

PREFACE

A *rt on Trial* is about the crossroads of art therapy, criminology, and assessments and the involvement of art therapists in capital murder trials. Until now, there have been a few publications available about forensic art therapy that focus on work with children and families, exclusively in abuse or custodial cases. One area of the field that has never been addressed is the role that an art therapist can serve in criminal and capital murder trials. The impetus for this examination emerged from a professional experience.

THE IMPETUS

In the fall of 2006, I was contacted by a defense attorney in a state other than the one in which I live. She inquired if I could provide expert witness testimony on art created by a man, Kevin Ward,* who was going to be tried for murder and attempted murder and for whom the prosecution was seeking the death penalty. I was contracted by the defense to testify that the large amount of art he had produced before, immediately after, and for several years following the crimes supported the claim that he was mentally ill when he committed the murder. The defense intended to use this strategy to prevent the state from putting the defendant to death.

One of the aims of this book is to explore how the defendant's art was used as evidence to help the defense determine if, indeed, he had suffered from mental illness at the time of the crimes. That he had committed

*With the exception of the three art therapists whose work is discussed in chapter 7, the names of all those connected with legal cases have been changed throughout this book.

these acts was never refuted. It was the mental status of Kevin Ward at the time of the crimes that was in question. This was why I was called in.

The case never went to trial as the result of a plea bargain, in which Ward pleaded guilty in exchange for an agreement that he would not be executed. So the case culminated in a sentencing hearing in the summer of 2009 to determine the length of his incarceration. I was still expected to provide evidence, based on the content of his excessive creative output, that indicated he had a mental illness, in the hope of convincing the judge to impose a sentence of less than life. Despite the long prison term the defendant received—95 years: 60 years for the murder of his elder child, and 35 years for the attempted murder of his younger child—the judge indicated that he did indeed suffer from a mental illness, based on the testimony of the expert witnesses given during the sentencing hearing.

This case has since been presented at various conferences and seminars. As expected, depending on the audience, questions and interest varied—however, all the attendees have been fascinated by the case itself, the role of the art therapist, the legal procedures, and, of course, the art and the way its assessment supported the defense. Eventually, it became clear that the experience and outcome could be written as a journal article or book chapter. Many—art therapists and non-art therapists alike—encouraged the reporting of the case as they heard about the details of the proceedings.

Interestingly, the prosecuting attorney supported the recording and publishing of the case. During the deposition, which is presented in chapter 4, the prosecutor and I half-jokingly talked about the work in this case eventually being published:

WILLIAMS: *Have you published anything out of your work in this case at all at this point?*

GUSSAK: *In this case?*

WILLIAMS: *Yes.*

GUSSAK: *No.*

WILLIAMS: *Well, when can we look forward to that?*

GUSSAK: *I'll let you know.* (Laughter)

When I contacted the prosecutor by e-mail 2 years later for an interview for this project, he answered, “I did joke with you on the publication [of this case], but because of the newness of this application of your area of expertise, I fully expected it to happen. I am glad to hear that you are moving forward in this area.”

As writing about the experience advanced, and as the comprehensive assessment of nearly 100 images was recorded, the focus of the project changed. There was too much information to be included in a chapter or an article. A colleague recommended that the account of the case would best be presented as a book.

As the case progressed, I underwent an interesting and intense form of doubt and reevaluation. After the attorneys agreed on a plea bargain, thereby avoiding a trial, I selfishly questioned the dramatic effect of such a publication. If there was no risk of the death penalty, what would be the point of offering this account? At this time, the focus of the intent of this publication began to solidify. Was this to be a book about the case, demonstrating a John Grisham–like dramatic tension, or was it about the value of art therapy in a court of law: the worth placed on such testimony and the detailed steps and copious information provided to demonstrate its effectiveness as evidence? What soon emerged was that despite its lack of drama and intrigue, this book was completed *because* of its nuance. This underscored what it would be about—not the defendant, but the art that was put on trial. Therefore, the structure of this book has been developed to provide an overview of art therapy and its application to the fields of forensics and psychology, a comprehensive and detailed description and assessment of the art presented during the hearing, and the particulars of its defense in court.

