

The Development of an Innovative Music Therapy Treatment Method: Trial Competency Through Music

Andrew Sammons, MA, MT-BC

Competence to stand trial is necessary for a defendant in criminal adjudication. Recent estimates indicate that between 50,000 and 60,000 defendants in the United States raise the question of competence each year, with approximately 20 percent found incompetent to stand trial (IST). Most of these defendants are committed to an inpatient facility for competence restoration. Although psychopharmacological intervention is a critical component of restoration, as most defendants are found incompetent because of a psychotic disorder, many other modalities of treatment are used. Traditional treatment methods include the use of standardized testing and psychoeducational group sessions. This article discusses the development of an innovative intervention using music therapy. Music as the catalyst provides a forum in which psychiatric patients are engaged and observed within a structured environment designed to address both their factual and rational knowledge and abilities to assist their attorneys in their defense. Trial competency training through a specific music therapy method called Competency Through Music (CTM) is presented, including examples of how music can be used to educate patients and assess trial competence.

J Am Acad Psychiatry Law 42:362–8, 2014

Competence for criminal adjudication, more commonly called competence to stand trial, is a requisite in the United States for criminal defendants. The U.S. Supreme Court in *Dusky v. United States*¹ mandated that all individuals facing criminal prosecution demonstrate competence to stand trial on two prongs: sufficient present ability to consult with a lawyer with a reasonable degree of rational understanding and a sufficient factual understanding of the proceedings.

Competence to stand trial (CST) is the most common referral question addressed by forensic mental health professionals. In a recent study, Bonnie and Grisso² estimated that the legal community annually requests approximately 60,000 competence to stand trial evaluations in the United States alone. Estimates vary regarding the ultimate outcome of these compe-

tence evaluations, although one study showed that 25 to 30 percent of defendants evaluated are deemed incompetent to stand trial and are court ordered for restoration to competence.² Converted to a number, the statistics suggest that approximately 15,000 defendants are committed annually as incompetent to stand trial.

Once a defendant is found incompetent, jurisdictions also vary in regard to how such individuals can be restored to competence. In *Jackson v. Indiana*,³ the court ruled that the length of restoration must be reasonably related to the purpose of commitment. In many jurisdictions, the restoration process varies, depending on the seriousness of the offense. For example, in California, nondangerous defendants or those committing misdemeanors can be restored in the community. Inpatient treatment is generally reserved for those defendants who require a more restrictive environment, although some states require inpatient commitment, regardless of offense type.⁵

Heller found that there were two overall types of patients committed as incompetent to stand trial

Mr. Sammons is Senior Rehabilitation Therapist, Napa State Hospital, Napa CA. Address correspondence to: Andrew Sammons, MA, MT-BC, Napa State Hospital, 2100 Vallejo Highway, Napa CA, 94558. E-mail: Andrew.Sammons@nsh.dmh.ca.gov.

Disclosures of financial or other potential conflicts of interest: None.

(IST): those with severe psychosis and those with significant cognitive deficits.⁶ Treatment approaches to address the reasons for incompetence would necessarily vary for each type of patient. In the American Academy of Psychiatry and the Law guideline for competence to stand trial assessments, the authors opine that competence restoration should include not just standard treatment for the mental disorder on which the incompetence ruling was based, but other interventions as well. Included in the recommendations are that individualized interventions should be provided and that clinicians should consider exploring “multimodal, experimental competence restoration educational experiences” (Ref. 7, p S57) as well as other standard educational efforts. Despite this recommendation, very little has been published regarding the process of restoration or the effectiveness of various approaches. Bertman and Thompson⁸ evaluated the effectiveness of an individualized intervention aimed at remediating the deficits that led to the finding of incompetence. They compared this deficits-focused intervention (combined with a standard legal education group) to an individualized education (non-deficits-focused) plus the standard education group and the standard educational group alone. They found that both types of individualized treatments were more effective in improving understanding than was the standard educational group format. Mueller and Wylie⁹ described the use of the Fitness Game (developed by Cuneo and Owen),¹⁰ a board game designed to provide education regarding the legal system that encourages problem solving and reasoning ability. They compared this approach to a health behavior game and found no differences between the two groups, suggesting that this focused intervention was not effective in improving competence.⁹

This article documents the development of an innovative competence restoration program that uses music as the vehicle for providing educational experiences to patients committed as incompetent to stand trial.

