drug use. These findings, spanning two centuries of American jurisprudence, support the position that a defense of involuntary intoxication should be potentially available to any addict but especially to those with an addiction induced by medical negligence.

C. Addiction due to a physician's mistake is beyond the control of the patient.

In Caro, the majority found that "People commonly rely on their own physicians to guide them...in matters of life and death. It is the doctor's fault, not the patient's, if the physician does not offer the appropriate guidance" (Supra @ 1231).

The Henderson panel found that "in order to constitute a defense, insanity must be the result of circumstances beyond the control of the actor" (Supra @ 664).

A mental health patient in distress is in a uniquely vulnerable position as compared to patients with physical ailments. He lacks, or has severely compromised, the ability to view his situation and behavior objectively.

His situation is comparable to a ship at sea being tossed by a storm. The captain depends on a competent and vigilant lighthouse keeper to raise a beacon and guide him to safe harbor, instead of one whose lackadaisical indifference leads to a shipwreck upon the rocks. A patient in the midst of such a squall has not the wherewithal to question their physician's judgement, instructions, and guidance.

D. In light of the opiate crisis, denying an involuntary intoxication defense to iatrogenically addicted defendants violates the Equal Protection guarantees of the Fifth Amendment.

"The federal sovereign, like the States, must govern impartially. The concept of equal justice under law is served by the Fifth Amendment's guarantee of due process" found the majority in Hampton (@100).

The Presidential Memorandum of October 26, 2017, "Combatting the National drug demand and opioid crisis" states:

"It shall be the policy of the United States to use all lawful means to combat the drug demand and opioid crisis currently affecting our country. Individuals, families, and communities across the United States continue to be devastated by an unprecedented epidemic of drug abuse and overdose, including of prescription opioids, heroin, and illicit synthetic opioids." and "Three factors are driving the opioid aspect of this crisis in particular. First, since the 1990's, there has been a dramatic rise in opioid pain medication prescriptions. Second, heroin from Mexico has flooded the country."

Substitute "amphetamine" for "opioid pain medication" and "ice" (high purity methamphetamine) for "heroin" and you have an analogous situation- a prescription drug blitz paving the way for an unquenchable demand for illicit drugs.

As a result of this policy, the federal government has begun to pursue doctors (such as the defendant in Jain) that inappropriately prescribe medications in volume for profit, also known as running a "pill mill", because of the needless addictions and deaths caused by a physician's failure

to exercise caution and care when diagnosing and prescribing and failing to appropriately monitor and supervise patients at risk of addiction.

Victims of addiction stemming from a physician's negligence are denied the equal protection of the laws when they are prosecuted by the same government that pursues the negligent physicians that injure them, but grants them no mercy for their negligently inflicted injuries. Prosecuting both perpetrators and victims is not consistent with justice, but tyranny. To not allow the involuntary intoxication defense in these circumstances compounds this inhumanity.

E. Punishing patients for physician's mistakes has a chilling effect on mental health treatment.

As a result of the COVID-19 pandemic lockdown and resulting social isolation, mental illness and addiction rates have risen to unprecedeted levels. Our fellow citizens will require skillful diagnosis, careful treatment, and vigilant monitoring to help them recover so they may return to their roles as contributory citizens, skilled workers, and beloved friends and family members.

In many cases, doctors and patients will be able to quickly and accurately uncover pathologies and improve their mood and behavior with therapies, both cognitive and pharmaceutical. In other cases, a patient's treatment may not improve, and may even worsen their conditions. Like any imperfect science, undesirable outcomes are inevitable. Sadly, some of these circumstances will involve behavior that deteriorates into legal transgression due to mistakes, whether honest or careless, on the part of the physician. When this is the case, neither the community, health care system, or justice benefits when patients are made to pay for the mistakes of another.

F. Forbidding the involuntary intoxication defense in these circumstances runs afoul of the Eighth Amendment's prohibition of Cruel and Unusual Punishment.

In Ford, this Court found that "[Insane persons] are not chargeable for their own acts, if committed under their incapacities: no, not even for treason itself" (Supra @406)... "it provides no example to others and thus contributes nothing to whatever deterrence value is intended to be served... because madness is its own punishment" (Supra @ 407) and "[T]he [Eighth] Amendment recognizes the "evolving standards of decency that mark the progress of a maturing society"... therefore this Court takes into account objective evidence of contemporary values before determining whether a particular punishment comports with the fundamental human dignity that the Amendment protects" (Supra @ 406).

A patient that suffers an injury due to their physician's unskillfulness, in this case addiction, did nothing to deserve the unjust "punishment" inflicted. Many similarly situated patients went for help because they expressly did not want their behavior to deteriorate to the point that they might hurt themselves or others.

Punishing behavior that is the result of another's mistake adds insult to injury. The only behavior deterred in this circumstance is that of vulnerable people in distress seeking life-saving mental health care, which is unquestionably against public policy and common sense.

