

Mental Defense Primer

By: Brett Purtzer; Jan 2006

A mental health defense is often the only way to explain an otherwise appearing senseless act of violence. Most criminal defense attorneys agree that absent an affirmative defense some abnormal behavior is often the cause of a violent offense. Presenting such defense to a jury, however, is always challenging because jurors expect an individual to be accountable for his or her acts.

Significantly, our Supreme Court has set forth the framework for presenting a mental health defense and has relaxed the onerous elements set forth in State v. Edmons, 28 Wn.App. 98, 621 P.2d 1310 (1981).

State v. Ellis, 136 Wn.2d 498, 963 P.2d 843 (1998) and State v. Greene, 139 Wn.2d 64, 984 P.2d 1024 (1999) which effectively overruled Edmons hold that opinions surrounding a mental health defense and governed by ER 702. The threshold that must be overcome, however, is that the testimony must meet the relevancy requirements of ER 401 and 403. Once relevance is established, and the court determines that the evidence will be helpful to assist the trier of fact, the evidence can be presented to the jury.

The form or basis of the testimony must also meet certain foundational requirements, and State v. Mitchell, 102 Wn.App. 21, 997 P.2d 373 (2000) helps us understand how the expert testimony must be presented.

Importantly, before the court will allow an expert to render an opinion, it must be on a more probable than not basis or by reasonable medical certainty that the defendant suffers from a mental disease or defect. Once that fact is established, the court, as set forth in Mitchell, eases how the evidence might be presented in the particular case. Rather than requiring the expert to state an opinion that the mental disorder actually produced the asserted impairment, it is only necessary that the expert opine that the asserted impairment could have been produced by the impairment, and if so, how that disorder operates. See Mitchell, 102 Wn.App. at 27. As such, the court allows an expert to opine that it is possible or likely that the defendant was suffering from said defect at the time of the event for which he was charged.

One must remember, however, that unless insanity defense is raised, a mental health defense is not an absolute defense, but only allows the jury to consider the disability's effect on

the defendant when the jury considers whether your client possessed the requisite mental state at the time of the event for which a charge was filed.

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