Overview of Music Therapy

Music therapy is an allied health profession in which music is used to address physical, psychological, emotional, cognitive, and social needs. The professional organization of music therapy developed in the 20th century. Columbia University offered the first course in music therapy in 1919.¹¹ Later, E.

Thayer Gaston¹² advocated for the establishment of educational programs for music therapy throughout the 1940s, 1950s, and 1960s. Gaston became known as one of the most important early leaders of music therapy during his position as Chairman of the Music Education Department at the University of Kansas.¹³ During this time, music therapy researchers began to dispel the view that music was connected to magical healing.¹³ These early efforts to create a scientific approach to the application of music therapy in the medical, social, and mental health arenas began to solidify as early as 1919.

National efforts to organize the profession of music therapy continued from 1950 through 1998. The National Association for Music Therapy, Inc. (NAMT) was established in 1950. NAMT published the research-based periodical, *Journal of Music Therapy*, beginning in 1964. As educational standards and research evolved, new organizations appeared. The American Association of Music Therapy (AAMT) was founded in 1971. In 1998 NAMT and AAMT unified to become the American Music Therapy Association (AMTA). AMTA publishes documents that guide the education of music therapists while also influencing practicing music therapists and their employers in providing quality music therapy services.¹¹

Certification standards for music therapy first emerged in 1985 with the establishment of the Certification Board for Music Therapists (CBMT).

Today, the CBMT maintains national certification and recertification for music therapists. There are currently 5,411 board-certified music therapists in the United States.¹⁴

Music Therapy in Psychiatry

Music therapy is recognized as a powerful therapeutic modality for treatment of the general psychiatric population. However, there is little information describing treatment methods for specific populations. Currently, literature provides anecdotal and descriptive reports indicating that the therapeutic functions of music may work by engaging feeling, thinking, acting, and behaving and in accessing areas related to emotion. According to Thaut,¹⁵ the use of music with a psychiatric prisoner population increases cooperative behavior in groups. Other findings suggest that music can improve depression, anxiety, and relationships between psychiatric patients and peers and staff. Because music is a powerful,

nonthreatening medium, psychiatric patients appear to benefit from music therapy.

Trial Competency Restoration at California's Napa State Hospital

The Department of State Hospitals (DSH)-Napa is a 1,200-bed psychiatric hospital and one of the oldest state hospitals in California. In 1997 a secure treatment area was built on the grounds to house a growing forensic population. Today, 80 percent of the beds are dedicated to the treatment of patients referred via the criminal justice system. Forensic patients admitted to DSH-Napa are committed under various statutes, including patients ruled IST or not guilty by reason of insanity and mentally disordered offenders sent by the corrections department.

Patients admitted to the trial competency program are typically found IST after exhibiting symptoms associated with a psychotic disorder. As such, they often display overt symptoms that are considered barriers to their ability to understand criminal proceedings and assist their attorney. Symptoms may include auditory hallucinations and delusions, often of a paranoid nature. Negative symptoms are also found to be barriers to trial competency in this patient population. Also, common symptoms of mental illness associated with findings of incompetence and leading to hospitalization include delusions, disorganized thoughts, and agitation.¹⁶ Finally, some patients are found to feign symptoms to avoid returning to court to face their criminal charges. During the patient's hospitalization, treatment is multidisciplinary. Clinical staff on the unit provide individual meetings, psychopharmacotherapy, and group sessions, all designed to restore trial competence.

Trial Competency Through Music

The treatment method Competency Through Music (CTM) is used to address various trial competency domains. Factual and rational knowledge of legal terms, rights, and plea-bargaining are covered. In addition, reasoning ability and effective communication are necessary to perform well in this treatment method, which may improve the patient's ability to provide rational assistance to his attorney.

