

court reasoned that although the focus of Dr. Miller's evaluation was related to the contempt charge, it did address Mr. Rendelman's mental state at the time he wrote the letters. Specifically, Dr. Miller reported that Mr. Rendelman was in control and fully aware when he wrote the letters. He further noted that Mr. Rendelman denied having obsessions or compulsions relating to his letter writing.

Finally, the court rejected Mr. Rendelman's argument that the district court abused its discretion by excluding the evidence from psychological evaluations conducted for the purposes of prior prosecutions. He asserted that this evidence was relevant because it would show he lacked *mens rea* as a result of his compulsion to write the letters. The court asserted that the evidence was properly excluded because, as previously discussed, his reported compulsion was not a valid defense for culpability.

Discussion

In the present case, Mr. Rendelman argued that he was not culpable for his actions, because he lacked the capacity to control his behavior as a result of an unconscious impulse to write letters. The court of appeals rejected his argument, relying on the legal statute addressing insanity as it pertains to criminal responsibility at the time of the offense (18 U.S.C. § 17 (2006)). The federal insanity statute is specifically limited to an appreciation of the nature and quality or wrongfulness of one's actions. According to 18 U.S.C. § 17 (2006), "it is an affirmative defense under any Federal statute that, at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts." The capacity to control one's actions is not relevant to one's sanity at the time of a crime, and unconscious influence on behavior is not relevant to intent. The court properly excluded evidence about volitional control (e.g., a second psychological evaluation or psychological evaluations from prior prosecutions), as it was not necessary or legally relevant to a culpability defense. However, evidence about capacity to control behavior is a relevant consideration at sentencing, which was properly allowed in the present case. Such evidence may provide a basis for a downward departure under federal sentencing guidelines.

Of note, although a lack of volitional control is not a valid defense for culpability according to federal

statute, some states include an element of volitional control within their standard definition of insanity. For example, some jurisdictions have adopted the test for insanity proposed by the American Law Institute Model Penal Code (1985), which includes consideration of an individual's capacity to conform his or her conduct to the requirements of the law.

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Death Penalty and Defendants Diagnosed with Mental Retardation

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Arizona Supreme Court Reviews Testimony on Adaptive Functioning of a Defendant Diagnosed with Mental Retardation in a Death Penalty Case

In *State v. Grell*, 291 P.3d 350 (Ariz. 2013), the Arizona Supreme Court reviewed evidence on appeal to determine whether a defendant had mental retardation and should be protected from the imposition of the death penalty. The state and the defense stipulated that Shawn Grell had subaverage intellectual functioning. The state's expert witness opined that Mr. Grell's behavior was consistent with antisocial personality disorder. However, the defendant presented evidence of educational, medical, criminal, and social history, which he argued was proof of adaptive functioning deficits that had been present since his childhood.

Facts of the Case

Shawn Grell murdered his two-year-old daughter by pouring gasoline on her and setting her on fire. An Arizona trial court found him guilty of murder and sentenced him to death. He appealed his conviction. While his appeal was pending, the U.S. Supreme Court issued the opinion in *Atkins v. Virginia*, 536 U.S. 304 (2002), making it unconstitutional for states to execute defendants who have a diagnosis of

mental retardation. On appeal, in *State v. Grell*, 66 P.3d 1234 (Ariz. 2003), the Arizona Supreme Court upheld Mr. Grell's conviction but remanded the case to determine whether he had mental retardation in light of *Atkins*. On remand, the trial court determined that he had not shown that he had mental retardation. On second appeal, in *State v. Grell*, 135 P.3d 696 (Ariz. 2006), the Arizona Supreme Court once again remanded the case to the trial court, holding that he was entitled to a jury determination of his sentence.

During the resentencing, the defense and prosecution stipulated that Mr. Grell demonstrated significantly subaverage intellectual functioning. In dispute was his adaptive functioning. The defense called a special education director from a school that Mr. Grell had attended as a child, who testified that he had a diagnosis of mental disability (a term used in the educational field as an equivalent to mental retardation), which was the basis for his being placed in a program for children with mental retardation. A school social worker also testified that he demonstrated better adaptive skills than had other students in his class, but not better than those of students in the general school population. She further testified that he was impulsive and lacked the ability to interpret social cues. Another teacher testified that although his primary disability was mental retardation, he also had serious behavioral problems.

The expert for the prosecution was Dr. Scialli, a board-certified psychiatrist who, the court noted, was not regularly involved in diagnosing mental retardation, was not qualified to administer tests used in aiding in the diagnosis of mental illness, and had never published an article on this topic. Dr. Scialli relied on the results of administrations of the Minnesota Multiphasic Personality Inventory (MMPI)-2 and Vineland Adaptive Behavior Scale to measure Mr. Grell's mental functioning and ultimately gave him a diagnosis of antisocial personality disorder, various substance-related disorders, learning disorders, and attention deficit/hyperactivity disorder (ADHD).

