

of his *Miranda* rights and the implications of waiving those rights before questioning. The dissent argued that the majority's opinion and the weight given to this test are likely to create a "powerful litigation tool" and preclude police from interrogating suspects who are unable to convey effectively what they understand.

Discussion

Garner may be viewed as one circuit court's expansion of *Miranda*. Even though police read Mr. Garner his *Miranda* rights in a seemingly simplified manner, and he told the police that he understood those rights and the waiver, the court retrospectively concluded that his young age, abusive background, low IQ, and poor performance on the Grisso test showed he lacked the capacity to waive his *Miranda* rights.

The *Miranda* Court sought to dissuade police misconduct during custodial interrogation by disallowing into evidence statements made by suspects who were not informed of their rights and who did not voluntarily, knowingly, and intelligently waive those rights. In this case, even in the absence of police misconduct, the court found that a defendant's inability to waive his *Miranda* rights knowingly and intelligently resulted in an unconstitutional use of his statements at trial. This case highlights the balancing act between promoting desirable police procedures (like obtaining confessions) and protecting the liberty interests of individuals. One can see how rulings like *Garner* might lead to more direct involvement of mental health professionals in appraising a suspect's understanding of his *Miranda* rights and the implications of waiving those rights, both before and after police interrogation. *Garner* reminds evaluators to consider both the possible difficulties with retrospective mental state assessments and the potential limitations of any structured instruments used.

Waiver of Postconviction Relief (PCR) and PCR Counsel

Kimberly A. Larson, JD, PhD

Postdoctoral Fellow in Forensic Psychology

Albert J. Gruzdinkas, JD

Clinical Associate Professor of Psychiatry

**Law and Psychiatry Program
Department of Psychiatry
University of Massachusetts Medical School
Worcester, MA**

A Convicted Capital Defendant's Lack of Understanding of the Procedural Posture of His or Her Case May Be Enough to Indicate That the Individual's Waiver of Rights in Postconviction Relief Proceedings Was Not Made Knowingly, Intelligently, and Voluntarily

In *Reed v. Ozmint*, 647 S.E.2d 209 (S.C. 2007), the Supreme Court of South Carolina considered whether the lower court had erred in determining that Mr. Reed was "mentally competent" and that his waiver of appellate review of the denial of his petition for postconviction relief (PCR) was "knowing, intelligent, and voluntary." The court further considered whether it should grant his request to relieve counsel. The court determined that Mr. Reed was mentally competent to waive his right to appeal the denial of his PCR application, because he met both the cognitive and assistance prongs of the *Singleton v. State*, 437 S.E.2d 53 (S.C. 1993), standard. Nonetheless, it denied his request to waive appellate review of his PCR petition because his decision was not knowing, intelligent, and voluntary. Specifically, whereas experts testified he was not exhibiting signs of mental illness severe enough to interfere with his mental competency, his appeal request was not unequivocal, because he had, at the same time, requested review of substantive issues regarding his original trial. His request to waive counsel was also denied because his request for review of these substantive issues showed that he did not understand the procedural posture of his case, indicating that his waiver was not knowingly and intelligently made. Consequently, his request to waive his appeal was denied, and his appeal was set to continue with the assistance of his attorney.

Facts of the Case

In 1994, James Earl Reed was charged with the murder of his ex-girlfriend's parents. In 1996, he was convicted of both murders and sentenced to death. His direct appeals and application for PCR were denied. He then filed a notice of appeal of the decision to deny his PCR request. At the same time, he wrote to the chief justice professing his innocence, stating that he wanted to waive his appeals and asking that his execution date be set. He also contacted opposing counsel stating that he had fired his attorney and was requesting assistance, which the South Carolina Su-

preme Court construed as a motion to relieve counsel. Before the court could issue a notice authorizing his execution, it had first to determine whether he was mentally competent and was making a knowing, intelligent, and voluntary decision to waive his appeal rights.

Ruling and Reasoning

In reviewing the lower court's determination regarding Mr. Reed's competence to make decisions related to his PCR appeal waiver and waiver of PCR representation, the Supreme Court of South Carolina first addressed his right to waive his appeal of the denial of his PCR application. The court held that, for him to be competent to waive these rights, he must not only be mentally competent to make such a decision, but must make that decision knowingly, intelligently, and voluntarily. Holding that the *Singleton* standard to determine whether an individual is mentally competent to waive such a right governed, the court examined whether he met both the cognitive and assistance prongs of that test. Under the cognitive prong, the court examined whether the petitioner could "understand the nature of the proceedings, what he or she was tried for, the reason for the punishment, or the nature of the punishment" (*Singleton*, p 58). Under the assistance prong, the court looked at whether Mr. Reed had "sufficient capacity or ability to rationally communicate with counsel" (*Singleton*, p 58). The court held that, to be found competent to waive his right to appeal his denial of PCR, he must meet both portions of this test.

Under the first, or cognitive, prong, the court examined the testimony of two expert witnesses who had testified at Mr. Reed's hearing in the lower court. The experts differed in their opinions regarding whether he had a mental illness and, if so, which diagnosis was appropriate, but agreed that he understood the nature of the proceedings, "what he was tried for, the nature of the punishment, and the reasons for punishment." Under the assistance prong, the defendant admitted that he disagreed with his attorneys, but he was able to communicate with them. Based on the record from the lower court, as well as the South Carolina Supreme Court's own examination of the defendant during oral arguments, the court concluded that he was paranoid at times and had a personality disorder, but these problems were not severe enough to interfere with his ability to

meet either the cognitive or assistance prongs of the *Singleton* standard.

