

# The Not-So Settled Debate

## A Discussion of the Settled Insanity Defense

Whitney Cowell, Ph.D., J.D.; Kathryn Olson, Psy.D.;  
Amanda Berthold, Psy.D. & Stephanie Howard, Psy.D.

\*Amanda Gugliano, Psy.D.

\* One of the authors of our research. Not presenting.

# Disclosures

- ▶ The views expressed in this presentation are our own and do not represent those of Mississippi State Hospital, Mississippi Department of Mental Health, or Denver Health.
- ▶ The only financial support we received related to this presentation is travel reimbursement.

# Format

- ▶ Presentation
  - ▶ 30 minutes
- ▶ Questions for panel prepared by moderator
  - ▶ 20-30 minutes
- ▶ Questions from audience
  - ▶ 20-30 minutes

# Competence Vs. Mental State at the Time of the Alleged Offense

## Competence (AKA: capacity, fitness, competence to stand trial)

- ▶ The present ability to perceive and understand the nature of the proceedings, communicate rationally with one's defense attorney about the case, recall relevant facts, and testify in one's own defense, if appropriate.
  - ▶ Present = Now, moment specific

## Mental State at the Time of the Alleged Offense (MSO)

- ▶ A retrospective analysis of someone's mental condition at the time the crime was committed.
  - ▶ Insane (AKA: Not Guilty by Reason of Insanity) is an adjudication.

# Not Guilty by Reason of Insanity

- ▶ There are three different standards for insanity used across the United States:
  - ▶ M’Naghten
  - ▶ American Law Institute
  - ▶ Durham

# Mississippi Rules of Criminal Procedure

## 12.3(c)

- ▶ “In addition, if the court so orders, the report shall contain a statement of the psychiatrist’s and/or psychologist’s opinion of the following: (A) the mental condition of the defendant at the time of the alleged offense; (B) if the psychiatrist’s and/or psychologist’s opinion is that at the time of the alleged offense the defendant suffered from a mental disease or defect, the relation, if any, of such to the alleged offense, including: (i) whether the defendant knew the nature and quality of the defendant’s actions; and (ii) if so, whether the defendant knew that the actions were wrong.”

# Rule 12.3(c) - What does it mean?

- ▶ At the time of the alleged offense the defendant suffered from a mental disease or defect
  - ▶ “A psychiatric or neurological disorder that is evidenced by behavioral or emotional symptoms, including congenital mental conditions, conditions resulting from injury or disease, or developmental disabilities.”

AND

- ▶ Whether the defendant knew the nature and quality of the defendant’s action
  - ▶ Did they know what they were doing or the consequences (e.g., did they understand they were shooting at someone with a gun, and it could result in serious injury)
- ▶ whether the defendant knew that the actions were wrong
  - ▶ In MS, this refers to legal wrongfulness NOT moral wrongfulness
  - ▶ Not ignorance of the law

# What is “settled insanity?”

- ▶ All Insanity defense standards require the threshold of a mental illness or disability.
  - ▶ In “settled” insanity, the mental condition is the result of voluntary substance use.
  - ▶ Fixed insanity “refers to permanent damage brought about by substance use” while settled insanity “refers to situations, such as drug induced psychoses, in which the psychosis may have been triggered by substance use, but continues well beyond the point of intoxication, even if it is not permanent.”
- ▶ Highly contested and controversial defense strategy within the U.S. legal system
- ▶ Although U.S. courts are divided on whether settled insanity meets the threshold for an insanity defense, it has gained momentum as a defense strategy



# Voluntary Intoxication ≠ Settled Insanity

- ▶ Voluntary intoxication is the willing use of any substance that the individual knows can have an intoxicating effect.
- ▶ Some substances mimic symptoms similar to that of a mental illness during periods of intoxication and/or withdrawal and cease when the substance is no longer in their system.
  - ▶ This is not settled insanity.
- ▶ Throughout history, most courts have not allowed voluntary intoxication as a criminal defense but have not widely addressed mental illness resulting from substance use.
  - ▶ Most jurisdictions follow the rule that “Intoxication, if voluntarily incurred, is ordinarily no defense to a charge of crime based upon acts committed while intoxicated” (21 Am. Jur. 2d Criminal Law §155 and §157).

