

Incapacity to Proceed and Juveniles

Two days ago, Franklin County prosecutors dismissed a murder charge against an 18-year-old male who allegedly admitted to decapitating his mother because “he felt like it.” The case made national headlines back in March when it was reported that the teen emerged from the home holding a butcher knife in one hand and his mother’s head in the other when officers arrived on the scene. According to this [article](#), the trial court recently found that the teen lacked capacity to proceed after he was examined by mental health professionals at Central Regional Hospital in Butner. This post discusses what it means for a juvenile to lack capacity to proceed and why it not only bars a criminal prosecution, but also, prohibits delinquency proceedings against a juvenile.

Both state law and constitutional due process require that juveniles must be mentally capable of participating in their defense (*i.e.*, possess capacity to proceed) in order to stand trial. If a juvenile cannot defend him or herself against the State, the fundamental fairness of the proceeding is significantly undermined. *Drope v. Missouri*, 420 U.S. 162, 172 (1975).

The constitutional test for capacity to proceed, known as the *Dusky* standard, is whether a defendant has a “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” and “a rational as well as factual understanding of the proceedings against him.” *Dusky v. United States*, 362 U.S. 402, 402 (1960) (per curiam). The *Dusky* standard is codified in [G.S. 15A-1001\(a\)](#) as a three-part test, which provides that an accused lacks capacity to proceed if *by reason of a mental illness or defect*, he or she is unable to:

understand the nature and object of the charges against him or her,
comprehend his or her own situation in reference to the proceedings, or
assist in his or her defense in a rational or reasonable manner.

This standard was developed for adult criminal defendants, but the Juvenile Code makes it applicable to juveniles. See [G.S. 7B-2401](#). The first two prongs of the statutory test encompass the *Dusky* standard’s requirement that an accused must possess both a factual and rational understanding of the proceedings, and the third prong is the ability to consult with and assist counsel. Because the test is disjunctive, a juvenile who is unable to perform any of these abilities is incapable of proceeding.

Factual understanding refers to a juvenile’s basic knowledge of facts about the trial process and courtroom procedures. Facts the juvenile must understand include the roles of various participants in the process (*e.g.*, judge, prosecutor, and defense attorney), the nature and seriousness of the charges, the nature of plea agreements, and potential penalties for the offense. See Thomas Grisso, [Legal Questions About Juveniles’ Capacities](#), Module 4 (2009).

Rational understanding, sometimes called “appreciation,” is the ability to appreciate the relevance or significance of information that one factually knows. For example, a juvenile may

understand that the defense attorney's role is to help the juvenile at trial but may not understand how the defense attorney provides such help. The juvenile may not fully understand that the defense attorney's job includes advocating for a dismissal, even if the allegations are true. In other words, the juvenile may lack the ability to appreciate what the juvenile factually knows about the defense attorney's role. *Id.*

Assisting in one's own defense requires at least four types of abilities: (1) the ability to receive and communicate information adequately, (2) the ability to trust or work collaboratively with counsel, (3) the ability to exercise reason in making decisions about pleading and waivers of important constitutional rights, and (4) the ability to participate in courtroom events. In other words, a juvenile must have the ability to follow instructions, communicate relevant facts, maintain self-control in the courtroom, and testify coherently, if necessary. See Laurence Steinberg, [Adolescent Development and Juvenile Justice](#), 5 Ann. Rev. Clinical Psychol. 47, 63 (2009).

Mental Illness or Defect. Although the existence of a mental illness or intellectual disability is not explicitly mandated by *Dusky*, North Carolina law requires that a juvenile's or an adult's incapacity to proceed must result from a *mental illness or mental defect*. [G.S. 15A-1001](#). In criminal cases, North Carolina appellate courts have held that even a defendant with a severe mental illness or brain injury is not automatically deemed incapable of proceeding. See, e.g., *State v. Shytle*, 323 N.C. 684, 688-689 (1989). The mental illness or defect must impair at least one of the abilities required for capacity to proceed.