Special witnesses for the defense included Drs. Cunningham and Keyes, who were not called during the initial sentencing. Dr. Cunningham was a board-certified forensic psychologist and research scientist with 30 years of experience, and Dr. Keyes was an educational psychologist with decades of experience in the field of mental retardation and was involved in composing the definition of mental retardation

shown in the Diagnostic and Statistical Manual of Mental Disorders. All special witnesses for the defense opined that Mr. Grell's adaptive functioning was impaired. The jury nevertheless returned a death verdict, resulting in an automatic appeal to the Arizona Supreme Court.

Ruling and Reasoning

The Arizona Supreme Court held that the defense had proved by a preponderance of the evidence that Mr. Grell had mental retardation, vacated the trial court's death sentence, and imposed a sentence of natural life in prison. The court concluded that he demonstrated a lack of adaptive functioning, in part on the basis of the testimony of staff from his childhood school.

The court highlighted the testimony of Dr. Cunningham, who opined that, because of his immature behavior and his inability to control his behavior in unstructured environments, Mr. Grell's behavioral problems and poor social functioning were grounded in mental retardation rather than antisocial personality disorder. The court also cited Dr. Keyes' testimony, which indicated Mr. Grell's impulse-control problems that caused his behavior not to conform to social expectations represented an adaptive-functioning deficit (i.e., the inability to confront difficult or frustrating situations without immediately reacting).

The court decided that in addition to presenting affirmative evidence of adaptive functioning deficits, the defense effectively discredited the testimony of the prosecution's special witness, Dr. Scialli. The prosecution pointed out that Mr. Grell had controlled his behavior when told that he "did not have any more chances", contending that it demonstrated that his actions were the result of antisocial personality disorder rather than mental retardation. However, the court found testimony of the other expert witnesses more persuasive, which indicated that individuals with mental retardation can behave appropriately in structured environments and that antisocial personality disorder can coexist with mental retardation.

The court held that the results of psychological tests that were not administered in a standardized manner were unreliable. First, the court reasoned that the results of the MMPI-2 were unreliable because the test was administered orally rather than self-administered. Second, the court relied on the record of the initial sentencing hearing, which indi-

cated that Mr. Grell's mother was given the Vineland Adaptive Behavior Scales and asked to self-report his behaviors, which is not the standardized administration method. Furthermore, the record suggested that she did not want her son to be labeled as having mental retardation, which the court held could have biased her responses on the test. Third, the court gave little weight to other tests of adaptive functioning presented by the prosecution, because the tests were completed by family members who did not know Mr. Grell before he was 18 years of age and who might have harbored ill feelings toward him.

Discussion

State v. Grell lends insight into the reasoning of courts in considering psychological and psychiatric evidence as it pertains to the adaptive functioning of defendants with mental retardation. First, the case focuses on the significance of perceived partiality of sources of information on which experts base their opinions. The court gave little weight to the results of the Vineland Adaptive Behavior Scale that had relied on the responses of Mr. Grell's mother, because the record noted the she did not want her son to be labeled as having mental retardation. Along the same lines, the court gave little weight to the Vineland Scale completed by members of the victim's family because they had not met him before he was 18 years of age and may have harbored ill feelings toward him. Similarly, the court believed that the records from his school were reliable because they were created for an educational purpose unrelated to any legal proceedings, and the staff therefore had no motive to fabricate or distort their findings. The court's reasoning highlights the importance of having forensic examiners scrutinize the impartiality of sources of information and of their acknowledging the weaknesses or limitations of data when appropriate.

Second, the court held that results from tests not administered in a standardized manner were unreliable. This ruling indicates that the results of tests administered in a nonstandardized manner may be considered weak evidence in the eyes of courts. If this reasoning is representative of most courts, it suggests that forensic examiners should avoid relying on results of psychological tests that were not administered in a standardized manner.

Third, the opinion emphasizes that experts should practice within the scope of their competence. Specifically, the court relied on the testimony of Drs. Cun-

ningham and Keyes more than that of Dr. Scialli because Dr. Scialli did not have the same level of expertise on the topic of mental retardation, was not regularly involved in diagnosing mental retardation, was not qualified to administer tests in the diagnosis of mental illness, and had never published an article in this area.

Finally, there is the matter of the behavioral problems displayed by Mr. Grell and to which disorder these behaviors can be attributed. The court relied on Dr. Cunningham's testimony to conclude that these behavioral problems were most likely the result of adaptive functioning deficits rather than antisocial personality disorder. The court also held that even if Mr. Grell met the criteria for antisocial personality disorder, it would still be possible for him to have mental retardation and therefore to be ineligible for the death penalty. For forensic examiners, this highlights the importance of ruling out impulsive behavior and behavioral dyscontrol due to mental retardation before attributing them to antisocial personality disorder. Furthermore, even if a defendant demonstrates antisocial behavior that can be linked to a personality disorder, he could nevertheless be spared the death penalty if he also meets criteria for mental retardation. Although determining the source of symptoms in the presence of comorbidity can be a challenging task for examiners, it can be a crucial one, especially when the consequences of the decision are significant, as in death penalty cases.

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Habeas Petition on Ineffective Assistance of Counsel when Counsel Called a Mental Health Expert Who Had Already Provided Damaging Testimony

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