

I.M.M. is a Native American. A history of strained relations between Native Americans and (presumably non-Native American) authority figures may have reinforced obedience on the part of I.M.M. and his mother, and contributed to a lack of appreciation of their “rights,” which have historically been violated and neglected by the dominant culture in the United States. From a cultural psychiatry standpoint, the silence on this cultural dynamic by the courts is interesting and deserves further exploration.

Ultimately, this case implies that closer scrutiny is warranted in future cases involving the application of *Miranda* to children and adolescents. Special consideration should be placed on determining such individuals’ capacity to comprehend their *Miranda* rights based on their developmental cognitive abilities.

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## Brain Injury, Intellectual Disability, and the Death Penalty

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### The Supreme Court of Missouri Denied a Petition of Habeas Corpus Citing That an Injury Causing Partial Loss of the Frontal Lobe Did Not Render the Defendant Incompetent to Receive the Death Penalty nor Did It Categorically Render the Defendant Ineligible for the Death Penalty Due to Intellectual Disability

In *State ex rel. Clayton v. Griffith*, No. SC94841, 2015 Mo. LEXIS 24 (Mo. 2015), the Missouri Supreme Court denied the petition for a writ of *habeas corpus* of the petitioner Cecil Clayton. Mr. Clayton contended that he was not competent to be executed because he had sustained a head injury resulting in the partial loss of one of his frontal lobes that qualified him as having an intellectual disability, making him ineligible for the death penalty under *Atkins v. Virginia*, 536 U.S. 304 (2002).

### Facts of the Case

Mr. Clayton was convicted of first-degree murder of a law enforcement officer, Deputy Christopher Castetter. The crime occurred after a convenience store clerk witnessed an argument between Mr. Clayton and his girlfriend and called police. The Purdy, Missouri, police chief arrived, separated the couple, and ensured that they left the store separately. Within the hour, Mr. Clayton went to his girlfriend’s house, but she was not there. The girlfriend’s sister called the police and Deputy Castetter was dispatched to the scene. A few moments later, other deputies arrived and discovered that Deputy Castetter had been shot in the forehead. Mr. Clayton went to a friend’s house, confessed, and asked the friend to provide a false alibi. They returned to his residence. When police arrived, he was discarding an object into a pile of concrete blocks where the murder weapon was later found.

The crime was committed in 1996 when Mr. Clayton was 56 years old. At age 32, he had sustained a head injury while working at a sawmill when a piece of a log broke off and was lodged in his head. He lost nearly 8 percent of his total brain mass and 20 percent of a frontal lobe. His brother testified that after his injury, Mr. Clayton separated from his wife, began drinking, and became impulsive. He was also unable to work and more prone to violent outbursts. Mr. Clayton argued that his head injury rendered him blameless for the murder of the deputy and made him incapable of forming the specific intent to commit murder. After being found guilty, Mr. Clayton was sentenced to death.

Since his conviction, Mr. Clayton has filed four appeals: In *State v. Clayton*, 995 S.W.2d 468 (Mo. 1999) (*Clayton I*), Mr. Clayton’s conviction was upheld. In *Clayton v. State*, 63 S.W.3d 201 (Mo. 2001) (*Clayton II*), Mr. Clayton’s motion for postconviction relief was denied. In *Clayton v. Luebbers*, 2006 WL 1128803 (W.D. Mo. 2006) (*Clayton III*), Mr. Clayton’s federal petition for *habeas corpus* was denied. The decision from *Clayton III* was affirmed by the U.S. Eighth Circuit Court of Appeals in *Clayton v. Roper*, 515 F.3d 784 (8th Cir. 2008) (*Clayton IV*).

In this appeal, Mr. Clayton asserted three reasons that he should be granted a writ of *habeas corpus*. First, he claimed that he was incompetent to be executed under *Ford v. Wainwright*, 477 U.S. 399 (1986), *Panetti v. Quarterman*, 551 U.S. 930 (2007), and Mo. Rev. Stat. § 552.060.1 (2000). Second, he

argued that M.O. § 552.060.1, RSMo 2000 is unconstitutional because it permits the Department of Corrections Director, a member of the executive branch, to determine a prisoner's competency to be executed. Third, he asserted that he qualified as intellectually disabled because of his head injury and therefore could not be executed, in accordance with *Atkins*.

#### *Ruling and Reasoning*

In a four-to-three decision, the Supreme Court of Missouri denied Clayton's writ of *habeas corpus*. Mr. Clayton asserted that his belief that God would spare him was similar to the petitioner in *Panetti*. In *Panetti*, the petitioner's delusions were religious, and he believed that the real reason for his execution was to stop him from preaching, not because he had committed capital murder. Mr. Clayton's statements to his counsel that God would spare him were religious in nature and may be interpreted as delusional, but they did not impair his understanding that he was being executed as punishment for the murder of Deputy Castetter. One of Mr. Clayton's experts had testified that Mr. Clayton was fully aware of the fact that he had been convicted of murdering Deputy Castetter and had been sentenced to death for the crime.

The court acknowledged that previously being found competent to be executed does not guarantee future competency, but it also found that, without further evidence of a material change in his competence, it could reach no other conclusion regarding Mr. Clayton's competency. In addition, the court cited telephone conversations between Mr. Clayton and his relatives during which he maintained to his family that he was innocent and asserted his belief that he would be spared execution, but if not, he was going to be executed for the murder of the police officer. In 2014, a forensic psychiatrist conducted a competency-to-be-executed evaluation at the request of the Missouri Department of Corrections and opined that Mr. Clayton understood that he was being executed for the murder of Deputy Castetter and that his religious beliefs that God would spare him were not fixed and therefore were not delusional.