- *Mental Illness*

In adult cases, incapacity to proceed typically results from serious mental illnesses, including psychotic conditions that may require inpatient hospitalization. However, a juvenile's incapacity to proceed may result from a broader range of mental conditions which include, but are not limited to, Attention Deficit/Hyperactivity Disorder (ADHD), mood disorders (e.g., clinical depression), anxiety disorders (e.g., Posttraumatic Stress Disorder), and thought disorders (e.g., Schizophrenia or other delusional disorders). Although juveniles with these diagnoses are not automatically incapable of proceeding, they may be more vulnerable to a determination of incapacity. See Thomas Grisso, *Clinical Evaluations for Juveniles' Competence to Stand Trial: A Guide for Legal Professionals* (2005) (describing how these conditions may impact the various abilities required for capacity to proceed).

- *Mental Defect*

With respect to adult defendants, a mental defect generally refers to an intellectual disability, which requires an IQ score below 70 and evidence of significant impairment in functioning in everyday life. However, juveniles may have cognitive limitations that fall short of an intellectual disability, such as a low IQ score, learning disability, or neuropsychological impairment, which also may impact the abilities required for capacity to proceed. For example, a juvenile with an intellectual

disability or other cognitive limitation may have difficulty with both the “factual” and “rational” understanding prongs of *Dusky* due to impairments in memory, learning, information processing, and abstract reasoning. Likewise, such juveniles may have difficulty with verbal expression which can affect their ability to consult with and assist counsel. See Grisso, *supra*.

Only two published decisions by North Carolina appellate courts have evaluated capacity to proceed determinations involving juveniles with mental health disorders or intellectual deficiencies and both upheld rulings finding the juveniles capable of proceeding. See [In re I.R.T.](#), 184 N.C. App. 579, 582 (2007) (upheld a ruling that 15-year-old with diminished intellectual functioning was capable of proceeding where the evidence supported the court’s findings that the juvenile did not “demonstrate any mental defect that would preclude his capacity to proceed to trial,” that he could assist his attorney, and that he had the ability to understand legal terms and procedures that are explained in concrete terms); [In re Robinson](#), 151 N.C. App. 733, 736 (2002) (upheld ruling that a 14-year-old with moderate mental retardation and schizophreniform disorder was capable of proceeding despite conflicting reports from multiple experts).

These cases demonstrate that the question of a juvenile’s capacity to proceed is largely within the discretion of the trial court, which is responsible for weighing the evidence and resolving any conflicts. [I.R.T.](#), 184 N.C. App. at 582. If supported by the evidence, the trial court’s conclusion on the issue of capacity is conclusive on appeal.

If a court finds that a juvenile is incapable of proceeding, the prosecution must be suspended until the juvenile’s capacity is restored. As in the case of the Franklin county teen charged with murder, a juvenile who lacks capacity to proceed may be involuntarily committed to a state hospital if the court finds “reasonable grounds to believe” that the juvenile satisfies the criteria for involuntary commitment found in [G.S. 122C-261](#). See [G.S. 15A-1003\(a\)](#). However, most juveniles who lack capacity to proceed do not qualify for involuntary commitment.

In the case of adult defendants, Chapter 15A provides other dispositions the trial court may impose after a finding of incapacity to proceed, including orders “to safeguard the defendant and to ensure his return for trial” if the defendant regains capacity, periodic supplemental hearings on the issue of capacity, and dismissal. [G.S. 15A-1004\(a\)](#); [G.S. 15A-1007](#); and [G.S. 15A-1008](#). These statutes do not apply to juveniles.

As a result, trial judges often struggle with determining how to proceed after a finding of incapacity to proceed in juvenile court. Additional unanswered questions relevant to juvenile capacity to proceed hearings include the role of developmental immaturity in juvenile capacity evaluations, the potential for capacity restoration, and treatment options for juveniles who lack capacity to proceed but do not qualify for civil commitment. In my upcoming bulletin on “Juvenile Capacity to Proceed Hearings,” I address these questions and more. So, stay tuned!