CTM requires patients to engage in a group process in three phases (although it can be provided on

an individual basis as well). This treatment modality requires that the individual listen to a song that contains some legal significance (Phase 1), answer questions on a worksheet (Phase 2), and discuss trial competence relevant to the song (Phase 3). The songs used in Phase 1 are selected based on their content and story line. Patients are given a handout containing the lyrics so that they can follow along with the words. The patients are asked to sit, focus, and follow the lyrics.

In the second phase, trial competency information based on the story of selected songs is presented through questions posed on a worksheet. Worksheets typically contain four to six questions designed to elicit answers about specific trial competency material. For example, for certain songs, participants may be asked to identify the crimes described in the songs, the main characters, and the severity and possible outcomes of legal situations. Song lyrics and worksheet questions include competency terminology such as testify, judge, and sentencing, terms that are considered important in trial competency training. The worksheet is designed by the music therapist with the intent to address patient-specific barriers (e.g., if a patient becomes fixated on one aspect of his case, the CTM worksheet can be written in a way that forces consideration of other options). Conversely, at times, patients may have to rehearse their responses to formal interview questions. If the treatment team has worked with the patient in areas such as answering questions in a succinct and direct manner, CTM is a good way to test the patient's ability to self-regulate outside of a formal interview. Patients may use both existing and newly acquired knowledge to demonstrate their progress in this unassuming forum.

In the third phase, patients play the role of public defender or district attorney for the characters in the song. Ultimately, patients will apply the trial competency knowledge that they have learned to the circumstances found in the song. The third phase requires patients in the session to read questions aloud and answer these questions. Discussion is encouraged, and patients are able to revise their answers. They can also demonstrate clarity of thought when material is discussed that may not be present on their worksheet. Participants are asked to distinguish between more and less legally relevant or factual information. The process requires individuals to reason through hypothetical legal scenarios (e.g., felony

crimes versus misdemeanor crimes, plea bargains, and effective interaction with legal counsel). The procedure is much like the MacArthur Competence Assessment Tool (MacCAT-CA),¹⁷ a widely used instrument that requires the examinee to make such judgments about a hypothetical crime. The MacCAT-CA contains a story in which a hypothetical offense involving an assault at a pool hall is read by the examiner. Like the MacCAT-CA, CTM requires individuals to make comparative judgments about the story contained in the lyrics and to explain their reasoning. The lesson design provides a forum in which attendees can demonstrate their ability to focus, acquire new knowledge, interact appropriately, and recognize rights.

The facilitator uses competency themes apparent in the song's story to keep the group focused. The questions on the worksheets yield definitive answers, since the purpose of the course is to prepare individuals for trial competency. Some discussion regarding opinions is encouraged, but the facilitator generally anchors discussions to the topics presented through the lyrics of the particular song. Any observed instances of insight offered by the patients are noted and shared with the treatment team during a conference or via progress notes. In addition, each patient's symptom presentation in group is shared with the team. The interactions during CTM can also help the treatment team evaluate the patients' ability to discern the legal relevance of information and their capacity to reason about specific choices that confront the characters in the song. The patients' written samples from the worksheets and their verbal responses during discussion of the scenarios that the worksheet questions pose can also be shared with the treating team members and the forensic specialists who evaluate the patients' level of trial readiness.

Setting the Stage for Treatment

Facilitating a group treatment such as CTM in the forensic psychiatric setting requires careful attention to and respect of each patient's situation. Therapists must consider several factors that may affect a patient's ability to stay focused on the three phases.

Although CTM is not designed for leisure and enjoyment, a natural inclination to "groove," or informally enjoy the music, is always present, given the medium. Therefore, there is the potential for misunderstanding the purpose of this treatment modality. Cultural implications regarding preference and con-

tent can be factors that may arise. Songs and music contain both pleasurable and, at times, offensive content. This content may exist in the song's lyrics, text, instrumentation, or the overall style of music.

Music and the story in the selected songs can evoke strong emotions and opinions. These may be demonstrated on the worksheets and in statements made during discussion. These feelings and thoughts can skew rational problem-solving when patients are asked to identify appropriate sentencing or the pleas available to the defendant in the song. For instance, if the perpetrator in the song's story gains patients' support for his actions, it may become difficult to objectively analyze the patients' understanding of the potential pleas, sentencing outcomes, and other trial competency-related aspects of the topic. It may also be the case that a song describes more than one crime, by more than one perpetrator. In such a case, it is crucial to maintain the structure of the three phases of CTM to enable patients' success.

