

Will the Waffle House shooter plead insanity? |

Opinion

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Editor's note: This is a special in-depth guest column published in light of the public interest in the April 22 Waffle House shooting in Nashville.

Attracting national attention, the Nashville Waffle House massacre occurred at a restaurant chain we all patronize. We could well have been victims too.

There is an attractive hero, James Shaw Jr. – lauded by the Tennessee legislature and now congratulated by the President – who saved the day and several lives, including his own.

And then there is the shooter – Travis Reinking – who slaughtered and injured innocent victims. He is seen as a demon.

But the demons may have all been in his head.

Given the multitude of witnesses and the overwhelming evidence Reinking shot all these people, the only conceivable defense would be a plea of not guilty by reason of insanity.

In no way do I intend to diminish the pain and horror of these events. Yet, this case will call into play the dynamics of how we adjudicate criminal responsibility of a person who may have suffered from a profound mental disorder.

This article addresses what an insanity defense trial might look like in the coming months.



Members of the Billy Graham Rescue Response Team pray with Lancelot DeSilva, far left, Susan Cox and Valerie Aaron at the memorial for the four people that were killed last Sunday at the Waffle House in Antioch, Tenn., Wednesday, April 25, 2018. Lacy Atkins / The Tennessean

What mental disorders qualify for an insanity defense?

When people hear somebody is relying on an insanity defense, their eyes roll back and think this is just a “get out of jail free card.”

Insanity is hard to comprehend and even harder to prove in court. We can accept broken arms and broken legs, but have a hard time accepting a broken brain.

The news reports are just developing, but at this early stage even law enforcement concedes that Reinking has “mental issues.”

There are reports he was “delusional” and believed he was being stalked by Taylor Swift, at one point chasing her around a Dairy Queen before she suddenly disappeared.

On another occasion Reinking threatened to shoot someone while wearing a woman’s pink housecoat, and then jumped into a public pool and exposed himself. Even during the Waffle House shooting, Reinking was apparently at least partly naked.

Because these events occurred over time and appear to all be centered on a persecution complex, it is probable that Reinking suffers from paranoid schizophrenia.

This is even more likely because there is information he was having auditory hallucinations: “hearing voices.”

If you want to understand what paranoid schizophrenia might be like, watch the movie “A Beautiful Mind.”

The Academy Award-winning film depicts the delusional episodes experienced by a university professor, convinced that Russian agents are after him.

Unfortunately, paranoid delusions resulting from schizophrenia may occasionally cause violent episodes where the person seeks to “destroy” those tormenting him.



James Shaw Jr. waves to the crowd and legislators inside the House chambers as he was honored for disarming a shooter inside an Antioch Waffle House Tuesday April 24, 2018, in Nashville, Tenn. Larry McCormack / The Tennessean

Understanding the pretrial process

Given his probable mental disorders, Reinking will be subject to a battery of tests and extensive evaluation by prosecution and defense psychiatrists. This can take months. These reports will be made available to the judge.

Before an insanity defense can even be considered, the judge must first determine whether Reinking is competent to stand trial, a legal question that inquires if Reinking understands the proceedings against him and can participate in his defense. If not, Reinking will be medicated – synthetically induced competency – so he can assist his lawyers and can stand trial.

The factual investigation is just beginning. Police are searching Reinking's computers and cell phone. A forensic analysis of that data may be a rich source of evidence for both sides.

Next, the state and defense will exchange discovery which will include witness statements, police, and medical reports.

A recent decision by the Tennessee Supreme Court dictates that none of this material will be public record. To do otherwise would compromise fair trial rights and perhaps trigger a change of venue.

Then some plea negotiations may perhaps include an agreed resolution of an acquittal by reason of insanity and a mandatory mental health commitment.

This is very unlikely. The gravity of the case dictates the district attorney will insist on extended incarceration.

How the jury trial works

If there is no plea agreement, there will be a jury trial.

What about the death penalty? Having committed mass murder, Reinking is eligible for capital punishment, available only for first-degree murder.

However, extreme mental disturbance is a valid defense tactic to an otherwise premeditated killing, forcing a compromise jury verdict down to second-degree murder.

This is so because the jury might not want to confront the possibility of executing an obviously deranged person.