# Why don't courts allow voluntary intoxication as a defense?

- ▶ Absolving intoxicated defendants who have “temporarily destroyed their mental capacities by voluntarily ingesting intoxicants would encourage recklessness”
- ▶ Consequences of intoxication include the potential consequence of reducing one's mental capacity
- ▶ Intent to become intoxicated is itself a wrongful intent that can take the place of ordinary criminal intent
- ▶ Fear that a defense of intoxication could be easily simulated as to make prosecution too difficult

# When is intoxication considered involuntary?

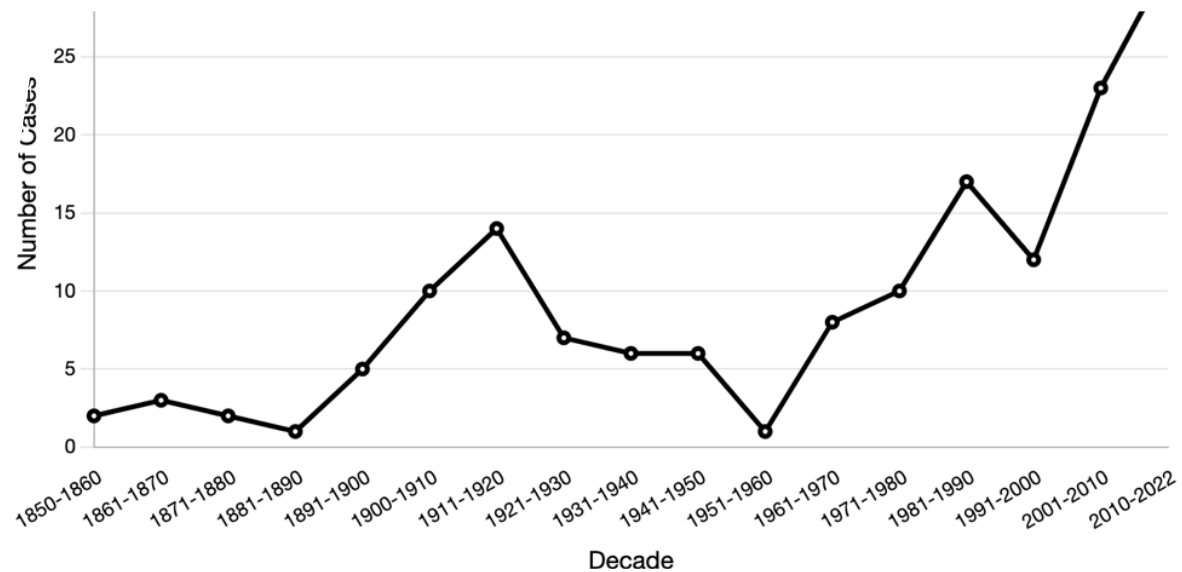
- ▶ “The presumption that one who consumes an intoxicant against one’s will, or without full awareness of the implications of one’s conduct, is not blameworthy. Thus ... the offender does not freely choose to become intoxicated and does not willingly assume the risks of one’s intoxicated conduct”
- ▶ When is intoxication involuntary?
  - ▶ Intoxication as a result of an innocent mistake by defendant as to the character of the substance taken or the result of fraud
  - ▶ Intoxication as the result of duress or coercion
  - ▶ Intoxication taken for medicinal purposes or is taken pursuant to medical advice
  - ▶ Aware of substance being taken, but the resulting reaction is “grossly excessive in degree” and the individual is unaware they are susceptible to an atypical reaction to the substance taken

# Our Research on Settled Insanity

- ▶ Purpose of study: To analyze appellate-level case law involving the settled insanity defense to discover trends and offer suggestions for future practice.
- ▶ Data: Published and unpublished appellate-level case law was collected through Westlaw
- ▶ Search Terms: “settled insanity” OR “fixed insanity”
  - ▶ These terms are often used interchangeably so we searched for both throughout our study.
- ▶ Examined quantitative and qualitative factors
- ▶ Data was analyzed using a mixed method and exploratory design.
  - ▶ Allowed for exploring the descriptive statistics of case law as well as the trends, patterns, and relevant discussions

