

THE COMPLEXITY OF COMPETENCE AND INSANITY IN CRIMINAL TRIALS IN THE NIGERIAN COURTS- THE PSYCHOLOGICAL PERSPECTIVE*

Abstract

Competence and Insanity are two closely related topics in Criminal Law that deals with the mental state of the defendant to stand trial and his mental state that led him to commit the crime. The problem that exist is that both are too complex areas that puzzles lawyers, legislators and the public in determining standard of establishing both and the nature of evidence thereto. The findings of this paper is that the Nigerian Legal System rely more on medical reports of general medical practitioners and evidence from relations in establishing insanity and pay little attention to psychological research and the use of other expert such as psychologists, specifically psychiatrists, social workers to aid the court in systemic and researched evaluation techniques in determining the two concepts. Doctrinal method was employed and the writers suggest that more research and reliance on evaluation methods in determining competence and insanity issues as well as exposing magistrates, and judges to seminars and workshops on modern research techniques in dealing with the problem.

1.0 Introduction

Competence to stand trial is very fundamental to criminal prosecutions in Nigeria as defendants who are not competent to stand trial robs the court of jurisdiction to do so and therefore waste the precious time of the court. It is fair enough that whenever the plea of competence is made, that the court will order for evaluation from experts and order for treatment to enable such defendants to stand their trial. Insanity too is the mental state and consciousness of a defendant as at the time the offence was killing her children “ever since I realized that I have not been a good mother to them”. She said that the children “weren't developing correctly”.

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committed which if determined at trial by the court from the evidence adduced in the case, discharges the defendant of whatever crime he committed save that he will be committed to a treatment facility to avoid a repetition of similar subsequent crime. The motivation of this paper is that the proper determination of competence and insanity cases will be of great relevance to the society, victims and perpetrators as to when the correct justice to each case is properly determined.

2.0 The Meaning of Legal Competence

On the summer morning of 2001, Andrea Yates filled the bathtub in her home and called her children to the bathroom one by one. Her 3- year old son Paul was the first to be called. She forced Paul into the bathtub and held his head under water until he stopped breathing. She carried his soaked body to the bedroom, laid him down, and covered him with a sheet. Then her sons Luke, age 2, and John, age 5 were killed the same way. Yate's 6 month- old daughter Mary- who was on the bathroom floor crying while her three brothers were killed- was the next to be held underwater. Just as Yates was lifting her daughter's lifeless body from the tub, her oldest child Noah (age7) walked in and asked what was wrong with her little sister. When Yates tried to grab Noah, he ran away. She chased him down a hallway, dragged him to the bathroom, and drowned him next to his sister.

After killing all five of the children, Andrea Yates called 911 and told the operator that she was ill and that she needed an ambulance. She also called her husband Russell and told him to come home. "It's time", she told him, "I finally did it". Then she hung up and when police arrived at the scene, Noah was found floating face down in the tub; his brothers and sister were found laid out in the same bed. Mary's head was resting on the shoulder of her brother John. His mother had placed his arms around the body of her sister. She told the police that she had been thinking about To the surprise of many, the grieving husband refused to condemn his wife. "I don't blame her a bit" he said "if she received the medical treatment she deserved, then the kids would be alive and well. And Andrea would be well on her way to recovery¹".

¹ J Springer. Kids Drowned, Mother Faces Execution, www.courttv.com, 2000.

When Andrea Yates went on trial in 2002, two key facts were undisputed: she had killed her five children, and she was mentally ill. Before the trial, a hearing was held to consider whether Yates was competent to stand trial on murder charges. Based on testimony by psychologists who had interviewed Yates and studied her history, she was deemed competent to stand trial. As the trial began, she entered a plea of not guilty by reason of insanity. Because Yates had confessed to the murders, and because the physical evidence against her was overwhelming, the trial focused on whether she was legally insane. After listening to weeks of complex expert testimony, a jury of eight women and four men deliberated for three hours and 40 minutes before finding Andrea Yates guilty. They apparently agreed with the prosecutor in the case, who argued that Yates “made the choice knowing that it was a sin in the eyes of God and a crime in the eyes of the state²”. Her defence attorney reacted bitterly to the verdict, “If this woman doesn't meet the standard for insanity, nobody does. We might as well wipe it off the books”. But all the expert testimony about Yate's mental illness may have influenced the sentence she received. When asked to choose between life in prison or the death penalty, jurors took less than an hour to decide to send Andrea Yates to prison.