The exercise within CTM requires a continual mental and emotional exchange between the human, living in the moment, and the rigor of trial competency, which can require significant guidance from the facilitator of the session. The patients are asked to ignore the subtle messages and the stories of the characters in the song and to focus on the selected worksheet questions. They are asked to attend to the specific questions relevant to trial competency that are derived from the crimes in the song. Likewise, throughout the session patients are prompted to focus on the story in the song as it relates to the crime described and not their own charges.

Anatomy of a Good Song for Use in Competency Through Music

There are many songs that contain situations to which trial competency training concepts can be applied. Songs used in the CTM group have terms, concepts, and information emphasized in traditional competency training. They contain references to weapons and aggressive or deadly behavior. They provide context for the illegal scenarios that may describe witnesses, location, and other pertinent information. References to legal rights, rationales for certain pleas, and conceptual information are also contained in the songs used. These features of the selected songs lend themselves well to the second and third phases of CTM. The worksheet and discussion phases of the session test the patient's present ability

to discern factual information regarding the adjudication process and strategies to consult with a lawyer in a reasonable fashion. The worksheets provide an opportunity for the patients to identify terms used in trial competency training by writing their answers on paper. Patients are tasked with applying their existing knowledge to answer questions regarding the terms or situations in the song. Questions are largely posed on general trial competency concepts. Again, the questions are based on the content in the song. The therapist may extract lyrics and pose specific questions and may request the patient to find lyrics in the song to support his position and rationale. Furthermore, the facilitator can design questions that can address patient presentation and barriers common in patients being restored to trial competency.

The Murder Ballad

Songs convey many messages through nonverbal sounds. They also carry explicit messages in their text. Sam Quinones¹⁸ describes the *narcocorrido* as a type of Mexican music and song tradition that evolved out of the *norteño* folk *corrido* tradition. This type of music is heard on both sides of the United States–Mexican border. Early *corridos* (non-*narco*) go back as far as the Mexican Revolution of 1910, telling the stories of revolutionary fighters.¹⁸

Gangster rap is a modern art form in which eloquently crafted and rhythmically complex poems set to beats tell stories about fictional and nonfictional events related to the artist's life experience and perceptions. Drugs and violence are nothing new in song form. First published in 1904, the song "Frankie and Johnny" is credited to and copyrighted by Hughie Cannon. Artists have recorded this song several times over the past 110 years, as it is in the public domain. Hence, many different variations of the ballad, recorded by many different artists can be heard today. The following is one example of an American folk song that can be described as a murder ballad.

Excerpt from the song *Frankie and Johnny*

Frankie she went down to the hotel,
Didn't go there for fun.
Underneath her kimono,
She carried a forty-four gun.

He was her man,
But he was doing her wrong.

Frankie looked over the transom,
To see what she could spy.

There sat Johnny on the sofa,
Just loving up Nellie Bligh.

He was her man,
But he was doing her wrong.

Frankie got down from that high stool,
She didn't want to see no more.
Rooty-toot-toot three times she shot
Right through that hard wood door.

He was her man,
But he was doing her wrong.

Sample Questions for "Frankie and Johnny," Based on the Complete Set of Lyrics

1. Who is the defendant in the story? Answer: Frankie.
2. Was the defendant charged with a felony or a misdemeanor? Answer: a felony.
3. What line in the song made you think that? Answer: ". . .three times she shot right through that hard wood door."
4. Who would be a witness in the story? Answer: this could have been in public.
5. Would Frankie's feelings that her man was doing her wrong be a reasonable defense and be effective in getting her charges dismissed? Answer: no.
6. May Frankie get a plea deal from the district attorney? Answer: She might.
7. What is a plea deal? Answer: A bargain that may reduce the sentence for the defendant and save the state time and money.
8. If the defendant accepts a plea deal, could she appeal her sentencing after the trial? Answer: no.
9. What evidence might be used against the defendant based on the song? Answer: The bullet holes in the door.
10. If you were the public defender how would you help the defendant if she said, "He did me wrong, and I was justified because he was mean to me." Answer: (may vary) tell the defendant that she should take a plea deal because the evidence against her is strong.

