

Alabama Rules of Criminal Procedure

Rule 11. Incompetency and mental examinations.

Rule 11.8. Privilege.

Evidence obtained pursuant to Rule 11 shall not be admissible to prove guilt, except that 1) evidence that has been obtained through sources or means wholly independent of the Rule 11 procedure shall not be made inadmissible by the fact that it also was disclosed or made available through the Rule 11 procedure, and 2) evidence obtained or made available through the Rule 11 procedure may be admissible in rebuttal if the defendant offers evidence in support of a plea of not guilty by reason of mental disease or defect.

[Amended 10-1-96.]

Committee Comments to Rule 11.8 (as Amended Effective October 1, 1996)

Rule 11.8 provides that the State may not use in a criminal proceeding evidence obtained by a compulsory mental examination of the defendant, unless the defendant offers evidence in support of an affirmative defense of insanity. See Ala.Code 1975, § 13A-3-1.

A defendant compelled to submit to a mental examination can incriminate himself or herself in at least four ways. First, admissions and other statements may implicate the defendant in the crime charged. Second, admissions and other statements may implicate the defendant in other crimes. Third, evidence of the defendant's mental condition may help the State build a prima facie case by establishing the mens rea of the offense, regardless of whether the defendant attempts an insanity defense. Fourth, if the defendant raises the insanity defense, the compulsory examination has forced the defendant to provide the State with evidence that might well defeat it.

The purposes of the examinations ordered under Rule 11 are in no way to be construed to allow the State to get information from the defendant concerning whether the defendant committed the offense charged. The purposes are to determine whether the defendant is competent to stand trial, and, in conjunction with that determination, and if the court chooses, to determine whether the defendant was insane at the time of the alleged offense. It is clear that, while the court may compel the defendant to submit to the examination, the State may not use information obtained through the examination as evidence to convict the defendant, although the State may use it to counter the defendant's evidence offered to rebut the presumption of sanity. See *Isley v. Dugger*, 877 F.2d 47 (11th Cir.1989).