In the trial of Andrea Yates and many other trials in the U.S, Nigeria and elsewhere, decisions about “competence” and “insanity” are at the heart of legal proceedings. Because these decisions require judgments about the psychological functioning of the defendant; clinical psychologists- those who study and treat various forms of psychological dysfunction on mental illness- are often crucial to that legal process in such cases.

Defendant has the most to lose during criminal proceedings. It is their liberty that is at stake. Consequently, it is important that they understand what is going on at every stage in the criminal justice process from arrest to sentencing. A defendant charged with a serious crime has a right to a trial. But what is going on before or during trial? Perhaps the defendant lacks the mental capacity to understand the complexities of legal proceeding. Perhaps he or she is substantially impaired by mental illness.

² M K. Stack. 'Jury Rejects Insanity Claim, Convicts Mother of Murder' (2002), Los Angeles Times A1- A18.

But if we judge some people to be too impaired to stand trial, how much impairment is too much? Does it matter if the defendant can understand much but not all of what happens in court? These are some of the difficult questions surrounding the legal concept of “competence”.

There are several reasons to be concerned about competence. One set of concerns involves fairness to the defendant. Full participation of the defendant in his or her own defence improves the probability of a just verdict. In an adversarial system, the defendant must be able to provide their lawyers with information about the crime and about the witnesses who testify at trial. Without the assistance of the defendant, the counsel is less able to mount an effective defence. That makes mistaken conviction more likely. And even though a lawyer handles the defence, the defendant remains ultimately responsible for several key decisions: whether to plead guilty, whether to waive a trial by jury, whether to testify, and whether to accept a plea bargain offered by the prosecution³.

A second set of concerns has to do with public respect for the criminal justice system. To use the full power of the state to try, convict, and punish the defendant who do not understand the nature of the legal proceedings against them undermines the perceived legitimacy of the legal system. It would simply not seem fair. A related but less central concern is that unruly behaviour in court by a mentally disturbed defendant disrupts the dignity of legal proceedings.

The legal doctrine of incompetence originated in English common law of the seventeenth century. Competence was considered critical because, at the time, defendant usually had to argue their own case. At present, the most frequently evaluated form of competence is called Competence to Stand Trial (CST) usual and common in the United States, England and some western legal systems. It was defined by the U.S Supreme Court in 1960 case of *Dusky v United States*⁴ and refers to the defendant “... sufficient present ability to consult with his attorney with a reasonable degree of rational understanding and whether he has a rational as well as

³ BJ Winick. Incompetence to Proceed in The Criminal Process: Past Present, And future. In BD. Sales & DW Shumah (eds) *Laws, mental health and mental disorders*. (Pacific Grove, CA: Brooks/Cole, 1996)

⁴ *Dusky v United States*. 362 U.S. 402 (1960).

factual understanding of the proceedings against him”. Notice the word present in the definition. Competence to Stand Trial (CST) refers to the psychological state of the defendant at the time of the trial. The defendant psychological state at the time of the crime is not relevant to a determination of CST (although it is relevant to a determination of insanity). During the 1990s, the US Supreme Court held that there should be a presumption of competence. That is, the defence bears the burden of proving that the defendant is incompetent. But the standard of proof is a “preponderance of the evidence”. Using this standard, the defence must show that it is more likely than not that the accused is incompetent *Cooper v Oklahoma*⁵; *Medina v California*⁶.

It is essential to recognize that CST is a legal, not a psychological concept. Being judged CST does not certify robust mental health or even normal mental functioning. It merely means that a defendant meets the minimal standard of being able to cooperate with a lawyer and is aware of the nature and possible consequences of the proceedings against him or her. Even people suffering from psychosis or mental retardation can be judged CST. In addition, CST is somewhat flexible standard- a defendant facing very serious charges in a case with complex facts may need to be more competent than someone facing less serious charges and a simpler legal proceeding. Also, if the defendant has many friends and family members who can provide information helpful to him, the competence of the defendant may be seen as less crucial.

Although CST is by far the most frequently assessed form of competence, issues of competence can arise well before and long after trial. The issue of competence may surface during a suspect's encounter with the police. Children or adolescents, adults who are mentally impaired, or mentally ill suspects may not be competent to waive their Miranda rights or to provide a voluntary and accurate confession. Next at arraignment, there may be an issue of whether the defendant is competent to decide to plead guilty. In an early decision in *Johnson v Zerbst*⁷, the US Supreme Court held that a guilty plea must be “knowing,

⁵ *Cooper v Oklahoma*, 116 S.Ct. 1373 (1996).