Having found Mr. Reed to be mentally competent to waive his right to appeal the denial of his PCR application, the South Carolina Supreme Court moved to the second part of the analysis—whether he had made the decision in a knowing, intelligent, and voluntary manner. The court reviewed the testimony of both experts who reported that he wanted to waive his right to appeal because he would rather be executed, maintaining his innocence and dignity, than remain on death row. The court then questioned him regarding his decision to waive his appeal. While he stated that he wanted to waive the appeal, he also indicated that he wanted the court to review substantive issues, such as his innocence and whether the assistance of his counsel had been adequate in previous proceedings. The court stated that this was not a clear waiver, but instead was conditioned on a request for the court to review deficiencies that the defendant believed existed in his original trial. Therefore, the court concluded that his waiver was not knowing and intelligent.

The court then turned to its analysis of Mr. Reed's request to relieve his counsel and continue *pro se*. The court recognized that defendants have a right to counsel under the Sixth and Fourteenth Amendments, but also found that a defendant may waive that right, as long as his or her decision is knowing, intelligent, and voluntary. Citing *Johnson v. Zerbst*, 304 U.S. 458 (1938), the court stated that whether a waiver meets this standard depends on the facts of the individual case, as well as the characteristics of the individual. The court also stated that the person makes an intelligent waiver when he or she "knows what he is doing and his choice is made with eyes open" (*Adams v. United States*, 317 U.S. 269, 279 (1942)). The court found that, in Mr. Reed's case, his request for a review of substantive questions while also asking to waive his right to appeal demonstrated a lack of understanding of the procedural posture of his case. It therefore denied his right to waive counsel, even though it had ruled him competent to waive that right.

Discussion

Although decided prior to the Supreme Court's holding in *Panetti v. Quarterman*, 127 S.Ct. 2842 (2007), the South Carolina Supreme Court's decision in *Reed* appears to be in line with that holding.

In *Panetti*, the Court further defined its earlier holding in *Ford v. Wainwright*, 477 U.S. 399 (1986). While avoiding laying out a blanket standard for competence to be executed, the court allowed for a consideration of whether a defendant has a rational understanding of the reason for execution. Similarly, the *Reed* court noted that to waive the right to a direct appeal or PCR in South Carolina the defendant must meet the cognitive prong (i.e., “can understand the nature of the proceedings, what he or she was tried for, the reason for the punishment, or the nature of the punishment”) as well as the assistance prong (i.e., whether the convicted defendant possesses sufficient capacity or ability to communicate rationally with counsel) (*Singleton*, p 58). The court further pointed out that “this standard of competency is the same one required before a convicted defendant may be executed” (*Reed*, p 212).

Thus, although in *Reed* the court did not find the petitioner to be mentally incompetent, its consideration of whether his symptoms of mental illness would interfere with his ability to meet either the cognitive or assistance prong appears to be in line with the Supreme Court’s finding in *Panetti* that “a prisoner’s awareness of the State’s rationale for an execution is not the same as a rational understanding of it” (*Panetti*, p 2862). *Reed*’s requirement that the individual understand “the reason for the punishment or the nature of the punishment” appears consistent with *Panetti*’s permissive reasoning. Of interest, in the waiver context, the South Carolina Supreme Court in *Reed* appeared willing to provide even more protection for convicted defendants than the long-accepted knowing, intelligent, and voluntary standard in finding that, although the court agreed that the defendant was competent to waive certain rights, it denied his motions to waive counsel and his right to appeal based on his lack of an adequate understanding of aspects of his case.

Videotaped Confessions and Miranda Rights

Paul Noroian, MD

Assistant Professor of Psychiatry

Law and Psychiatry Program

University of Massachusetts Medical School

Chief of Psychiatry, Worcester State Hospital

Worcester, MA

A Videotaped Confession Upholds a Waiver of Miranda Rights as Knowing and Voluntary

In *Robinson v. United States*, 928 A.2d 717 (D.C. 2007), the District of Columbia Court of Appeals considered the appeal of Steven Robinson, who challenged his conviction for second-degree murder on the grounds that his videotaped confession was not made in a knowing or voluntary fashion and should not have been admitted into evidence by the trial court.

Facts of the Case

District of Columbia metropolitan police arrested Mr. Robinson for the murder of James Osborne, who had died of severe head trauma on August 7, 2001. At the time of the arrest, police detectives reportedly read him his *Miranda* rights, and he reportedly expressed his understanding of these rights and signed off on the card used by the police in explaining the rights. He did not ask for his attorney, and after signing the rights card, he agreed to an interview by detectives. During the interview, he admitted some culpability in the murder and agreed to a video recording of his statement.

Mr. Robinson filed a motion to suppress the videotaped statements made to police detectives. He claimed that he had invoked the right to an attorney and that he did not have the intellectual capacity to waive his *Miranda* rights knowingly and intelligently. He also claimed that there had been an unreasonable delay from the time of his arrest until his appearance before the court. At the pretrial suppression hearing, the prosecution presented expert testimony by a forensic psychologist, who opined that the defendant understood his *Miranda* rights at the time they were presented to him, on the basis of the appellant’s high score on the “Grisso *Miranda* Instrument,” the name given to an instrument developed to assess a defendant’s ability to understand and appreciate the *Miranda* rights (Grisso T: Instruments for Assessing Understanding and Appreciation of Miranda Rights. Sarasota, FL: Professional Resource Press, 1998). The defense presented testimony from two psychologists. The first testified that he read at less than a second-grade level and that his verbal IQ placed him in the “high end” of mental retardation. The second defense expert, a forensic psychologist, asserted that the appellant’s poor reading and comprehension skills made him incapable of understanding the rights card presented to him by the police