Asking for the death penalty is a good way to muddle an otherwise excellent case, suggesting that the prosecution will seek life without parole.

What happens if Reinking is found not guilty by reason of insanity? Tennessee law provides if someone is acquitted by reason of insanity for a homicide offense the person must go to a mental hospital.



Travis Reinking, the suspect in a deadly shooting at an Antioch Waffle House, is escorted into Hill Detention Center for booking in Nashville, Tenn., Monday, April 23, 2018. (Photo: Lacy Atkins / The Tennessean)

Significantly, the person cannot be released until a judge later approves the discharge, and even then, there must be step-down proceedings.

That the person is just “turned loose” when they are “cured” is no longer the law, appropriately so.

What is the legal test for insanity?

The insanity defense has existed for centuries. But there has always been debate on how it is defined, and the defense administered.

As early as 1827, the Tennessee Supreme Court endeavored to “ascertain the kind of prostration of intellect which is requisite to free a man from punishment for crime by the law of the land.”

What must the jury decide under the law as it stands today? The first issue for legal insanity requires that Reinking establish by clear and convincing evidence he was suffering from a severe mental disease or defect during the shootings.

Probably, his lawyers can sustain that element and perhaps the State’s doctors will agree.

The next issue the jury must consider is whether, because of the severe mental disease or defect, was Reinking “unable to appreciate the nature or wrongfulness” of his acts.

This differs from the simplistic: “knowing the difference between right and wrong.” Rather, the legal standard is subtler.

The far more complex question is whether Reinking was unable to “appreciate” the “wrongfulness” of his acts. In a delusional state brought on by schizophrenia, a paranoid person could believe that he or she was obeying the command of God.

Auditory and visual hallucinations produce extraordinarily bizarre behavior. For example, a mentally disturbed person might think he was shooting not at humans, but evil “robots” or “aliens” pretending to be human.

While the person may understand he was shooting and killing something, he could not understand “the nature” of his actions.

Paranoid schizophrenia can produce very “real” delusions. The person could believe he was acting “in self-defense” or removing a threat to the world.

The person may not perceive the “wrongfulness” of his actions, honestly believing, instead, that the actions were appropriate or even laudatory.

In the hands of a skilled attorney, the exculpatory force of insane delusions can be profound, swaying a jury to acquit in even the most horrific case.

What will the district attorney prove?

The state will present its own mental health experts. The surviving victims will recount the moments of terror and the pain of being shot.

The heroic citizen who disarmed Reinking may be the government’s final witness since the jury will be eagerly awaiting his testimony. Anticipation is a valid trial tactic.

Reinking apparently had reserve ammunition, thus planning his crime way in advance.

Shooting multiple people at close range is abundant evidence of premeditation. The prosecution will endeavor to prove cold-blooded murder.

As to “insanity,” why did Reinking run once he was disarmed? Only people who know they have done wrong flee and elude the police.

The district attorney will argue that mental disorders are not a ticket to an acquittal.

The insanity defense is a test for criminal responsibility. The state will demand that Reinking be held accountable.

Twelve citizens will then decide these questions.

How often is the insanity defense successful?

The insanity defense is rarely utilized and then, only in the most extreme cases. There have been acquittals in Tennessee for serious homicides, but only where there is profound evidence of severe mental diseases or defects.

It remains to be seen whether Reinking can demonstrate the severe mental illness and lack of understanding required by the Tennessee statute.

Still, we should well consider the words of the late Chief Justice Joe Henry who, writing in 1980, advised that, “Those knowledgeable in the field of criminal law recognize that the defense of insanity is scorned by prosecuting attorneys, abused by some defense lawyers, viewed with distrust by juries, and scrutinized with suspicion by many trial judges. And yet all concerned must recognize that a person who is truly insane is entitled to a fair treatment in a court of law.”

Under our system – the envy of the world – Mr. Reinking is entitled to nothing more, but justice dictates nothing less.

David Raybin is a Nashville attorney. He is a former prosecutor and has written and lectured extensively about criminal trials. Mr. Raybin has successfully defended citizens who suffer from severe mental disorders. He does not represent Mr. Reinking and is not otherwise involved in the case.