⁶ *Medina v California*, 112 S. Ct 2572 (1992)

⁷ *Johnson v Zerbst* 304US 450 (1938)

voluntary, and intelligent”. In part, this means that the defendant must understand the charges against him as well as the potential consequences of a conviction for example spending several years in prison. Judges are required to question the defendant to make sure he or she understands that by entering a plea of guilty, important constitutional rights are forfeited: the right to a trial by jury, the right to remain silent, and the right to confront one's accusers. Later, at the trial stage, defendant may decide to serve as his or her own attorney. Here again, the issue of competence can be raised. Do such defendant fully understand the consequences of waiving their right to an attorney? We have heard the old saying that “anyone who serves as his own lawyer has a fool for a client”. Some lawyers argue that simply asking to represent oneself is evidence of incompetence. However, the law only requires that the decision to serve as one's own attorney is voluntary and made “with understanding⁸”.

A rare situation involving the assessment of competence involves prisoners sentenced to die in the execution chamber. Although the U.S Supreme Court has ruled that executions do not violate the Eighth Amendment's prohibition against cruel and unusual punishment, it has also ruled that it would be cruel and unusual to execute an incompetent prisoner who does not understand why he or she is being executed *Ford v Wainwright*⁹. In some instances, mental health professionals have been enlisted in the ethically troubling process of resorting prisoners to competence so that they can then be executed.

Although courts and psychologists use somewhat different standards to judge different forms of competence, in 1993 case of *Godinez v Moran*¹⁰, the U.S. Supreme Court endorsed a single standard of competence. That decision permits states to develop separate standards for different types of competence but requires that the Dusky standard be used as the minimum requirement. In the Nigerian case of *Sanusi v State*¹¹. The Nigerian supreme Court describe CST as FST (fitness to Stand Trial when they held same as:

⁸ *Faretta v California*, 422 U.S 806 (1975).

⁹ *Ford v Wainwright*, 477 U.S. 399 (1986).

¹⁰ *Godinez v Moran*, 13 S.ct 2680 (1993).

¹¹ *Sanusi v State* [1984] LPELR- SC. 49/1983

“It is a well settled law that the plea of the accused person is his answer to the written charge against him. Fitness to stand trial not merely connotes the capacity of the accused to understand the charge against him, it also involves his ability to make a reasonable defence to the charge. See *Bakori v Zara N.A*¹². It is not enough that the accused was able to understand the nature of the charge, he should be capable of following proceedings intelligently-*R.v Inyang*¹³. Concisely stated accused must be capable of defending himself and instructing counsel at the time of the plea and during the trial ” per Karibe whyte J.S.C. (p 46, paras D-G.

In the above case, the court held that for unsoundness of mind to be constituted, that there must be an aberration of reason. In *Uwaifo v. A-G Bendel State & Ors*¹⁴ the court held that:

“The word “Competence” in law according to Webster's' New Twentieth Century dictionary unabridged second Edition means: “legal capacity, qualification, power, jurisdiction or fitness as (a) the competence of a witness to testify and (b) the competence of a judge to try a case” per Obaseki J.S.C (p. 84, parars, E-G)

In other words, when a defendant is not fit or competent to stand trial, the court lack jurisdiction to entertain the suit.

¹² (1964) N.A.N.L.A 25

¹³ (1946) 12 WACA

¹⁴ (1982) 7 S.C (Reprint) 58

3.0 How the Criminal Justice System Deals With Incompetent Defendants

If a defendant person does not want to raise the question of competence, ethical guidelines require lawyers that a defendant may be incompetent. Usually, the defence lawyers raises the issues but prosecutors and judges are also ethically obliged to be vigilant for incompetent defendant. Further, if either attorney raises the issue of the defendant competence, the presiding judge almost always orders for a psychological evaluation. Section 223(1) of the Criminal Procedure Law provides that “when a judge holding a trial or a magistrate having a trial or an inquiry has reason to suspect that the defendant is of unsound mind and consequently incapable of making his defence, the judge, jury or magistrate as the case may be shall in the first instance investigate the fact of such unsoundness of mind. In the Nigerian case of *Chukwu v State*¹⁵ the court held that a court ordering for investigation to the unsoundness of mind of the defendant depends on the nature of the case. It is only where a judge holding a trial has reason to suspect that the defendant is of unsound mind and consequently incapable of making his defence that the judge is required by Section 223 of the Criminal Procedure Law in the first instance to investigate the fact of such unsoundness of mind. In law every person is presumed to be sane. In the present case there was evidence that the appellant was once insane and there was evidence that he had been cured long before the day of incident and had returned home. There was no evidence of lapse. Unlike most other issues decided in court, there tends to be little dispute providing a competence evaluation when it is requested. Prosecutors seldom object to requests for competence evaluations, and judges rarely deny such request¹⁶.

