

In *Panetti*, the Court further defined its earlier holding in *Ford v. Wainwright*, 477 U.S. 399 (1986). While avoiding laying out a blanket standard for competence to be executed, the court allowed for a consideration of whether a defendant has a rational understanding of the reason for execution. Similarly, the *Reed* court noted that to waive the right to a direct appeal or PCR in South Carolina the defendant must meet the cognitive prong (i.e., “can understand the nature of the proceedings, what he or she was tried for, the reason for the punishment, or the nature of the punishment”) as well as the assistance prong (i.e., whether the convicted defendant possesses sufficient capacity or ability to communicate rationally with counsel) (*Singleton*, p 58). The court further pointed out that “this standard of competency is the same one required before a convicted defendant may be executed” (*Reed*, p 212).

Thus, although in *Reed* the court did not find the petitioner to be mentally incompetent, its consideration of whether his symptoms of mental illness would interfere with his ability to meet either the cognitive or assistance prong appears to be in line with the Supreme Court’s finding in *Panetti* 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 2862). *Reed*’s requirement that the individual understand “the reason for the punishment or the nature of the punishment” appears consistent with *Panetti*’s permissive reasoning. Of interest, in the waiver context, the South Carolina Supreme Court in *Reed* appeared willing to provide even more protection for convicted defendants than the long-accepted knowing, intelligent, and voluntary standard in finding that, although the court agreed that the defendant was competent to waive certain rights, it denied his motions to waive counsel and his right to appeal based on his lack of an adequate understanding of aspects of his case.

## Videotaped Confessions and Miranda Rights

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### A Videotaped Confession Upholds a Waiver of Miranda Rights as Knowing and Voluntary

In *Robinson v. United States*, 928 A.2d 717 (D.C. 2007), the District of Columbia Court of Appeals considered the appeal of Steven Robinson, who challenged his conviction for second-degree murder on the grounds that his videotaped confession was not made in a knowing or voluntary fashion and should not have been admitted into evidence by the trial court.

#### Facts of the Case

District of Columbia metropolitan police arrested Mr. Robinson for the murder of James Osborne, who had died of severe head trauma on August 7, 2001. At the time of the arrest, police detectives reportedly read him his *Miranda* rights, and he reportedly expressed his understanding of these rights and signed off on the card used by the police in explaining the rights. He did not ask for his attorney, and after signing the rights card, he agreed to an interview by detectives. During the interview, he admitted some culpability in the murder and agreed to a video recording of his statement.

Mr. Robinson filed a motion to suppress the videotaped statements made to police detectives. He claimed that he had invoked the right to an attorney and that he did not have the intellectual capacity to waive his *Miranda* rights knowingly and intelligently. He also claimed that there had been an unreasonable delay from the time of his arrest until his appearance before the court. At the pretrial suppression hearing, the prosecution presented expert testimony by a forensic psychologist, who opined that the defendant understood his *Miranda* rights at the time they were presented to him, on the basis of the appellant’s high score on the “Grisso *Miranda* Instrument,” the name given to an instrument developed to assess a defendant’s ability to understand and appreciate the *Miranda* rights (Grisso T: Instruments for Assessing Understanding and Appreciation of Miranda Rights. Sarasota, FL: Professional Resource Press, 1998). The defense presented testimony from two psychologists. The first testified that he read at less than a second-grade level and that his verbal IQ placed him in the “high end” of mental retardation. The second defense expert, a forensic psychologist, asserted that the appellant’s poor reading and comprehension skills made him incapable of understanding the rights card presented to him by the police

detectives. The expert asserted that the Grisso *Miranda* Instrument was not an accurate measure of the appellant's abilities at the time of his arrest, since it had been used one year after his arrest and videotaped statements.

The trial court denied the appellant's motion to suppress his statements to police. The court found that Mr. Robinson's waiver of his *Miranda* rights was knowing and intelligent, basing its decision largely on the appellant's videotaped statements. The court explained that the videotaped material was the "best evidence of [the appellant's] mental condition contemporaneous with the giving of the statement and [the appellant's] level of understanding at the time" (*Robinson*, p 722). It noted that the videotape did not show evidence of coercion and that the appellant appeared comfortable during his meeting with the detectives. In the video, he appeared to use complex vocabulary and showed an understanding of the seriousness of the meeting. The court ultimately supported the testimony of one of the detectives that the appellant did not show signs that he did not understand his *Miranda* rights. It further noted that the defense's forensic expert had not used the videotaped statement in his evaluation of the appellant's ability to waive *Miranda* rights and that the appellant's behavior during the five-day suppression hearing did not cast doubt on his ability to waive his *Miranda* rights.

At trial, the prosecution offered testimony from a witness who claimed that Mr. Robinson came to Mr. Osborne's home on the day of the murder, seeking to recover \$300 that was owed him. The witness claimed that he saw him running away from the victim's home with a bloody baseball bat. The deputy medical examiner for the District of Columbia testified that Mr. Osborne's death was the result of blunt force trauma to the head and neck. Mr. Robinson took the stand in the trial in his own defense. He testified that he had gone to Mr. Osborne's home on the day of the murder, and that Mr. Osborne had attacked him, prompting him to hit him with a bat in self-defense. He also testified that, at the time of his arrest, he had informed police detectives of his desire to speak with his attorney and that the detectives told him that he could not have his attorney present. He stated that he did not understand his *Miranda* rights when they were read to him by the detectives at the time of his arrest.