THE STRUCTURE OF THE BOOK

Following the introduction, this book is divided into three distinct parts:

- Part I A comprehensive overview of the art in one case study and the final, conclusive assessment that emerged
- Part II A defense of the art assessment
- Part III An analysis and the implications of the case

The introduction provides the information necessary for those in the art therapy field to understand the legal and forensic context in which this art therapist found himself, and for those in the legal, forensic, criminology, and counseling fields to understand art therapy and art-based projective assessments. It offers an overview of art therapy, projective assessments, the tools used by art therapists to elicit information about their clients, and the distinct description and role of the forensic art therapist. Following is a brief exploration of the status criteria for expert witnesses. This chapter is crucial, since art therapy continues to be used in other professional arenas. All parties must develop a shared language and understanding in order to work cohesively.

PART I: ART AND THE MURDERER: A CASE STUDY

Chapter 1 outlines the development of the case, explains why an art therapist was approached to provide testimony, and offers a comprehensive evaluation of all the art pieces provided by the defense attorney. The chapter ends with a description of the defendant and his crime.

The first meeting with the defendant is presented in chapter 2. His reasons for creating each piece of art are explored, allowing for a clear image of his mental illness as displayed in his behavior and allusions. A conclusive assessment is developed and presented to the defense counsel at the end of this chapter. However, after the discovery of additional art pieces, the assessment continues in the following chapter.

Chapter 3 describes a follow-up meeting with the defendant for a comprehensive review of the additional pieces of art. At the end of this chapter, the final assessment is clarified, solidified, and provided to the defense. The next step is to defend the art in a court of law.

PART II: DEFENDING THE ART

Chapter 4 presents the deposition conducted by the prosecutor, and chapter 5 provides the testimony given in the final sentencing hearing. Both chapters include sections of the transcripts of these two proceedings. While appearing at times redundant and divergent of focus, this approach is necessary for two reasons. The extracts from the transcripts clarify how the art was introduced to the prosecution and the courts, and how those outside the field viewed the presentation and assessments of the art. It also

provides a detailed unfolding of the procedures that an art therapist testifying in such court proceedings may experience and the challenges and pitfalls that may develop.

PART III: ANALYSIS AND IMPLICATIONS

A summation of the book and the case appears in chapter 6, providing an evaluation of the legal process, an explanation of the approaches used to assess the defendant, and a brief discussion of the strengths and challenges of using art therapy in such a context. It also explores the ethical and moral ramifications that an art therapist may face in a similar situation.

Chapter 7 provides additional information on the roles that an art therapist may play in capital murder cases through a comprehensive overview of three other cases. In contributing to the defense of people accused of murder, the therapists provided support in varying capacities, which are illuminated in this chapter. By examining transcripts, court and personal documents, and communications with these three art therapists, the various roles an art therapist may play in capital criminal cases emerged.

Finally, chapter 8 offers an overall assessment of the ways in which these particular cases informed and expanded our knowledge about the field of forensic art therapy.



The events surrounding the case and the testimony and reactions of an art therapist testifying as an expert witness in a legal proceeding are provided throughout this book, which includes reproductions of many of the art pieces that were used to assess the client and were presented in court. The chapters pertaining to the case include both my personal recollections and information obtained from transcriptions of the proceedings, and interviews with various key participants: the defense attorneys who hired me to provide testimony; the prosecutor; and the judge, who, while sentencing Ward to a lengthy prison term, provided clearance for me to testify and, in turn, validated the procedure of art therapy for a capital murder trial.

WHY A SINGLE-CASE FOCUS?

While this book is not a research study per se, elements of research epistemology and methodology are included to address the overriding questions of the way in which art was used in the defense's presentation of the client's psychological state and the role of an art therapist in a death row case. Despite the intention to write a scholarly and academic treatise on the assessability of art for evidence in a court of law, some of what is included here is presented as a personal narrative. Although this contradicts my own academic perspective of how "scholarly" work should be conducted, what became clear was that the best manner in which to present this information was to report certain experiences as a first-person account.

This book uses personal experiences as data to help inform other art therapists about what they may experience as potential expert witnesses in a capital case and to educate the legal, criminology, and forensic professions on how to use art therapy services as unique evidentiary opportunities. This project also relied on interviews, case vignettes of other art therapists' experiences in capital trials, and content analysis and review of various transcripts. Ultimately, the findings are presented as an in-depth case study.