The issue of CST is typically raised at a pretrial hearing but can be ordered by the judge at any time during the trial. At least one, and occasionally more than one mental health professional- usually a psychiatrist, clinical psychologist or social worker- is asked to serve as an evaluator.

¹⁵ *Chukwu v State* [1994] 4 SC. 15 85.

¹⁶ R Roesch & S Golding. *Defining and Assessing Competence to Stand Trial*. In IB Weiner and AK Hess (Eds), *Handbook for Forensic Psychology* (New York: Wiley, 1987).

The evaluator (or evaluators) will usually interview the defendant, administer psychological test, review the defendant history, and write a report. The report will summarize the evaluator's findings and offer a conclusion about the defendant's ability to participate in his or her trial and co-operate with his or her attorney. The evaluation can be done on either an “inpatient” or an “out-patient” basis. Inpatient evaluations involve holding a defendant in a mental institution for a period usually ranging from a few days to few weeks. An advantage of evaluation in institutional settings is that they provide multiple opportunities to observe the defendant behaviour over time. Out-patient evaluations are those that occur outside of mental institutions. They are usually conducted in jails (prisons) or local clinics and are often much more common than in-patient evaluations. Usually a written report is all that is required by the court. But it is not uncommon for a judge to ask a psychologist to testify about his or her findings.

It is estimated that somewhere between 25,000 and 39,000 criminal defendant persons are evaluated for CST every year in the U.S¹⁷.. This data or any data of criminal defendants who stand trials in Nigeria who are evaluated on their fitness to stand trial is not available obviously for lack of research and trained personnel and interest of researchers and funding to do so. First is that such data or statistics are not available. Secondly, Judges, Magistrates and President of customary courts hardly send such defendants to such evaluations primarily for the reason that defence counsels, do not make such applications and when made, the difficulty in getting such health facility or institutions or experts making such evaluations and the cost of such evaluations on the defendants as the state or court do not have the resources to cater for such expenses. And finally the delay such process will take which will add to other delays inherent in criminal prosecutions in Nigeria. In the U.S, of those defendants who are referred for a competence evaluation, only about 12% are actually found to be incompetent¹⁸.

¹⁷ PA. Zapf & R Roesch. 'Mental Competence Evaluations: Guidelines for Judges and Attorneys' (2000) 37, Court Review, 28-35.

¹⁸ 18. G B. Melton et al (2nd ed), Psychological Evaluations For the Courts: A Hand Book For Mental Health Professional (New York, Guilford; 1997).

It is quite rare for a judge to reject the conclusion of an evaluator, especially if the defendant has been found incompetent. Research on a defendant judged to be incompetent has revealed that such a defendant tend to live on the fringes of society. As a group, they tend to have a history of treatment for mental illness, to show obvious symptoms of current mental illness, to have a history of drug abuse, and to be charged with a serious crime (about half are accused of violent crimes). They also tend to be socially isolated, unmarried, unemployed, poorly educated, and below average in intelligence^{19, 20}. If an evaluator reached the conclusion that an accused person is incompetent, the report will usually contain recommendations for treatments that might restore the defendant competence.

Prior to the 1972 decision in *Jackson v Indiana*²¹, a defendant judged to be incompetent could be held in mental hospitals for infinite periods. Indeed, just prior to that decision, researchers found that about half of people found incompetent spent the rest of their lives in mental institutions²². Hospital stays often exceeded the amount of time a defendant would have to serve in prison if they had been found guilty of the crime. The Jackson ruling limited the period of confinement to the time necessary to determine if the accused could be returned to competence in the “foreseeable future”. As a result of the Jackson decision, most states in the United States limit confinement to somewhere between 4 and 18 months. If, after that period, the defendant is still judged to be incompetent, an extension of several more months can be granted. Significant problems and uncertainties arise if even after this extended hospital stay, the accused has still not been restored to competence. Sometimes involuntary civil commitment proceedings are initiated. But to commit someone to an institution against his or her will using involuntary civil commitment laws is difficult.

¹⁹ R A, Nicholson, & RE Kugler. 'Competent and In Competent Criminal Defendants: A Quantitative Review of Comparative Research' (1991) 109, *Psychological Bulletin*, 355-370.