Mr. Robinson was convicted of second-degree murder. He appealed his conviction on the grounds that his videotaped confession was not made in a knowing or voluntary manner and that the trial court committed an error in allowing the video into evidence at trial. He asserted that the trial court's decision to allow the video was in violation of precedent set in *Di Giovanni v. United States*, 810 A.2d 887 (D.C. 2002).

#### *Ruling and Reasoning*

The District of Columbia Court of Appeals upheld the decision of the trial court. The court of appeals held that the trial court had considered the range of factors that establish whether a suspect has made a voluntary, knowing, and intelligent waiver of *Miranda* rights, including "prior experience with the legal system, evidence of coercion or trickery, cognitive ability of the suspect or delay between arrest and statement" (*Robinson*, p 725). The appeals court contrasted the facts in Mr. Robinson's case with those from its decision in *Di Giovanni*, in which it had concluded that the suspect's waiver of rights was neither voluntary nor intelligent, as the suspect was wet and cold during his interrogation and appeared to be "very slow" in cognitive function. In addition, there was evidence that the police officer had advised the suspect that counsel was not necessary or feasible. In the case of Mr. Robinson, the appeals court found that the facts were "readily distinguishable" from those of the earlier case. The videotaped statement showed an appellant who appeared to understand the information presented to him by the police detectives. He did not appear to be in distress, and he did not demonstrate any confusion or apparent cognitive problems. These circumstances were in marked contrast to those of the earlier case. The appeals court opined that the most important distinction between Mr. Robinson's circumstances and those in *Di Giovanni* was that unlike the instant case, the police officer had advised Mr. Di Giovanni that he did not think he needed a lawyer and that it was not feasible to bring one into the police station. There was no evidence of error or coercion by the detectives who interviewed Mr. Robinson, and the appellant verbalized an understanding of his *Miranda* rights from prior experience with the criminal justice system. Finally, the appeals court pointed out that he had scored at a very high level on the Grisso *Miranda* Instrument, achieving a perfect score on the subtest

that measures basic comprehension of *Miranda* rights.

Mr. Robinson also argued that the trial court had relied on evidence from an unreliable and biased witness. He asked the appeals court to overturn his conviction, claiming that without the testimony of this witness, there was insufficient evidence for a guilty finding. The court held that the determination of the credibility of the witness fell to the fact-finder in the trial court, the jury. As the appeals court did not find anything inherently incredible about the testimony of the witness, it found no basis for overturning the decision of the jury.

#### Discussion

*Miranda v. Arizona* established procedural safeguards to protect an individual's right against self-incrimination and right to counsel. This case highlights the reasoning used by the courts in determining whether a defendant's waiver of *Miranda* rights is knowing, intelligent, and voluntary. In deciding whether Mr. Robinson's confession met these conditions, the appeals court reviewed evidence related to his intellectual functioning, prior experience with the legal system, scores on Grisso's Instruments for Assessing Understanding and Appreciation of *Miranda* Rights, physical and emotional condition at the time of his confession, and the information presented to him by the detectives who interviewed him. Ultimately, the court identified the videotaped confession as the most compelling evidence that the defendant had, in fact, made a knowing, intelligent, and voluntary waiver of his rights. It pointed to the video as evidence that the appellant could understand complex words and concepts, and that he was not under duress at the time of his confession. It also noted his high score on the *Miranda* assessment instruments as further evidence of his comprehension of *Miranda* rights.

Forensic practitioners should take special note in this case of the weight the courts ascribed to the videotaped interview. The trial court found that the testimony of the experts was informative, as experts on both sides agreed that Mr. Robinson had learning disabilities, but that the videotaped confession was the "best evidence" of his mental condition. The case makes no mention of how or whether the appellant's experts tried to explain the discrepancies between their findings on cognitive testing (he reportedly bordered on mild mental retardation in reading and

spelling) and his apparent abilities during his videotaped interview. Given the potential power of a videotaped confession, it appears critical for the forensic practitioner to view such materials when formulating an opinion about competency.

The forensic experts on both sides of this case utilized the Grisso *Miranda* Instruments in assessing the competency of the appellant to waive *Miranda* rights. This instrument comprises a series of standardized instruments that assess an evaluatee's abilities to understand and appreciate the elements of the *Miranda* warnings. The instruments primarily address the "knowing" and "intelligent" aspects of waiving *Miranda* rights, as opposed to the "voluntary" component. Given the common usage of these instruments, the forensic practitioner should be familiar with their strengths and limitations.

## Guardianship and Autonomy in Decision-Making

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### **It Is Improper to Remove a Husband as Guardian Unless It Is Determined to Be in the Best Interest of the Ward and Based on a Firm Factual Foundation of Conflict of Interest**

In the case of *In re Penning*, 930 A.2d 144 (D.C. 2007), the District of Columbia Court of Appeals addressed the appointment of a guardian and conservator over the objection of an individual when there may have been a conflict of interest, and in so doing, examined evidentiary requirements to ensure that appointment of these decision-makers is in the best interests of the individual. In addition, the appellate court examined the lower court's decision on conflict of interest grounds to disqualify a law firm from serving as counsel. The appellate court held that the lower court abused its discretion in both areas because it made its rulings without a "firm factual foundation" and relied on suspicion alone.