

Therefore, the notion that the legislature's intent was for the exception not to apply in circumstances where a person is temporarily involuntarily committed for this very reason seems counterintuitive.

Another question that comes to light in this case is one of ethics. K.I. posits that his doctor acted as both a treatment provider and a forensic evaluator during the period in which he was temporarily involuntarily committed. Having a physician serve in dual roles may lead to multiple negative consequences. It can cause harm to the therapeutic relationship. Transference, an essential process for psychotherapy, can be disrupted when a patient feels that his trust may be violated. Furthermore, a patient, whether consciously or subconsciously, may disclose personal information in a different light if it is known that the communication can be used in future legal proceedings. On the other hand, the provider may develop an unconscious bias based on his perception of the patient, which hinders his ability to provide an objective opinion for forensic purposes.

K.I.'s case also raises the matter of proper consent for psychiatric evaluations. In 1981, the U.S. Supreme Court weighed in on this debate. In *Estelle v. Smith*, 451 U.S. 454 (1981), a psychiatrist performed a court-ordered competency evaluation for Mr. Smith. The psychiatrist later used the information he obtained to testify about Mr. Smith's dangerousness during the sentencing phase of his trial, and Mr. Smith was subsequently sentenced to death. The U.S. Supreme Court noted that Mr. Smith was not informed of the nature and purpose of the evaluation, and this omission violated his Fifth Amendment right to avoid self-incrimination. The psychiatrist's testimony was excluded, and the death sentence was vacated. The main difference in this case is the nature of the evaluation. Dr. Brendel's evaluations of K.I. were performed for the purposes of treatment and the determination of risk and thus were not mandated by the court. Therefore, the *Lamb* warning was deemed not applicable.

All of these points present challenges to the clinician who must constantly monitor and maintain the delicate balance between confidentiality and safety. Although it is to be avoided when possible, certain occasions require the clinician to serve as both a treatment provider and an evaluator. Fortunately, the Supreme Judicial Court has attempted to make this situation more manageable for the clinician by not requiring a patient to give informed consent for a

forensic evaluation at the initiation of a temporary involuntary civil admission.

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Prosecutorial Misconduct and Violation of the *Brady* Rule in a Case Involving Intellectual Disability

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The Sixth Circuit Court of Appeals Upholds Ruling to Vacate a Life Sentence for a Defendant with an Intellectual Disability

In *Gumm v. Mitchell*, 775 F.3d 345 (6th Cir. 2014), the Sixth Circuit Court of Appeals upheld the ruling of the U.S. District Court for the Southern District of Ohio at Cincinnati, vacating a death sentence imposed on a defendant with an intellectual disability. The defendant, Darryl Gumm filed a writ of *habeas corpus* on four claims to the federal district court. He contended that the state violated the *Brady* Rule by failing to disclose exculpatory evidence, that he received an unfair trial because of improper admission of incendiary prior bad acts, that admission of a psychiatric report violated the Sixth Amendment's Confrontation Clause and that prosecutorial misconduct caused a denial of due process.

Facts of the Case

On May 12, 1992, the body of 10-year-old Aaron Raines was found by the police in the basement of an abandoned building in the lower Price Hill section of Cincinnati. Betty Gumm, a friend of the Raines family and Mr. Gumm's sister through adoption, learned that her brother had been in the neighborhood on the day of Aaron's murder. She called the local "crime stoppers" number. Cincinnati police interviewed Mr. Gumm and after extensive questioning in which he changed his statement several times, Mr. Gumm eventually confessed involvement in the murder of Aaron Raines.

Mr. Gumm's statement disclosed that he and Michael Bies, an acquaintance of his, had lured Aaron Raines into the abandoned building for sexual purposes. Michael Bies allegedly then asked Aaron to perform oral sex for money. When Aaron refused, Mr. Gumm stated that Mr. Bies punched Aaron multiple times, after which Mr. Gumm and Mr. Bies fled the scene. Mr. Gumm claimed that he did not hit Aaron but that he might have stepped on Aaron's body as he attempted to flee with Mr. Bies from the basement of the building (see *Bies v. Sheldon* in the following case review).

The coroner determined that the cause of death was a combination of blunt impacts to the head, chest, and abdomen and blunt injury to the neck. At the trial, Mr. Gumm's sole witness, psychiatrist Henry Leland, testified that Mr. Gumm "evinced 'a mild to borderline level of mental retardation' as well as a difficulty 'synthesiz[ing] external stimuli'" (*Gumm*, p 356). This condition would cause Mr. Gumm to "confuse what he had witnessed or experienced with what had been told to him" (*Gumm*, p 356), which, Dr. Leland explained, made Mr. Gumm's statements to the police unreliable. Dr. Leland's opinions were based in part on court-compiled psychiatric reports that contained bizarre allegations and statements regarding cruelty to animals and sexual habits. Much of the contents of the reports were based on hearsay, but the prosecutor later presented them to the jury as evidence of sexual deviance.

Mr. Gumm was convicted of kidnapping, attempted rape, and murder. The jury recommended and the trial court imposed the death sentence for the aggravated murder count and imposed consecutive terms of imprisonment for the attempted rape and kidnapping convictions. Mr. Gumm's convictions and sentence were affirmed by the Ohio Court of Appeals, and by the Ohio Supreme Court.

On September 16, 1996, Mr. Gumm filed a petition for state postconviction relief. The common pleas court found that all of Mr. Gumm's grounds for relief were barred by Ohio's *res judicata* rule, which "provides in relevant part that a final judgment of conviction bars a convicted defendant from raising in any proceeding, except an appeal from that judgment, any issue that was raised, or could have been raised, at trial or on appeal from that judgment" (*Williams v. Bagley*, 380 F.3d 932 (6th Cir. 2004), p 967).