²⁰ P G, Nestor et al. 'Competence to Stand Trial: A Neuropsychological Inquiry' (1999) 23, *Law and Human Behaviour*, 397-412.

²¹ *Jackson v Indiana*, 406 U.S 715 (1972).

²² AL, Mc Garry, 'The Fate Of Psychiatric Offenders Returned For Trial' (1971) 127, *American Journal of Psychiatry*, 1181-1184.

The person must either be shown to be “gravely disabled” (unable to care for himself/herself and to provide for basic needs like food or shelter) or to be “imminently dangerous to self or others²³”

Even if an incompetent defendant is hospitalized, it is not certain that he or she will receive the kind of treatment that will restore competence. The quality of treatment at mental health facilities varies considerably. However, a study conducted by Alex Siegel and Amiran Elwork²⁴, suggests that training specifically designed to explain court room rules and procedures can help to restore CST. Those researchers used two groups of defendant persons who had been judged to be incompetent and who were confined in psychiatric hospitals. The treatment group was given information about court room rules, personnel, and procedures by means of videotapes, lectures, and discussions. The control group received more standard forms of therapy. By the time the training ended, hospital staff judged 43% of the treatment group to be CST, but only 15% of the control group to be CST trial. A competence evaluation may delay trial for some time and give attorneys more time to prepare. Also prosecutors may request a competence evaluation to prevent the defendant from being released from bail, and either side may seek an evaluation to gain information about the feasibility of an insanity defence²⁵. Information gathered during a competency evaluation cannot be introduced at trial unless the defendant places his or her mental state into evidence, for example, by pleading not guilty by reason of insanity²⁶.

4.0 Insanity

In *Adamu v. State*²⁷, the court defines Insanity thus:

“What then is insanity?” It is “Any mental disorder severe enough that it prevents a person from having legal capacity and

²³ JO, La Fond. 'The Impact of Law On the Delivery Of Involuntary Mental Health Service.' In B.D Sales & D.W Shumian (eds) *Law Mental Health and Mental Disorder*. (Pacific Groove LA: Brooks-Cole, 1996).

²⁴ A Siegel & A Elwork. 'Treating Incompetence To Stand Trial' (1990) 14, *Law and Human Behaviour*, 57-65.

²⁵ *Ibid*

²⁶ *Estelle v Smith* 451 U.S. 454 (1981).

²⁷ (2014) LPELR- 22696 (SC)

excuses the person from criminal or civil responsibility. In deed, it is a legal, not a medical standard” therefore, “insanity defence” means an affirmative defence alleging that a mental disorder caused the accused to commit the crime. However, unlike other defence, a successful plea of insanity defence may not result in an acquittal but instead leads to the defendant's commitment to a mental institution. See Black's law Dictionary, ninth edition, page 865 per Ariwoola J.S.C (p. 30 paras C-F)

In *Achuku v State*²⁸, the court held per Ogbuinya J.C.A at p. 41 paras C-D that in the domain of criminal law, the surest way of proving insanity is by medical evidence while in *Ero v State*²⁹, the court held that:

“...the surest way of establishing insanity is by medical evidence or by compelling evidence of eye witnesses, particularly of the relatives of the appellant, relating to his general conduct and behavior prior to, during and after the incident of February, 1997. See *Anthony Ejinma v. the State*³⁰. Positive act of the accused before and after the deed complained of, evidence by a doctor who examined and watched the accused over a period of time as to his mental state, evidence of relatives who know the accused person intimately relating to his behavior and the change which had

²⁸ (2014) LPELR- 22696 (CA)

²⁹ (2014) LPELR- 22651 CA)

³⁰ (2013) LPELR- 20869 (CA)

come upon him; the medical history of the family which could indicate hereditary mental affliction or abnormality, and such other facts and circumstances which will help the trial judge come to the conclusion that the burden of insanity placed on the accused has been simply discharged ” per Yakubu J.C.A (pp. 40-41, paras F-D)

In *Sate v John*³¹, the court held that the burden of proving insanity lies on the person who is asserting it and that the burden is discharged on the balance of probabilities as in civil cases, he must show that the evidence he relies on sufficiently proves insanity.

5.0 Conclusion and Recommendation

Competence and Inanity is a defence to murder and other charges and in its proper determination is very important and helpful to the society at large. The complex nature of the two concepts requires more research, knowledge, training, workshops and conferences from magistrates and judges and we recommend as well that involving other experts such as psychologists, psychiatrists and social workers to be involved with court evaluations on competence and insanity cases will prove very useful.

³¹ (1991) 75 INT (pt.1) 318 at 328