A case study, simply put, is a form of research, usually qualitative, "in which a single individual, group, or important example is studied extensively and varied data are collected and used to formulate interpretations applicable to the specific case . . . or to provide useful generalizations" (Fraenkel & Wallen, 2009, p. 13). Many early art therapy publications relied on case studies and presentations to investigate the role and effectiveness of art therapy in many different settings, with various clinical and medical populations. In these instances, as Kapitan (2010) pointed out, the researcher was "interested in discovering what can be learned from a particular encounter or encounters in the field that have bearing on art therapy practice" (p. 103). Often questioned for their validity as a form of scientific inquiry, case studies can be an effective means of investigation, provided that the focus is on people and their interactions (Gordon & Shontz, 1990; Kapitan, 2010).

Research in the field has since evolved to include many methodological approaches. Much of my recent work addresses art therapy in correctional settings through rigorous quantitative inquiry. However, this book relies

on a qualitative approach. Similar to what Stake (2000) termed an intrinsic case study approach, this case was predetermined; therefore, without choosing this particular situation, what could be learned from it? The desire for deeper inquiry arose during the process, and it became clear that information could be gleaned from this single event that could then be provided to those “who share commonalities of experience” (Kapitan, 2010, p. 103). The purpose of this approach was to learn something important from a singular experience. That is precisely what evolved—this event has yielded a great deal of information, which, in turn, can be communicated to a number of people who may benefit.

This book has one unique feature. Many books and articles present methods of conducting art-based assessments. Some cover single types of assessment procedures, with illustrations from various participants that support the theories (e.g., Cohen, 1985; Levick, 2001). Others provide collections of a variety of art-based assessment procedures (e.g., Brooke, 2004; Feder & Feder, 1998). Through clear, pragmatic descriptions, this book applies art-based assessment to various art pieces created by one person. As the assessment for each art piece unfolds, so does the story.

IN SUM . . .

Many art therapy texts, including mine on art therapy in prisons (Gussak & Virshup, 1997), try to address the breadth of a particular niche of the field by introducing many cases by many art therapists who have had many different experiences, to provide a comprehensive overview. This book is different. By offering a variety of case vignettes, focusing on one particular experience, introducing and examining a great many art pieces, and presenting details of the numerous steps taken over a long period of time, this book attempts to provide a depth of information that, in turn, educates professionals in several fields. The art and how it was put on trial remains the focus. This book is about the art therapists who have to learn how to prepare their case and defend it. It is about all the mistakes that can be made along the way, the ethical ramifications, and ultimately the validation of art as an evidentiary tool. It is about the pragmatic application of theoretical and empirical understanding of formal art elements to real-world experiences.

While the details of the cases discussed may be fascinating, they are secondary to the true nature of this book. The presentation of the legal proceedings is necessary to provide context, but the focus of this book is how the art was used as evidence to support the defense's claim of mental illness. I would be remiss, however, if I did not end this preface without underscoring that this book recounts true stories about horrific incidences, in which there were innocent victims. Despite the intent of *Art on Trial*, and the tone of the conclusions presented, there were no winners.

ACKNOWLEDGMENTS

Many people have contributed a great deal to this project. Although a simple mention in this acknowledgments does not do justice to their invaluable contributions, I hope they accept this in the spirit in which it is intended.

To begin, I would like to thank those who contracted for my services to participate in this forensic process: the members of the defense team. All of them took a chance in bringing art therapy into their defense, and they trusted me with helping their cause. Even after the hearing was over, and their work with the defendant was complete, they were willing to help me, making themselves available for interviews and providing missing information and details. The lead attorney—who in this book is referred to as Jackie Chief—was especially helpful, allowing me to call at any time whenever I needed information or advice. Although all the defense attorneys must remain nameless, they know who they are, and I hope they realize the importance of their contribution.

As well, the chief deputy prosecutor, who worked hard to disprove my worth in public, and the judge who presided over the case were extremely helpful in making themselves available. They, too, must unfortunately remain anonymous, but without their perspectives, feedback, and support, I would have been able to tell only half a story.

I even appreciate the defendant, his horrific deeds aside, for allowing me to use his art and his case to demonstrate the value of art therapy in the legal arena.

Three major contributors to the field of art therapy, all pioneers—Myra Levick, Maxine Junge, and Sandra Kagin Graves—were extremely generous with their time, their files, and their support. I spent many