

## Retrospective Postconviction Competency to Stand Trial Assessments

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### The Defendant Must Establish, by a Preponderance of the Evidence, That the State Could Not Have Proved Either the First or the Second Prong of the Competency Test

In *Commonwealth v. Chatman*, 46 N.E.3d 1010 (Mass. 2016), the Supreme Judicial Court of Massachusetts affirmed the trial court's denial of his motion for a new trial, which was based on his assertion that he was incompetent at his 2002 trial. The *Chatman* test was constructed in a 2013 appeal in this same case as a framework for retrospective evaluation of a defendant's competency to stand trial, after the verdict, when the defendant's competency was not raised at trial. The test did not change the substantive inquiry into the defendant's "functional abilities" at the time of trial. However, under the *Chatman* test, the burden is shifted to the defendant to prove, by a preponderance of the evidence, that the Commonwealth would not have prevailed if the defendant's trial competency had been raised at trial.

#### Facts of the Case

Demond Chatman was convicted of murder in 2002. He filed a motion for a new trial in 2008, six years after his conviction, arguing, for the first time, that he had been incompetent to stand trial. The motion was heard by the same judge who oversaw Mr. Chatman's trial.

During the evidentiary hearing for this motion, Mr. Chatman's original counsel, Attorney Bonistalli, testified that Mr. Chatman had not reported any mental health history, that he communicated adequately, but that he did not significantly participate in the trial itself. Another trial attorney, Sharon Church, testified that Mr. Chatman "went on 'tan-

gents'" (*Chatman*, p 1015) and did not actively assist in the preparation of the case.

Defense psychologist Dr. Robert Joss retrospectively opined that Mr. Chatman had not been competent to stand trial during his 2002 trial. Dr. Joss evaluated Mr. Chatman multiple times (albeit years after the original trial), reviewed records, and spoke with mental health professionals who had diagnosed paranoid personality disorder. Dr. Joss also referenced a 2005 neuropsychological evaluation wherein Mr. Chatman's diagnosis was a psychotic spectrum disorder. Dr. Joss did not interview either trial attorney. He offered as evidence of Mr. Chatman's incompetence that he had stated that Attorney John Bonistalli had a "cop look" suggesting that Mr. Bonistalli worked with the prosecutor. Dr. Joss opined that Mr. Chatman irrationally believed that Mr. Bonistalli had an advantage over the prosecutor due to racial differences, and that the prosecutor had removed homosexuals and white women from the jury. Dr. Joss further opined that Mr. Chatman did not communicate with defense counsel because Mr. Chatman did not disclose his mental health diagnosis, which Dr. Joss interpreted as evidence of paranoia.

Notably, during the motion for a new trial, the state did not present any evidence of Mr. Chatman's competence to stand trial. They relied, instead, on disputing the evidence presented by Mr. Chatman.

#### Ruling and Reasoning

The court affirmed the dismissal of the motion for a new trial. The Supreme Judicial Court of Massachusetts reviewed the motion judge's interpretation of the 2013 framework, the *Chatman* test. The court pointed out that, as in contemporaneous evaluations of competency to stand trial, the question does not lie in whether the defendant has a mental disorder, but rather, in the defendant's functional abilities at the time of trial. The standard *Dusky* components were included: the defendant must have "sufficient present ability to consult with his counsel with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings" (*Dusky v. United States*, 362 U.S. 402 (1960), p 402). Unlike traditional competency evaluations, the postverdict test required that the defendant establish by a preponderance of the evidence that the Commonwealth would not have prevailed had the defendant's competency been raised at the

time of trial. In particular, the defendant need not show that he was incompetent to stand trial, rather, the defendant must show at least that the evidence of competence versus incompetence are “equipoise” (of equal weight). Also, evidence should be preferentially weighed for those elements that are derived from knowledge contemporaneous with the trial. In this vein, the court noted that because the same judge served as the trial judge and the motion judge, her ruling was given substantial deference, because she could use her personal observations of Mr. Chatman at trial in ruling on the postconviction motion.

The court stated that Mr. Chatman’s largely undisputed mental illness was informative but not dispositive. No evidence was cited equating his illness with an inability to communicate. In particular, the court noted that trial counsel testified that they had discussed the evidence and his conduct on the day of the offense, and that he had built an alibi defense. The court also noted that Dr. Joss’ opinion that Mr. Chatman could not communicate with trial counsel was based solely on statements of mistrust that Mr. Chatman made several years later. Finally, Dr. Naomi Leavitt (another evaluator who had opined that Mr. Chatman was incompetent at the time of his motion hearing) indicated that Mr. Chatman told her that he did not have any problem in trusting his trial attorney.

Regarding his failure to disclose his illness to his trial attorney, the court stated that, historically, Mr. Chatman had inconsistently reported his illness at various times, without any pattern related to people he trusted or did not trust. Therefore, the court found that a lack of disclosure could be due to rational reasons, not solely to irrationality from mental illness. The court referenced a previous case that indicated “The world is full of people who do not own up to their limitations, often with remarkable success” (*Commonwealth v. Blackstone*, 472 N.E. 2d 1370 (Mass. App. Ct. 1985), p 1371). The court added that an inability to offer the most helpful defense is not necessarily indicative of incompetence to stand trial.