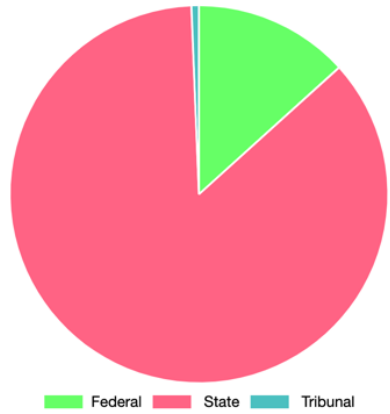
# Results

- ▶ 223 appellate-level cases cited settled/fixed insanity
  - ▶ Cases that were irrelevant to settled/fixed insanity defense were excluded
- ▶ Relevant case law spanned from 1854 to 2022
- ▶ 158 cases were coded and analyzed
  - ▶ 123 cases (78%) were published
  - ▶ 35 cases (22%) were unpublished



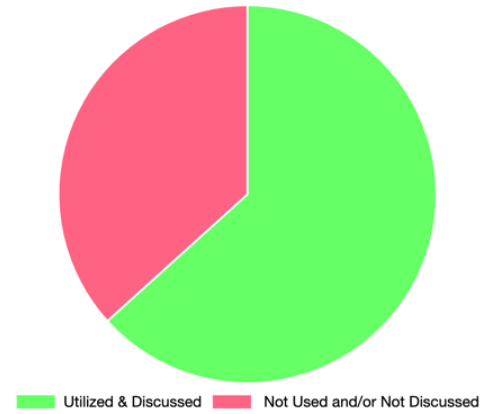
## Court Where Case was Decided

Figure 3: Type of Court



## 100 cases (63%) utilized expert witnesses

Figure 4: Expert Witnesses



## 74 cases (47%) discussed mental health diagnoses outside of substance use

Figure 5: Mental Health Diagnosis

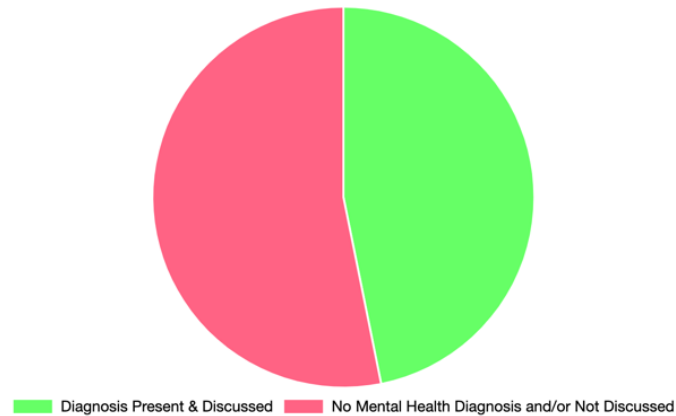
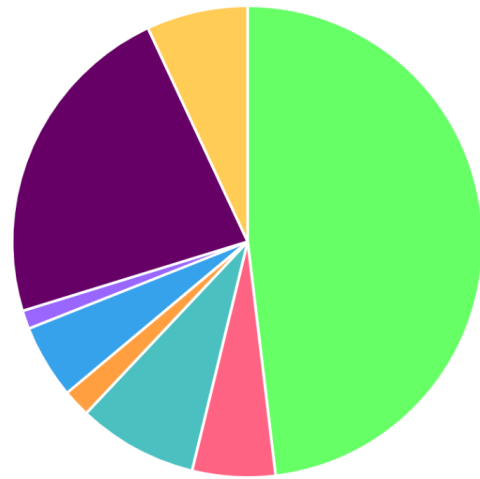
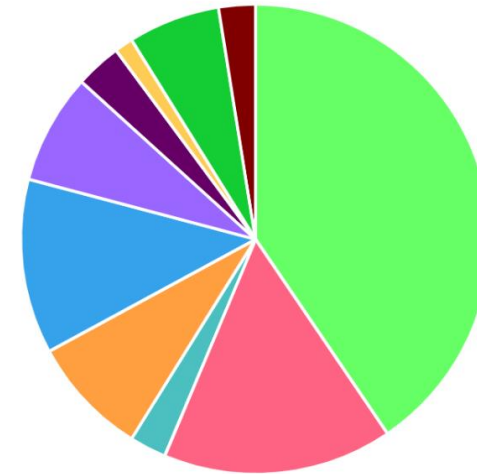