In Question 1, patients completing the worksheet identify the main character. Later worksheet questions use this character's story as the basis for testing trial competency and later opening up opportunities for education. Question 2 gives patients an opportunity to demonstrate basic trial competency concepts,

such as the difference between a felony and a misdemeanor. Question 5 addresses rules currently in place that carry important information for patients learning to navigate trial competency. In the story line, the main character states that her man “was doing her wrong.” Topics such as how the main character’s capacity to know right from wrong may affect her trial competency can be approached. In Question 10, the patient may role play as the defendant’s lawyer and weigh the evidence and advise the character on plea bargaining.

Limitations of CTM

Group participation in Competency Through Music can be a powerful tool in competence restoration, although it was not developed as a stand-alone intervention. Patients are found IST for many reasons, some related to major mental illness. A large percentage of the patient population in the IST program at NSH has received the diagnosis of schizophrenia. The CTM setting provides a more relaxed environment for psychotic patients, allowing severely ill patients to engage in treatment at their own comfort level. Patients who are suspected of malingering may demonstrate abilities in an informal intervention not evident in formal testing or a psychoeducational group setting. Furthermore, writing samples provide another layer of the patient’s expressive abilities and reasoning abilities. The CTM group can be effective in ascertaining competence in multiple types of patients.

There are, however, some limitations to the CTM intervention. Unlike traditional testing like the MacCAT-CA, the CTM setting does not allow for a review of the patient’s individual charges. The CTM process is unique and does not replicate formal settings, such as individual sessions or mock trials. Patients have committed a wide range of felonies, many of which are not represented in the chosen songs. CTM is not able to replicate the formal training, testing, and evaluation required by forensic specialists. These individuals typically target a patient’s case details included in records such as police reports, psychiatric evaluations, and charging documents. CTM is unable to address nuances of all cases for patients treated in this setting. Although many popular songs carry stories that are related to assault, murder, rape, and other felony crimes commonly committed by this patient population, there are a

significant number of patients who have been found incompetent for other offenses.

Navigation of Colloquial Problems During Trial Competency Treatment

Patients admitted to a trial competency program talk with their treatment team and forensic specialists in testing and psychoeducational settings to demonstrate trial competency readiness. In these informal and formal interviews, questions that address specific problems and the charges the patients face can become familiar. In preparation for their return to court, however, patients must be able to answer questions in many ways when asked by legal professionals or mental health clinicians unfamiliar to them. Treatment providers have the unique challenge of recognizing the combined mental illness and legal problems their patients are facing.¹⁹

The CTM group setting is a different one. Many patients may appear to be organized when questions posed to them require only a one or two sentence answer. Patients may learn to respond well to familiar questions asked by familiar clinicians. However, symptoms such as neologism, circumlocution, response to internal auditory hallucinations, and negative symptoms may be evident in both the written worksheet and verbal discussion required by the CTM process. Patients’ abilities to process story lines and think abstractly about the content of the lyrics are examined during this therapeutic modality. The patient’s performance through written worksheet answers and discussion in the group can reveal how well the patient can synthesize information.

Likewise, patients with antisocial personality traits and engrained patterns of treatment resistance can be observed in this setting. They may show that they have the cognitive power to process the information and abstract the content to satisfy the trial competency training, yet their pressured or manipulative tendencies may impair their participation in the group. In this case, they may talk over their peers, argue points that are frivolous, or challenge the authority of the group leader. The CTM method gives the treatment team a novel perspective on the patient’s ability as it exists in a differently structured setting.

Conclusion

CTM requires patients to listen to music in a specialized way. Metaphors and analogies presented in

the song are weighed against what they mean for the crime and the legal outcomes for the main characters. During CTM, patients can evaluate the story of a character such as Rocky Raccoon. Although they may not be ready to look at the facts of their own case, they may be willing to consider what rights Rocky has. They will be asked to describe crimes and the appropriate sentencing for his legal case. Patients can demonstrate their ability to learn terms and legal concepts and show what they already know in regard to these concepts. With time, the patients may perceive their own legal situation and mental health from a more informed and better-educated vantage point, given the experience of CTM sessions.