The court did not find Dr. Joss’ opinions about Mr. Chatman’s misperceptions regarding courtroom personnel compelling. Dr. Joss’ testimony showed, instead, that Mr. Chatman’s beliefs about jurors and the racial advantage of his trial attorney were consistent with Mr. Chatman’s long-held racist beliefs and

not his presumed mental illness. In addition, Dr. Joss testified that Mr. Chatman was able to follow the proceedings at trial, and he understood his charges and the roles of prosecutor, the jury, and his attorney. Despite some misperceptions, there was insufficient evidence to support an inability to understand court processes.

Finally, the court responded to Mr. Chatman’s argument that the failure of the state to prove he was competent should suggest that he may not have been competent. However, the court strongly opposed this claim, stating that the state bore no burden to prove his competency and could legally rest on simply impeaching his arguments.

#### Discussion

Mr. Chatman’s case offers a framework in Massachusetts for providing a retrospective, postconviction analysis of a defendant’s competency to stand trial. The significant points to consider include that the burden of proof shifts to the defendant instead of being borne by the state. Analyzing trial competency retrospectively does not require any change in substantive questions and no higher standard of proof. In fact, evidence must either be equal both ways or weigh toward incompetence, which seems reasonable, given it would be harder to construct the defendant’s mental state after the fact of the trial as opposed to evaluating competency contemporaneously.

Significant time was spent pointing out that the weight of the evidence was primarily assigned to those who could describe contemporaneous observations of the defendant. Furthermore, the court emphasized that the defendant should not be relied on alone for evidence of his incompetence at the time, given the self-serving nature of such statements. Notably, the court emphasized independent collateral evidence and the use of collateral informants by experts. Dr. Joss’ testimony was undermined by the fact that he made no effort to corroborate what Mr. Chatman had claimed about his trial counsel.

Finally, the court relied significantly on the fact that the motion judge was also the trial judge and therefore knew Mr. Chatman best in this context. However, the court noted that a trial judge’s ability to recognize her own mistakes may be limited based on the natural tendency toward confirmation bias and indicated that judges considering postconviction

appeals of this nature must guard against confirmation bias.

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## The Best-Interest Model of Termination of Parental Rights

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### Despite False Allegations of Abuse Against the Mother of a Child, the Child's Best Interest Supersedes Consideration of the Unfair Nature of the Termination of Maternal Contact With the Child

In *Knutsen v. Cegalis*, 137 A.3d 734 (Vt. 2016), Raymond Knutsen moved to terminate reestablishment of parent–child contact with Karen Cegalis, the mother of the child, claiming that Ms. Cegalis and her previous partner had sexually abused the child, an allegation that was never factually substantiated. The Superior Court denied Ms. Cegalis' motion to modify parental rights and responsibilities and denied her any parent–child contact unless the child's therapist recommended such contact. Ms. Cegalis appealed, and the Supreme Court of Vermont affirmed the lower court's decision, citing the best interest of the child.

#### Facts of the Case

Mr. Knutsen and Ms. Cegalis had a son in August 2005. Mr. Knutsen was awarded primary custody of their son in 2009. The court concluded that he had a greater ability to foster the child's relationship with his mother. He eventually remarried.

In 2012, according to Mr. Knutsen, his son reported that he had been sexually abused by Ms. Cegalis and her boyfriend. Mr. Knutsen filed a motion for a restraining order placed against Ms. Cegalis. The court found that he failed to prove the abuse by a preponderance of the evidence, and thus, his motion was denied. The court requested that a psychol-

ogist help to initiate and carry out a reunification plan. The court also requested that the parents and child undergo forensic psychiatric evaluations.

The following year, in October 2013, the court grappled with the question of what type of reunification plan would be in the best interest of the child. Dr. Craig Knapp conducted forensic evaluations of the parents and the child. He observed the child with Ms. Cegalis and determined that despite his continued belief about the abuse, he was rapidly able to form a positive bond with her once again. The court once again asserted that despite investigation by the Department for Children and Families, the allegations of abuse were not substantiated. They concluded that it was in the child's best interest to reestablish his relationship with his mother.

Despite the court's order, the reunification process was subsequently terminated by the child's therapists. In February 2015, the court was forced to decide what schedule of contact was in the child's best interest. The therapists noted that the child was deeply traumatized and that he truly believed that his mother would kill him. The concern of the therapists was not why the child believed the mother would kill him but rather the risk to the child of reunification.

During the February 2015 hearing, Ms. Cegalis offered her own expert, Dr. Eric Mart, who presented his opinion on parental alienation. The court found that Dr. Mart's description of parental alienation fit the facts of this case. The child's father and stepmother had indoctrinated the child to believe that Ms. Cegalis wanted to kill him. His stepmother even drove him to Ottawa, where Ms. Cegalis' former boyfriend lived, to report the alleged abuse to the police.

Despite the false allegation of abuse against Ms. Cegalis and the determination that the father and stepmother were responsible for the child's trauma and estrangement from his mother, the court found the testimony of the child's therapists regarding the risk of traumatizing him further to be compelling. It found that the factors to consider were the quality of the child's present adjustment to his home, school, and community and the potential effect of any change and further determined that changing his environment and forcing him to live with his mother would be a "violent dislocation."

The court therefore ordered the halting of the reunification process and denied Ms. Cegalis any fur-