International Journal of Law and Psychiatry xxx (2016) xxx–xxx

Contents lists available at ScienceDirect

International Journal of Law and Psychiatry

Competency to stand trial evaluations in a multicultural population: Associations between psychiatric, demographic, and legal factors

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ARTICLE INFO

Available online xxxx

Keywords:
Competency
Competency to stand trial
Forensic evaluation

ABSTRACT

Data were examined from an archival sample of Competency to Stand Trial (CST) reports of 200 consecutive New York City pre-trial defendants evaluated over a five-month period. Approximately a fourth of defendants in the present study were immigrants; many required the assistance of interpreters. The examiners conducting the CST evaluation diagnosed approximately half of the defendants with a primary diagnosis of a psychotic disorder and deemed over half not competent. Examiners reached the same conclusion about competency in 96% of cases, about the presence of a psychotic disorder in 91% of cases, and affective disorder in 85% of cases. No significant differences between psychologists and psychiatrists were found for rates of competency/incompetency opinions. Compared to those deemed competent, defendants deemed not competent had significantly higher rates of prior psychiatric hospitalization and diagnosis of psychotic illness at the time of the CST evaluation but lower rates of reported substance abuse.

1. Introduction

A competency to stand trial (CST) evaluation is considered "the most significant mental health inquiry pursued in the system of criminal law" (Stone, 1975, p. 200). It has been estimated that about 60,000 CST evaluations are conducted in the United States each year and that 25 to 50% of criminal defendants referred for a competency evaluation are deemed not competent (Bonnie & Grisso, 2000; Melton, Petrilla, Poythress, & Slobogin, 2007). The current legal standard, adopted by almost every jurisdiction in the United States, is based on the case of *Dusky v. United States* (1960).

The Supreme Court held:

> It is not enough for the district judge to find that 'the defendant is oriented to time and place and has some recollection of events', but that the test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding — and whether he has a rational as well as factual understanding of the proceedings against him. (p. 402).

Some studies have found that characteristics associated with being found not competent include: non-Caucasian ethnicity, older age, unmarried status, unemployment, and lower education level (Cooper & Zapf, 2003: Hubbard, Zapf, & Ronan, 2003; Nicholson & Kugler, 1991; Pirelli, Gottdiener, & Zapf, 2011; Reich & Wells, 1985; Steadman, 1979). Mixed results have been reported with regard to gender; some studies found that women were more likely to be found not competent (Crocker, Favreau, & Caulet, 2002; Nicholson & Kugler, 1991; Rogers, Gillis, McMain, & Dickens, 1988) and others found no association between gender and competency (Cooper & Zapf, 2003; Pirelli et al., 2011). Previous studies examining the relationship between education and CST have reported mixed results. Some studies found a relationship between lower education level and being found not competent while several studies found no relationship between level of education and CST opinions (Cooper & Zapf, 2003; Hart & Hare, 1992; Nicholson & Kugler, 1991; Reich & Wells, 1985).

Few studies have focused on how immigration history influences CST. Crocker et al. (2002), in a Canadian study of CST evaluations, found that, compared with defendants born in Canada, immigrants were more likely to be deemed not competent. In an earlier Canadian study, however, no significant relationship was found between CST opinions and immigration status (Rogers et al., 1988).

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http://dx.doi.org/10.1016/j.ijlp.2016.02.039
0160-2527/

Several studies found that, compared with those charged with violent or felony offenses, defendants charged with nonviolent or misdemeanor offenses were significantly more likely to be found not competent (Cooper & Zapf, 2003; Kois, Pearson, Chauhan, Goni, & Saraydarian, 2013; Rosenfeld & Ritchie, 1998). However, Nicholson and Kugler (1991), in a meta analysis of previous studies, found no relationship between severity of charges and CST.

Previous research found that the strongest predictors of being found not competent include presence of a psychotic disorder, active psychotic symptoms, and a prior psychiatric history (Colwell & Gianesini, 2011; Cooper & Zapf, 2003; Hart & Hare, 1992; Kois et al., 2013; Nicholson & Kugler, 1991; Pirelli et al., 2011; Warren et al., 2006). In a meta-analysis of 68 studies, Pirelli et al. (2011) found that defendants diagnosed with a psychotic disorder were eight times more likely to be deemed not competent compared with those not diagnosed with a psychotic disorder. The presence of severe cognitive deficits or dementia has also been found to predict being found not competent (Frierson, Shea, & Shea, 2002). Researchers have reported that, in contrast, those with alcohol or drug use disorders were more likely to be found competent (Cooper & Zapf, 2003).

Several studies examined characteristics of the CST evaluation process itself. Researchers have consistently found a high CST agreement rate between examiners (Golding, Roesch, & Schreiber, 1984; Goldstein & Stone, 1977; Gowensmith, Murrie, & Boccaccini, 2012; Kois et al., 2013; Poythress & Stock, 1980; Skeem, Golding, Cohn & Berge, 1998). Skeem et al. (1998) reviewed 100 CST reports and found an 82% agreement rate and Gowensmith et al. (2012), in their review of 216 reports, found a 71% agreement rate for CST. Very high agreement rates have been reported for CST evaluations conducted in New York City. Goldstein and Stone (1977), in their review of 1404 evaluations, found a 97.5% agreement rate and Rosenfeld and Ritchie (1998) found agreement in 187 of the 188 (99%) cases they reviewed.