Figure 6: Type of Substance(s)



Alcohol CNS Depressants CNS Stimulants Opiates  
Hallucinogens Marijuana Polysubstance Use Not Mentioned/Unknown

Figure 7: Offense Type



1st Degree Murder 2nd Degree Murder Manslaughter  
Attempted Murder Robbery/Burglary/Theft/Other Property Related Offenses  
Assault/Battery Drug-Related Offense Kidnapping Sexual Offense  
All Other Offenses

- ▶ In 76 cases (48%), the defendant utilized alcohol
- ▶ 36 cases (23%) involved the use of multiple substances

**90.5% of the cases rejected the settled insanity defense**

# Qualitative Findings

The background features abstract, overlapping geometric shapes in shades of orange and green. The shapes are layered, creating a sense of depth and movement. The colors are muted and earthy, contributing to a professional and clean aesthetic.



# Increased Use of Settled Insanity Defense

- ▶ Until 1936, alcohol was the only substance discussed.
- ▶ Several other substances cause psychotic symptoms at much higher rates than alcohol.
- ▶ Literature about substance-induced psychosis has grown dramatically.
  - ▶ Research shows a link between chronic substance use and the development of a long-term/major mental illness.
- ▶ Changes in medical, societal, and legal views of substance abuse/addiction
  - ▶ Substance abuse/addiction historically was considered voluntary and not an illness.
  - ▶ Late 18<sup>th</sup> to early 19<sup>th</sup> centuries, medical field began conceptualizing alcoholism as a disease different from voluntary intoxication (Disease Model of Addiction)
  - ▶ Most courts have adopted status-conduct distinction.
    - ▶ People can be criminally punished for their acts while intoxicated/withdrawing but not for being an addict.

# Distinguishing between voluntary intoxication and settled insanity

- ▶ Did the symptoms persist after cessation of the substance(s)?
  - ▶ Most cases agreed on this, but none specified how long symptoms must last.
- ▶ In *State v Hogan* (1906), the court found the defendant was not insane because he never received medical treatment, yet he was not ill anytime between his arrest and the trial, indicating the symptoms had abated.
- ▶ In *People v. Kelly* (1973), the CA Supreme Court held a temporary psychosis which was not limited merely to periods of intoxication and which rendered the defendant insane under the M'Naughten test constitutes a settled insanity that is a complete defense to the offenses here charged.
- ▶ In *People v. McCarthy* (1980), the court ruled symptoms did not need to be permanent or beyond repair but needed to be present even when the individual was "stone sober."
- ▶ In *Morgan v Commonwealth* (2007), the court held an offender's mental recovery following his decision to seek medical treatment precluded the application of the settled-insanity doctrine because the offender's insanity was not "permanent."

# Factors Influencing Success of Settled Insanity Defense

- ▶ Most influential factor was the presence of long-term symptoms of psychosis that remained after acute intoxication/withdrawal
  - ▶ Other factors discussed in conjunction with settled insanity defense: acute intoxication/withdrawal, pathological intoxication, temporary insanity, atypical reactions to substances, and involuntary intoxication.
  - ▶ Possibly accepted for settled insanity defense: delirium tremens (DT)/mania a potu
- ▶ Length of symptoms stressed by the courts and the DSM-5
  - ▶ DSM-5 notes if symptoms persist for more than 1 month, symptoms are due to a mental illness rather than substance-induced

# Limitations of Study

- ▶ Using public, legal databases only allowed appellate case law to be retrieved and analyzed.
  - ▶ Appellate case law focuses on nuanced legal-related issues, making it possible that relevant legal discussions about settled insanity that occurred at the trial level were left out of the appellate decision.
  - ▶ The majority of cases reviewed involved defendants who were unsuccessful in their defense strategy.
    - ▶ Appellate cases tend to involve the defendant appealing the verdict.
- ▶ Generalizability of findings is limited.
- ▶ Individual descriptives may be skewed.

Fall 2023  
OSPD & MPDA  
Public Defender  
Conference



Wednesday, Oct. 25, 2023  
3:25pm - 4:55pm

*The Not So Settled  
Debate*

Drs. Cowell, Olson,  
Howard, and  
Berthold

