

## Determination of Intellectual Disability for Capital Punishment

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**Individuals May Not Be Determined as Intellectually Disabled without an Overall Assessment of How Deficits Affect the Individual's Ability to Meet Society's Expectations**

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**Key words:** intellectual disability; death penalty; deficits; adaptive behavior; legal determination

In *State ex rel. Montgomery v. Kemp*, 469 P.3d 457 (Ariz. 2020), the Supreme Court of Arizona ruled the trial court erred in determining Apolinar Altamirano was intellectually disabled. The supreme court found that the trial court failed to conduct an overall assessment of how Mr. Altamirano's deficits affected his ability to meet the standards of personal independence and social responsibility for a person his age and cultural background, as required by Arizona's statutory framework for adjudicating intellectual disability.

### Facts of the Case

In 2015, Mr. Altamirano shot and killed a convenience store clerk while attempting to purchase a pack of cigarettes. The state indicted Mr. Altamirano for first degree murder and filed a Notice of Intent to Seek the Death Penalty. In accordance with Ariz. Rev. Stat. § 13-753(B) (2009), the trial court ordered Mr. Altamirano undergo an intelligence quotient (IQ) prescreening evaluation. Initially, Mr. Altamirano objected; however, a few months before trial, he requested an IQ evaluation, which the trial court granted. On the basis of the results of the

evaluation, an evidentiary hearing was held to determine whether Mr. Altamirano was intellectually disabled. The court found that Mr. Altamirano proved intellectual disability by clear and convincing evidence and dismissed the State's Notice of Intent to Seek the Death Penalty.

The State filed a special action with the court of appeals, alleging the trial court erred by ignoring the statutory definition of intellectual disability, which requires an overall assessment of one's ability to meet society's expectations. The court of appeals accepted jurisdiction but denied relief, finding that the judge had discussed adaptive weaknesses and adaptive strengths in the domains of conceptual, social, and practical. The court of appeals further found no clear error because the judge heard both "competent lay" as well as expert testimony to support the finding of intellectual disability. The Supreme Court of Arizona granted *certiorare* to determine whether Arizona's statutory framework for determining intellectual disability complied with the U.S. Supreme Court opinions on the determination of intellectual disability.

### Ruling and Reasoning

The Supreme Court of Arizona vacated the court of appeals' decision order, reversed the trial court's decision, and remanded for a new determination of intellectual disability. The court found that Arizona's statutory framework for adjudicating intellectual disability did not comply with the constitutional requirements determined in *Moore v. Texas*, 137 S. Ct. 1039 (2017) ("*Moore I*") and *Moore v. Texas*, 139 S. Ct. 666 (2019) ("*Moore II*"). The court found that the trial court did not conduct an overall assessment of Mr. Altamirano's adaptive behaviors affecting his ability to meet society's expectation of him as required by Ariz. Rev. Stat. § 13-753(K)(1) (2009). Through *Atkins v. Virginia*, 536 U.S. 304 (2002), the U.S. Supreme Court concluded that imposing the death penalty on intellectually disabled defendants was an excessive punishment that violated the Eighth Amendment.

By prohibiting enforcement of the death penalty against an individual with intellectual disability, the U.S. Supreme Court left the task of determining which individuals were intellectually disabled and the manner to ensure adherence to this constitutional restriction regarding their sentence up to the states. Through *Hall v. Florida*, 572 U.S. 701 (2014), the Court provided further guidance in determining

intellectual disability in defendants, opining that IQ cutoffs alone did not consider evidence of intellectual disability as demonstrated by the defendant's adaptive deficits in his social and cultural environment. Under Arizona statute, intellectual disability requires subaverage intellect that occurs with significant impairment in adaptive behavior, beginning before the age of eighteen. Although the Arizona Supreme Court determined in *State v. Escalante*, 425 P.3d 1078 (Ariz. 2018), that the diagnosis of intellectual disability must be informed by the medical community, Arizona's statutory definition differed from a clinical definition, which existed without considering strengths in determination of impact on adaptive functioning. The Supreme Court of Arizona found this difference in defining adaptive behavior did not violate the Eighth Amendment, as the medical community also identified the importance in adaptive behavior of comparing personal independence and social responsibility compared with one's peers. Through *Moore I* and *Moore II*, the U.S. Supreme Court elucidated the faults of overemphasizing adaptive strengths when the medical community's framework, which must be informative in determining intellectual disability, focused on adaptive deficits.

Under Arizona statute, the courts must determine the presence of significantly subaverage intelligence, significant impairment in adaptive function, and onset prior to age eighteen. According to Ariz. Rev. Stat. § 13-753(E) (2016), these determinations are made utilizing "current community, nationally and culturally accepted physical, developmental, psychological, and intelligence testing procedures." The court opined that Arizona statutes appropriately utilize the medical community's consideration of conceptual, social, and practical life skills in determining intellectual disability. The use of these medical community standards ensures the Arizona statute comports with the Supreme Court's decisions in *Moore I* and *Moore II*. Under Ariz. Rev. Stat. § 13-753, Arizona requires experts evaluating a defendant's intellectual disability to have at least five years of experience in testing, evaluating, and diagnosing intellectual disabilities and utilizing the current community standards for diagnosis. The overall assessment does not disregard current medical standards but presents a flexible approach for determining intellectual disability that can adapt to changes in the medical community framework, citing *The Diagnostic and Statistical Manual of*

*Mental Disorders, Fifth Edition*, acknowledgment of limitations in interpreting diagnosis and impact on legal standards.