The court of appeals affirmed, and the Ohio Supreme Court refused to hear an appeal. Mr. Gumm filed a federal petition for a writ of *habeas corpus*. While this petition was pending, the U.S. Supreme Court, on June 20, 2002, released *Atkins v. Virginia*, 536 U.S. 304 (2002). Based on that decision, Mr. Gumm moved to stay his federal *habeas* proceedings to allow him to return to state court to litigate the question of his mental capacity. That motion was granted, and eventually the state trial court adjudged Mr. Gumm to have an intellectual disability and reduced his sentence to life imprisonment with the possibility of parole after 30 years on the aggravated murder count. Mr. Gumm, also sought relief on several non-*Atkins* grounds, all of which were denied by the trial court. The Ohio Court of Appeals affirmed the trial court's decision, and the Ohio Supreme Court denied an appeal.

On September 13, 2007, Mr. Gumm amended his federal petition for a third time and was referred to a magistrate judge who granted Mr. Gumm *habeas* relief on his fair trial, Confrontation Clause, and prosecutorial misconduct claims, but not on his *Brady* claim (see below; *Brady v. Maryland*, 373 U.S. 83 (1963)).

The U.S. district court reviewed the report and recommendation and adopted it with respect to Mr. Gumm's fair trial, Confrontation Clause, and prosecutorial misconduct claims. The district court disagreed with the magistrate judge's assessment of the *Brady* claim. Whereas the magistrate judge had found that the *Brady* claim failed because most of the evidence cited was inadmissible, the district court noted that "does not necessarily mean that it would not lead to admissible evidence or that it was not subject to disclosure" (*Gumm*, p 359). The district court therefore granted Mr. Gumm *habeas* relief on his *Brady* claim as well. The state appealed and the Sixth Circuit Court of Appeals granted *certiorari*.

Ruling and Reasoning

In a unanimous decision, the court of appeals held that the state had violated the *Brady* rule by failing to disclose exculpatory evidence. Citing *Brady v. Maryland*, it stated that the prosecutor had not disclosed information favorable to Mr. Gumm, which included tips, leads, and witness statements relating to individuals who had been investigated for the murder of Aaron Raines. These included two other suspects who had confessed to the murder, a failure to

state that the victim's brother had failed a polygraph test, and evidence undermining the state's theory of the case. The court stated that to prevail on a *Brady* claim, a petitioner need only show that the undisclosed evidence was "likely admissible under Ohio law" (*Gumm*, p 369).

The court of appeals concluded that Mr. Gumm was not entitled to relief on the prosecutorial misconduct claim based solely on the prosecutor's motion to admit hearsay statements in the psychiatric reports, but held that the prosecutor's remarks regarding Mr. Gumm's sexual habits were improper and that the prosecutor's misconduct was "flagrant and severe." (*Gumm*, p 383). The court reasoned that the prosecutor used background testimony on Mr. Gumm in an intentional and deliberate manner. He used the testimonies from witnesses to depict Mr. Gumm as a "sexual deviant" who had sex with little boys, although there was no evidence on record. The court stated that the testimony used by the prosecutor was then used to mislead and prejudice the jury. The court reasoned that the case against Mr. Gumm was so weak and the prosecutor's misconduct so "pronounced and persistent" that it too had a "probable cumulative effect upon the jury which cannot be disregarded as inconsequential" (*Gumm*, p 385).

Discussion

This case raises numerous points, including the occurrence of false confession in individuals with intellectual disabilities and prosecutorial misconduct when psychological testimony intended to be favorable to a defendant is misused to prejudice a jury against a defendant. The U.S. Supreme Court in *Atkins v. Virginia* expressed its concerns about the heightened possibility of false confessions by individuals with intellectual disabilities. In *Atkins*, the Court recognized that the individuals with intellectual disabilities are capable of knowing the difference between right and wrong, but that their impairments cause a diminished capacity to understand and process information, to communicate, to reason logically, and to learn from their mistakes. Those with intellectual disabilities are particularly susceptible to the wishes of authority figures, even in the absence of direct pressure (Cloud M, *et al*: Words without meaning: the constitution, confessions, and mentally retarded suspects. U. Chi. L. Rev. 69:495, 511, 2002). Individuals with an intellectual disability are more likely to answer rather than remain silent, more

likely to confess when interrogated, less likely to give a truthful statement and yet more likely to be found by the court to have confessed voluntarily, knowingly, and intelligently (Hourihan PT: Earl Washington's confession: mental retardation and the law of confessions. Va. L. Rev 81:1471, 1493, 1995).

Psychiatrists and psychologists, when evaluating and preparing reports for the courts, frequently use information gathered from medical reports and collateral information to arrive at an opinion. Although the totality of the report is admissible as evidence, in *Gumm*, the Sixth Circuit recognized limitations on the hearsay evidence in the report and criticized the prosecution's misuse of the information. Mr. Gumm's counsel introduced Dr. Leland's report in this case to show that Mr. Gumm's confession to the police was not reliable; however, the prosecution used parts of the report to prejudice the jury against Mr. Gumm and used background witness testimony to present Mr. Gumm as sexually deviant.

Finally, the withholding of exculpatory material was deemed inappropriate, in violation of the *Brady* Rule, when the state did not turn over to Mr. Gumm's counsel more than 170 pages of witness statements and confessions by others gathered by the police that would have helped the defense in its case. The Sixth Circuit upheld the district court ruling that highlighted these concerns and, based on its reasoning, concluded, "This is such a case in which extreme malfunctions in the state criminal justice system prejudiced Petitioner and caused him to suffer extreme violations of his constitutional rights" (*Gumm*, p 385).

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Defendant With an Intellectual Disability Appealed for a New Trial Based on the State's Withholding Evidence

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