Because defendants with addictions resulting from medical errors are compelled to use drugs due to circumstances beyond their control, this Court should find that such defendants are entitled to an involuntary intoxication defense.

2. The district court abused its discretion in characterizing Petitioner's intoxication as voluntary and ignoring expert reports diagnosing psychosis at the time of the offenses.

A. Abuse of discretion defined.

Marshall lays out the abuse of discretion standard: "An abuse of discretion occurs when a district court (1) fails to consider a relevant factor that should have received significant weight; (2) gives significant weight to an improper or irrelevant factor; or (3) considers only the appropriate factors, but in weighing those factors commits a clear error of judgement" (Supra @ 719)

B. Insanity Defense

United States Code, Title 18, Section 17 reads:

"(a) Affirmative Defense. It is an affirmative defense to a prosecution under any Federal statute that, at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to [] appreciate the nature and quality or the wrongfulness of his acts. Mental disease does not otherwise constitute a defense."

C. Psychosis, regardless of the cause, satisfies the "severe mental disease prong of the Insanity Defense statute.

Psychosis is defined as "fundamental derangement of the mind characterized by defective or lost contact with reality especially as evidenced by delusions, hallucinations, and disorganized behavior" (Merriam-Webster's Page 1004).

Methamphetamine Psychosis is recognized as a mental disease by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders (DSM) IV (pg. 389-390)

Federal courts have found that psychotic behavior fits the definition of a "severe mental disease" referenced in the statute (Dixon @ 399). Nothing in the statutory language precludes this defense in cases of substance induced psychosis.

D. Drs. Blessing and Savarese's reports are admissible under Rule 702.

Federal Rule of Evidence 702, Testimony by Expert Witness states:

"A witness who is qualified as an expert by knowledge, skill experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

Dr. Savarese based his opinion and report on over 100 hours of interviews and records review. Dr. Blessing based his opinion on a personal interview and a battery of neuropsychological tests. Both expert's reports and opinions satisfy all the criteria required by the rule.

E. Savarese and Blessing both have experience that qualifies them as expert witnesses.

In Gilliss, the court found that "If the subject matter falls within a person's experience...this is sufficient to qualify the witness as an expert (Supra @ 1278).

Dr. Savarese has over 30 years experience in forensic, clinical, and [redacted] medical social work, and possesses a PhD in Clinical Social Work/Social Policy, while Dr. Blessing has a PhD in Neuropsychology. Experientially and [redacted] educationally, both are qualified to render an opinion on Keeter's behavior.

Additionally, Dr. Savarese has been qualified as an expert in federal cases (Kidd), as has Dr. Blessing (Lynne).

E. Federal courts have recognized Psychologists as expert witnesses for over 60 years.

In 1962, the court in Jenkins found: "...a psychologist's competence to render an expert opinion...must depend on the nature and extent of his

knowledge...When...training is followed by actual experience in the treatment and diagnosis of disease...the opinion of the psychologist may be properly received into evidence." (Supra @ 645).

Precedentially, there is no foundation for disallowing Dr. Blessing and [redacted] Dr. Savarese to be qualified as experts, since they have been previously qualified as such.

F. The precedents cited by the court do not involve misdiagnosed defendants.

The precedents cited by the district court that apparently preclude an involuntary intoxication defense are simply not equivalent situations.

To make clear, the court states in its Order of July 21, 2021 (Appendix B) that the Petitioner was misdiagnosed and misprescribed amphetamines.

In F.D.L., the defendant illegally consumed laced (with PCP) marijuana, but was still "able to appreciate the nature and quality of wrongfulness of their acts" (Supra @ 1117).

Long Crow "consumed large amounts of alcohol" (Supra @ 1321) but was not addicted nor had he ever been prescribed alcohol as part of a psychiatric treatment regimen, and "was not insane at the time of the offense" (Supra @ 1322).

In Knott, the defendant "drank and [consumed] a..." "white powder" (Supra @ 1120). Again, the defendant had never been prescribed alcohol or anything analogous to the "white powder" to treat his schizophrenia.

None of these defendants had been prescribed a Schedule II controlled substance as a result of a physician's error prior to their offenses.

G. The district court gave improper weight to Dr. Brady's report.

Keeter underwent treatment for PTSD (the proper diagnosis for his [redacted]

symptoms) with Dr. Don Brady, PhD.

Dr. Brady is not trained in forensic evaluations, nor was he ever asked to conduct one in this case. His report was issued to show that Keeter successfully completed voluntary treatment and to provide the court some background information on brain functioning during addiction. As such, his report only concerns his experience as Keeter's treating clinician and in no way reflects his thoughts or opinions about Keeter's state of mind at the time of the offense.

Because Dr. Brady's report does not serve as a forensic exam, and is therefore irrelevant, the district court abused its discretion by giving it improper weight while also disregarding and ignoring the relevant forensic reports of Dr. Savarese and Dr. Blessing. □

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Zachary S. Keeter

Date: May 2022, 2022