Utilizing this reasoning, the Supreme Court of Arizona set forth a standard for determining intellectual disability in a legal setting. First, a court should utilize the medical community standards to conduct an overall assessment of the strengths and weaknesses in realms of conceptual, social, and practical skills to determine if any deficits exist. In addition, an unrelated strength in one category cannot offset a deficit in another category, but the court should consider both strengths and weaknesses as part of the holistic approach to assessment. If no deficits are identified, the inquiry ends. If a deficit is identified, the court should determine under an adaptive behavior prong if the deficit caused a functional impact when comparing the defendant's age and cultural group and the defendant's social responsibility and personal independence as outlined in Ariz. Rev. Stat. § 13-753 (K)(1) (2009). While the trial court correctly considered Mr. Altamirano's strengths and weaknesses in the life-skill categories, the trial court did not conduct the overall assessment of the functional impact of these deficits to satisfy the adaptive behavior prong. Therefore, the court remanded for a new intellectual disability determination.

#### Discussion

The U.S. Supreme Court views the imposition of the death penalty on intellectually disabled defendants as unconstitutional and tasks the states to develop appropriate ways to enforce the constitutional restriction when sentencing individuals with intellectual disability. Although flexibility in enforcing the constitutional restriction exists, the Court requires that the adjudication of intellectual disability occur with the understanding that, while the medical community's diagnostic framework informs the legal determination of intellectual disability, the legal determination of intellectual disability is distinct from a medical diagnosis. This can be considered analogous to the legal determination of competency as informed by, but not beholden to, a medical diagnosis or assessment of capacity.

In this case, the Supreme Court of Arizona examined Arizona's statutory framework for adjudicating intellectual disability and defining adaptive behavior to avoid imposition of cruel and unusual punishment prohibited under the Eighth Amendment. The court

found that the additional requirement of an overall assessment did not reduce the liberty of a defendant by applying medical community standards incorrectly through identifying strengths to offset determined weaknesses in adaptive functioning and, therefore, did not exceed the state's authority as recognized by the Supreme Court to define intellectual disability. The decision highlights that, while states are tasked with determining which defendants have intellectual disability, this determination can vary procedurally among states if the state's procedure of determination comports with existing federal law to ensure the decisions are guided by medical knowledge and provide protections to defendants who have intellectual disabilities.

## Threshold for Repeated Competency Evaluations

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### No Abuse of Discretion in Denying Additional Competency Hearings Before Trial and Sentencing

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In *United States v. Cometa*, 966 F.3d 1285 (11th Cir. 2020), the Eleventh Circuit Court of Appeals considered an appellant's claim that a federal district court had erred in not holding additional trial competency hearings. The appellant also asserted that the district court had not sufficiently weighted the evidence that supported his claim as to the need for additional hearings. The court affirmed the district court's ruling.

#### Facts of the Case

In December 2016, Stephen Cometa, a military veteran, arrived at his psychiatrist's office with two semiautomatic weapons. A struggle ensued, during which the weapon discharged twice. No one was injured. During an interview with the FBI, Mr.

Cometa related that he had been unhappy with his treatment for chronic pain and posttraumatic stress disorder (PTSD). He was subsequently indicted for assault with a firearm, as well as other charges.

Mr. Cometa was evaluated for competency to stand trial two days after his arrest. Dr. Michel Herkov, a psychologist, opined that Mr. Cometa had bipolar disorder and was incompetent to proceed because he would have difficulty assisting his attorney in the preparation of a defense. Mr. Cometa was also evaluated by Dr. Lisa Feldman, a forensic psychologist, who concluded that Mr. Cometa was displaying signs of a mental disorder and was not competent. In May 2017, Mr. Cometa was committed for competency restoration. During the four-month period of competency restoration, Mr. Cometa was treated by mental health professionals, including Dr. Evan Du Bois, who diagnosed borderline personality disorder and PTSD. He was returned to jail with a recommendation that he be found competent to proceed. Two months later, defense counsel informed the district court about their concern that Mr. Cometa was becoming incompetent again, and informed the court of their intent to employ the insanity defense. Mr. Cometa was then recommitted for evaluation of his competency as well as his sanity at the time of his alleged offenses.

Six months later, Dr. Du Bois reported that Mr. Cometa remained competent and that fluctuations in Mr. Cometa's presentation were not due to a serious mental illness, but instead to an underlying personality disorder. Dr. Du Bois opined that Mr. Cometa's symptoms were not likely to be amenable to medication management, and that, during the evaluation period, Mr. Cometa had not been prescribed medication. Additionally, Dr. Du Bois noted that Mr. Cometa did not satisfy the requirements for the insanity defense.

At a second arraignment in 2018, Mr. Cometa's new counsel related concerns over the "anguish" that Mr. Cometa was experiencing. Mr. Cometa had informed counsel that he wanted to plead guilty and be executed "within 30 days." Nevertheless, counsel did not believe Mr. Cometa's statements necessarily meant he was incompetent to proceed. The district court then found that, despite the fact that Mr. Cometa refused to indicate understanding as to his charges and their associated penalties, he did indeed understand said matters.

At trial, Mr. Cometa's counsel requested a new inquiry into his client's competence on the basis of a