The novel intervention of restoration of competence through the modality of music has been presented here. Patients stay engaged in groups like CTM because they feel it is more enjoyable than the traditional models of psychoeducational groups. Patients who have limited cognitive abilities and have not been successful in educational settings may be more apt to engage in CTM instead of traditional models of group therapy. Those individuals with poor attention skills and cognitive deficits can return and often tend to stay in CTM group settings for longer periods.

CTM shows usefulness in the treatment of IST patients as an adjunct to standard evaluations, psychoeducational treatment settings, and psychopharmacology. A wide range of patients may be responsive to this modality of intervention. Information regarding the patient's present abilities relevant to trial competency readiness can be gleaned from worksheets and discussions in the treatment setting. Future directions for CTM include careful documentation and communication to interdisciplinary team members and other outside parties evaluating IST patients for trial readiness. Further study of CTM's impact on patients' ability to show trial competency readiness and motivation, length of stay, and usefulness to team members should be evaluated to show this new treatment method's efficacy.

Acknowledgments

I would like to thank Dr. Barbara McDermott for sharing her expertise and giving her support.

References

1. Dusky v. United States, 362 U.S. 402 (1960)
2. Bonnie RJ, Grisso T: Adjudicative competence and youthful offenders, in *Youth on Trial: A Developmental Perspective on Juvenile Justice*. Edited by Grisso T, Schwartz RG. Chicago: University of Chicago Press, 2000, pp73–103
3. Jackson v. Indiana, 406 U.S. 715 (1972)
4. Cowell L, Giancesini J: Demographic, criminographic and psychiatric factors that predict competency restoration. *J Am Acad Psychiatry Law* 39:297–306, 2011
5. Morris GH, Meloy JR: Out of mind? out of sight: the uncivil commitment of permanently incompetent criminal defendants. *UC Davis L Rev* 27:1–96, 1993
6. Heller MS, Traylor WH, Ehrlich SM, *et al*: Intelligence, psychosis and competency to stand trial. *Bull Am Acad Psychiatry Law* 9:267–74, 1981
7. Mossman D, Noffsinger S: American Association of Psychiatry and Law Practice Guideline for the Forensic Psychiatric Evaluation of Competence to Stand Trial. *J Am Acad Psychiatry Law* 35:3–72, 2007
8. Bertman L, Thompson J: Effect of an individualized treatment protocol on restoration of competency in pretrial forensic patients. *J Am Acad Psychiatry Law* 3:27–35, 2003
9. Mueller C, Wylie M: Examining the effectiveness of an intervention designed for the restoration of competency to stand trial. *Behav Sci L* 25:891–900, 2007
10. Cuneo D, Owen B: *The Fitness Game*. Chicago: Department of Human Services, 1990
11. de L'Etoile S: The history of the undergraduate curriculum in music therapy. *J Mus Ther* 38:51–71, 2000
12. Gaston ET: *Music in Therapy*. New York: Macmillan, 1968
13. Davis W, Gefeller K, Thaut M: *An Introduction to Music Therapy, Theory and Practice* (ed 2). Boston: McGraw-Hill, 1999
14. *Recertification Manual* (ed 4). Downingtown, PA: Certification Board for Music Therapists, Inc., 2002
15. Thaut MH: A new challenge for music therapy: the correctional setting. *Music Ther Perspect* 4:44–50, 1987
16. Choi A-N, Lee MA, Lim H-J: Effects of group music intervention on depression, anxiety, and relationships in psychiatric patients: a pilot study. *J Altern Complement Med* 14:567–70, 2008
17. Pinals D, Tilbrook C, Mumley D: Practical application of the MacArthur Competence Assessment Tool-Criminal Adjudication (MacCAT-CA) in a public sector forensic setting. *J Am Acad Psychiatry Law* 34:179–88, 2006
18. Quinones S: *True Tales from Another Mexico*. Albuquerque, NM: University of New Mexico Press, 2001
19. Pinals D: Where two roads meet: restoration of competence to stand trial from a clinical perspective. *New Eng J Crim & Civ Confinement* 31:81–108, 2005