The second claim that Mo. Rev. Stat. § 552.060.2 (2000) is unconstitutional was dismissed on its merits. The law allows the person overseeing an execution to stop the execution if the overseer has reason to believe that the person about to be executed is not

competent to be executed. The overseer could not unilaterally declare someone competent to be executed without a hearing, because it would be a violation of the precedent set in *Ford*.

In his third claim, Mr. Clayton argued that, under *Atkins*, the death penalty is not allowed for individuals who satisfy the state standards for intellectual disability (previously mental retardation). He cited his below-average IQ and poor adaptive skills as the reasons he should be classified as intellectually disabled. However, Missouri's statute states that intellectual disability must be manifested before the age of 18 (Mo. Rev. Stat. § 565.030.6 (2013)). School records and other collateral information showed that Mr. Clayton was of average intelligence before the age of 18 and until his brain injury in 1972, when he was 32; therefore, he did not meet this statutory requirement. He argued that, even though his brain injury did not render him incompetent to be executed, his injury exempted him from execution because it was "as if" he were intellectually disabled under *Atkins*. Mr. Clayton did not offer a reason why the exemption of execution should be broadened in this way. Based on these factors, the district court found no evidence that Mr. Clayton had an intellectual disability.

#### *Discussion*

This case underscores the principle that competency to be executed, like any other competency, is based on functional abilities and not merely on the presence of a mental illness or defect. Mr. Clayton was found competent because he understood the reason and nature of his punishment.

In *Atkins*, the Supreme Court of the United States held that executing an intellectually disabled person does not further the goals of deterrence or retribution for "the lesser culpability" of intellectually disabled individuals. When deciding that Mr. Clayton did not meet the statutory criteria for intellectual disability, the court relied heavily on the requirement that cognitive decline must be evident before age 18. The court used a strict definition of intellectual disability based on age of onset, even though Mr. Clayton's adaptive functioning may have been similar to someone with intellectual disability.

The main question in this case is whether an acquired intellectual disability disqualifies a defendant for the death penalty under *Atkins*. Mr. Clayton argued that his injury essentially caused him to become

intellectually disabled; however, the court recognized that the expansion of intellectually disabled to include other individuals who think, act, or behave “as if” they are intellectually disabled did not apply in this case, as Mr. Clayton offered no evidence for why it should be expanded to include a neurocognitive disorder caused by traumatic brain injury.

The U.S. Supreme Court denied his application for a stay of execution, and Mr. Clayton was executed on March 17, 2015.

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

## Sentence of Life Without Parole for a Juvenile Convicted of Homicide Upheld

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### The Georgia Supreme Court Held That a Nonmandatory Sentence of a Juvenile to Life Without Parole for Homicide Is Not Cruel and Unusual Punishment and That the Code Of Judicial Conduct Did Not Prohibit a Former Judge From Testifying in the Sentencing Phase

In *Bun v. State*, 769 S.E.2d 381 (Ga. 2015), the defendant, Veasa Bun, appealed his life-without-parole (LWOP) sentence arguing that it constituted cruel and unusual punishment under both the federal and Georgia constitutions and that his trial counsel provided ineffective assistance by not objecting to the testimony of a former juvenile judge who had presided over Mr. Bun’s juvenile cases but who was no longer acting in a judicial capacity at the time of the instant case.

#### Facts of the Case

On July 20, 2011, Deputy Richard Daly and several other law enforcement officers pulled over a vehicle in which 17-year-old Mr. Bun was a passenger. Mr. Bun had been identified as a passenger by another officer who knew that there was an outstanding warrant for Mr. Bun’s arrest in connection with a

robbery and aggravated assault. When Deputy Daly and the other officers approached the stopped vehicle, Mr. Bun grabbed a gun, stepped out of the car, and fatally shot Deputy Daly twice in the abdomen. Mr. Bun then shot at other officers as he fled into the nearby woods.

At trial, Mr. Bun was found guilty and sentenced to LWOP, plus an additional 70 years of imprisonment. His motion for a new trial was denied, and he appealed, arguing that his sentence constituted cruel and unusual punishment under both the federal and Georgia constitutions and that his trial counsel provided ineffective assistance of counsel by not objecting to testimony of a former family court judge. He cited *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), *Miller v. Alabama*, 132 S. Ct. 2455 (2012), and *Foster v. State*, 754 S.E.2d 33 (Ga. 2014).

#### Ruling and Reasoning

In a five-to-two decision, the Georgia Supreme Court held that evidence was sufficient to support a homicide conviction, a discretionary sentence of LWOP on a juvenile for homicide was not cruel and unusual punishment, and the code for judicial conduct did not prohibit the former judge from testifying in the sentencing phase.

The appropriate punishment for juvenile offenders has been an evolving area of law. In 2005 the U.S. Supreme Court held in *Roper* that juvenile offenders could not receive the death penalty. Five years later, in *Graham*, the U.S. Supreme Court held that a juvenile offender who had not committed a homicide could not be sentenced to LWOP. In 2012 in *Miller*, the Supreme Court struck down mandatory sentences of LWOP for juveniles who had committed homicide. Therefore, lower courts must use discretion when considering whether to impose a sentence of LWOP on a juvenile offender who has committed homicide, because mandatory LWOP sentences violate the Eighth Amendment’s ban on cruel and unusual punishment. Adolescents are biologically and emotionally immature and are therefore less culpable than adults for their actions. Therefore, they are also less deserving of the most severe punishment. The Supreme Court of Georgia denied Mr. Bun’s motion for a new trial, stating that the U.S. Supreme Court’s decisions in *Roper*, *Graham*, and *Miller* do not prevent juveniles who have committed homicide from being sentenced to life imprisonment without the