Amnesia for a Capital Offense and Competency to be Executed

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The United States Supreme Court Reversed the Eleventh Circuit's Decision That a Prisoner With Dementia Who Had No Memory of the Offense Was Incompetent to be Executed

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In *Dunn, Commissioner, Alabama Department of Corrections v. Madison*, No. 17–193 (U.S. November 6, 2017), Vernon Madison was convicted of murder and sentenced to be executed. While incarcerated, he had two strokes that resulted in cognitive impairment. Mr. Madison requested a competency to be executed hearing. At this hearing, a court-appointed psychologist, Dr. Kirkland, opined that Mr. Madison was competent to be executed because he understood that the state was punishing him for murder. A defense retained neuropsychologist, Dr. Goff, testified that Mr. Madison was not competent because he had no memory of the crime and believed he had never killed anyone. The trial court, based on the standards outlined in *Ford v. Wainwright*, 477 U.S. 399 (1986) and *Panetti v. Quarterman*, 551 U.S. 930 (2007), found Mr. Madison competent to be executed. On appeal, the Eleventh Circuit reversed the trial court's decision, finding it unreasonable that a man with no memory of what he had done wrong would have rational understanding of why he was being put to death. *Certiorari* was then granted and the U.S. Supreme Court reversed the court of appeals' decision. The Court held that neither *Ford* nor *Panetti* set the standard that amnesia of the crime equals incompetency to be executed. It also held that the trial court did not unreasonably apply *Panetti* and *Ford* and the trial court's decision was not founded on an unreasonable assessment of the evidence.

Facts of the Case

In April 1985 Vernon Madison shot and killed an Alabama police officer. A jury found him guilty of capital murder and the trial court sentenced him to death in September 1985.

In 2016, Mr. Madison petitioned the court for a suspension of execution. He argued that he was incompetent to be executed as a result of several recent strokes. The strokes caused vascular dementia and other physical and mental health problems, including the following: blindness, incontinence, slurred speech, the inability to walk independently, and amnesia. The court held a competency to be executed hearing and two expert psychologists testified. Dr. Kirkland, the court appointed psychologist, opined that Mr. Madison had a decline in cognitive function after the strokes. However, he argued that Mr. Madison understood his position in his case and had a rational understanding that his execution would result in his death. When Dr. Kirkland was asked if Mr. Madison understood that the state was punishing him for the murder, he replied, "Certainly." The defense retained neuropsychologist, Dr. Goff, argued that Mr. Madison's strokes resulted in amnesia about "numerous events." Dr. Goff agreed with Dr. Kirkland that Mr. Madison was aware that Alabama was seeking retribution for the murder and he understood the meaning of a death sentence. However, Dr. Goff opined that Mr. Madison did not understand the crime for which he was being punished because he could not recall events related to his arrest. Mr. Madison also believed that he had never killed anyone.

The Alabama trial court held that Mr. Madison was competent to be executed. Referring to the standards outlined in *Ford* and *Panetti*, the trial court found that Mr. Madison did not have a mental illness that impaired his rational understanding that he was being executed as punishment for capital murder. The court held that Mr. Madison understood he was going to be executed for capital murder, that the state was going to punish him via execution, and that execution would result in his death.

Mr. Madison filed a petition for a writ of *habeas corpus* in a federal district court, which was denied. He then appealed to the Eleventh Circuit Court of Appeals. The court of appeals reversed the trial court's decision because it was "plainly unreasonable" and found Mr. Madison incompetent to be executed. The Eleventh Circuit's decision was based on the fact that Mr. Madison had "no memory" of the crime. Therefore, the court ruled that he lacked a rational understanding

of the relationship between the crime and his execution. The U.S. Supreme Court granted *certiorari* to review the Eleventh Circuit's decision.

Ruling and Reasoning

In a unanimous ruling, the U.S. Supreme Court reversed the Eleventh Circuit's decision. The Court reviewed the standards outlined in *Ford* and *Panetti*. In *Ford*, the Court questioned the "retributive value" of executing a prisoner who lacked comprehension of why he was being executed. In *Panetti*, the Court stated 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 943). The Court stated neither *Ford* nor *Panetti* established that failure to remember the crime equates with incompetence to be executed. Rather, the prisoner must rationally understand that he is being executed for the crime that he committed.

The Court found that the trial court's decision did not unreasonably apply *Panetti* and *Ford*. They stated that despite his memory loss, Mr. Madison recognized that he was going to be executed for the murder for which he had been convicted. The Court also ruled that the state court's decision was not founded on an unreasonable assessment of the evidence. Both expert psychologists testified that Mr. Madison understood he was convicted of murder and that the state ordered him to be executed as punishment for the capital offense.

Discussion

While the U.S. Supreme Court's decision relied on the standards outlined in *Ford* and *Panetti*, this case is unique in terms of diagnosis. Although in *Ford* three psychiatrists gave conflicting diagnoses, the majority opined he had a psychotic disorder and the Court ruled that a state cannot execute an "insane" prisoner. In *Panetti*, the prisoner was having delusions. In this case, however, Mr. Madison was diagnosed with dementia and an emphasis was placed on his retrograde amnesia for the offense.

Retrograde amnesia was the topic of discussion in another landmark case, *Wilson v. United States*, 391 F.2d 460 (D.C. Cir. 1968). *In Wilson*, the defendant was involved in a high-speed chase after he highjacked a car at gunpoint and robbed a pharmacy. He crashed into a tree which resulted in loss of consciousness and retrograde amnesia. The U.S. Court of Appeals for the District of Columbia held that if a defendant with amnesia can construct an understanding of the offense from the available evidence, has the ability to follow the proceedings against him, and can discuss his case rationally with his attorney, then his amnesia does not necessarily equal incompetence if the state's case "is such as to negates all reasonable hypotheses of innocence" (*Wilson*, p 462)." Therefore, the U.S. Supreme Court's competency decision regarding amnesia and competency in *Dunn* is consistent with the decision in *Wilson*.

This case raises two interesting concerns for forensic evaluators. First, unlike Wilson's retrograde amnesia, dementia can affect anterograde memory as well. In jurisdictions that require inmates to be able to rationally assist their attorney as an element of the competency to be executed standard, assessing the impact of anterograde amnesia on their ability to recall conversations with their attorney, follow trial proceedings, and to provide rational assistance to their attorney may prove difficult. Finally, should forensic psychiatrists serve as advocates for death row inmates with dementia? Mr. Madison suffered blindness, incontinence, slurred speech, the inability to walk independently, and amnesia. In *Atkins v. Virginia*, 536 U.S. 304, 306 (2002), the U.S. Supreme Court, citing "evolving standards of decency," held that the constitution bars the execution of prisoners with intellectual disability. Whether these "evolving standards of decency" should bar the execution of inmates with dementia, including those with severe impairments such as Mr. Madison, may be a topic for further discussion and potential advocacy by professional organizations.

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Rehabilitative Potential as a Basis for Involuntary Commitment

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