Few studies have examined whether any differences exist in how the practitioners of each discipline conduct CST exams. Warren et al. (2006) reviewed 8343 CST cases, evaluated by 309 examiners over a ten-year period in Virginia. They found that, compared with psychiatrists, psychologists were more likely to use psychological and/or neuropsychological testing. Psychologists spent more time interviewing defendants, reviewing records, and preparing CST reports. Psychologists were more likely to conclude that defendants were not competent (21% versus 9%).

As the United States has become more culturally and linguistically diverse it is important to explore how cultural factors affect CST evaluations. This study aimed to explore the role of immigration and English language proficiency in CST evaluations. We included variables rarely assessed in previous studies, e.g. whether the defendant immigrated to the United States, the number years an immigrant lived in the United States.

In building on the existing literature, a goal of the present study was to explore variables associated with CST assessment procedures. Among the evaluation characteristics studied were whether the two examiners interviewed together or separately, and whether the interview was conducted by a psychologist or a psychiatrist. The agreement rates among examiners with respect to general psychiatric diagnostic category and CST opinions were also examined.

The present study assessed the demographic, psychiatric and legal characteristics of a large ethnically and culturally diverse group of pretrial criminal defendants referred for competency to stand trial evaluations in a major urban court clinic. Similar to the results of previous studies, we hypothesized that defendants diagnosed with a psychotic disorder would be more likely to be deemed not competent compared with defendants diagnosed with a non psychotic disorder. We also hypothesized that defendants who were recent immigrants or who required the assistance of interpreters would be more likely deemed not competent. We hypothesized that there would be a high examiner agreement rate for psychiatric diagnosis and CST opinions and no difference in rates of competent versus not competent opinions between psychologist and psychiatrist examiners.

2. Materials and methods

2.1. Setting

The authors examined data from an archival sample of CST reports of 200 consecutive pre-trial defendants who were over the age of eighteen at the time of evaluation. Defendants were referred during a five-month period (January to May, 2012) from the Criminal and Supreme Courts of New York City, County of Kings (Brooklyn). Approval to conduct this study was granted by the Institutional Review Board of Downstate Medical Center.

Eight licensed clinic examiners from the Kings County Hospital Center Forensic Court Clinic of the Brooklyn Supreme Court conducted the CST evaluations and wrote CST reports. The examiners included five clinical psychologists and three psychiatrists. Seven of the examiners were trained to conduct competency examinations at this clinic. One psychiatrist completed a forensic psychiatry fellowship before he began working at the clinic.

States have different requirements for conducting CST evaluations; New York State requires that two examiners evaluate a defendant. The examiners are retained by the court, not by the prosecution or defense. If the two examiners disagree about CST, a third examiner evaluates the defendant. Examiners submit independent reports to court. A hearing is mandatory when the first two examiners disagree or if the defense attorney or the prosecutor requests one. The defense attorney and prosecutor can retain their own independent examiner to interview the defendant and testify at the hearing. The defendant also has the right to testify at this hearing. After considering all the evidence (e.g. examiners' reports, examiners' testimony, defendant's testimony) the judge rules whether the defendant is competent or not competent.

The standard practice in the Kings County Hospital Forensic Clinic was for both examiners to interview the defendant together. Occasionally, if only one examiner was available the day of the scheduled evaluation, he or she interviewed the defendant alone. The second examiner interviewed the defendant on a later day. The two examiners interviewed the defendants together in the majority (91%) of cases. Cases were assigned randomly to examiners so defendants could have been seen by two psychiatrists, two psychologists or a psychiatrist and a psychologist. In eight cases the two examiners disagreed about CST and a third examiner evaluated the defendant.

Before the interview examiners were provided with the defendant's criminal complaint and the indictment, if the defendant was indicted on a felony charge. In most cases this was the only collateral information available. Occasionally, previous CST reports and psychiatric records were available as additional information.

Most defendants were detainees who were housed at the Rikers Island Detention Center. Twenty-one (11%) were not in detention; they were seen as outpatients because they were out on bail or had been released on their own recognizance. A few were inpatients on the forensic service of a public hospital because they were deemed too clinically unstable to be housed in a regular jail setting. The hospitalized defendants were brought to the Supreme Court to expedite the CST evaluations. One hundred and seventy four defendants (87%) were seen once, 24 (12%) were interviewed twice, and two (1%) were seen three times.

The examiners used a semi-structured clinical interview to assign DSM-IV diagnoses and determine whether defendants met criteria for CST (*Dusky v. United States*, 1960; *People v. Valentino*, 1974). They did not use structured interviews such as the MacArthur Competence Assessment Tool–Criminal Adjudication (MacCAT-CA™) (Poythress et al., 1999) but they gathered psychosocial information and assessed psychiatric symptoms in an organized and systematic fashion. Typically, examiners did not administer any formal diagnostic or psychological

Please cite this article as: Paradis, C.M., et al., Competency to stand trial evaluations in a multicultural population: Associations between psychiatric, demographic, and legal fact..., *International Journal of Law and Psychiatry* (2016), http://dx.doi.org/10.1016/j.ijlp.2016.02.039