

(Fla. 2010)). Rather, it mapped out a qualitative review of such factors, “considering the totality of the circumstances compared with other capital cases” (*Delgado*, p 982). Regarding the death penalty sentence, the court noted that the death penalty is proportionate only for those murders characterized as both the most aggravated and the least mitigated.

In its opinion, the supreme court discussed the two aggravating factors identified by the trial court: prior violent felony (moderate weight) and the victim was a law enforcement officer (great weight). The court allowed that the “law enforcement” aggravator was obviously very serious, but it held that the “prior violent felony” aggravator was less compelling in Mr. Delgado’s case, as it was “an act that did not result in an injury [and] was committed contemporaneous to the murder” (*Delgado*, p 982). Essentially, the court held that Mr. Delgado did not have actual “prior violent felonies.” The majority opinion then pointed out that the trial court had identified a total of 44 mitigators (3 statutory and 41 nonstatutory). The court concluded that, when compared with other capital murder cases, Mr. Delgado’s case was “one of the least aggravated and most mitigated of capital murders” (*Delgado*, 983). It held that the death penalty was disproportionate under the facts presented, and the case was remanded to the trial court with directions to impose a life sentence.

Discussion

In *Delgado*, the Supreme Court of Florida reviewed essential aspects of proportionality in capital sentencing cases. The court’s review sought to evaluate aggravating and mitigating factors in a qualitative manner. Several of the mitigators identified as having significant weight were at least related to mental health. These included that the murder was committed while Mr. Delgado was under the influence of extreme mental or emotional disturbance (substantial weight), that Mr. Delgado’s capacity to conform his conduct to the requirements of law was impaired (moderate weight), the reality that Mr. Delgado was homeless and under the stress of multiple psychosocial stressors (substantial weight), and that Mr. Delgado had a received a diagnosis of a disorder characterized by impulsivity (moderate weight). The courts’ disproportionality decision was based on a combination of reduction in one of the primary aggravating factors and the consideration of

mitigating factors, many of which involved mental health.

Delgado illustrates the ongoing importance of mental health testimony in educating courts on mental health concerns pertinent to capital sentencing. As there are often no predetermined criteria to define or limit mitigating evidence, great responsibility is placed on mental health evaluators to be as comprehensive as possible in their assessments. Forensic professionals are thus essential to the process of elucidating these factors for the courts. As clinical understanding of human behavior continues to advance, forensic psychiatrists should be aware of emerging knowledge that could qualify as mitigating evidence. Such an approach will provide the courts with a more complete picture of the defendant.

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Dismissal of Charges after Juvenile Found Not Competent to Stand Trial

Benjamin Lowenburg, MD
Fellow in Forensic Psychiatry

D. Clay Kelly, MD
Associate Professor of Psychiatry

Department of Psychiatry and Behavioral Sciences
Tulane University School of Medicine
New Orleans, LA

Charge of Possession of a Deadly Weapon on School Premises Sufficiently Meets the Definition of an “Act of Violence Against a Person,” Such That Charges Could Not be Dismissed

In *State ex rel. Smith v. Sims*, 772 S.E.2d 309 (W. Va. 2015), the Supreme Court of Appeals of West Virginia considered whether the circuit court erred in dismissing charges of possession of a deadly weapon on the premises of an educational facility after a 12-year-old defendant, J.Y., was found incompetent to stand trial. The West Virginia Supreme Court held that possession of a deadly weapon on the premises of an educational facility with the express intention to intimidate another student “involves an act of violence against a person,” as set forth in the definition of “violence,” and that the purpose of addressing it was in the reduction of future risk of harm to the public.

Facts of the Case

In September 2013, J.Y., a 12-year-old boy, took a semiautomatic pistol to his middle school. The prior evening, J.Y. had shown ammunition for the gun to other children. After one of the children tipped off the school, the principal asked J.Y. about the ammunition, and J.Y. admitted to having individual rounds in his pockets, as well as loaded magazines in his school locker. A search located the loaded magazines in his locker and the loaded gun in his backpack. Upon questioning from police, J.Y. revealed that he removed the pistol from his grandparents' house and took it to school with the intention of scaring a girl who had been bullying him. He was suspended from school and taken to a juvenile detention facility. He was charged by juvenile petition with the offense of possession of a deadly weapon on the premises of an educational facility (W. Va. Code § 61-7-11a(b)(1) (2014)). J.Y. was immediately suspended from school and taken to a juvenile detention center where he was placed on suicide watch, because he had also told the officer that he had the gun "to scare himself."

In December 2013, J.Y. was evaluated by a forensic psychologist. The psychologist reported that J.Y. had a full-scale IQ of 70 and was functioning at approximately the third-grade level. He concluded that J.Y. did not have "a rational, as well as factual, understanding of the proceedings against him" and was not competent to stand trial "due to his limited intellectual abilities and high distractibility." The psychologist further concluded that competency would not be easily restored and that it might take "one or two years of education." In March 2014, it was determined that J.Y. was not competent to stand trial and was not "substantially likely to attain competency within the next three months" (*Sims*, pp 311-12).

The circuit court then had to determine whether the charged behavior constituted an act of violence against a person. The W. Va. Code § 27-6A-3(g) (2013) states that if a defendant has been charged with a misdemeanor or felony that does not involve an act of violence against a person and is found not competent to stand trial, the charges would be dismissed (*Sims*, p 312). Conversely, W. Va. Code § 27-6A-3(h)(2013) states that if a defendant is found unlikely to regain competency for a misdemeanor or felony that does involve an act of violence against a person, the charges would not be dismissed. The per-

son would therefore be committed to a mental health facility under the court's jurisdiction until the expiration of the maximum sentence, unless the defendant attains competency to stand trial or the court dismisses the charge. The mental health facility would then provide an annual summary of the defendant's status to the court.

In response, the circuit court found that the charge did not constitute an act of violence and dismissed the charge against J.Y. In its finding, the circuit court cited that he had not shown the gun to anyone at school and had not "made any specific threats to, or against, anyone" (*Sims*, p 312). The state filed a writ of prohibition to the West Virginia Supreme Court contending that the circuit court had "abused its legitimate powers" by ruling that the charge did not involve an act of violence against a person.

Ruling and Reasoning

The West Virginia Supreme Court noted that at the time that the case came before the circuit court, the phrase "act of violence against a person" was not defined by statute or case law. In its ruling, the West Virginia Supreme Court referred extensively to *State v. George K.*, 760 S. E. 2d 512 (W. Va. 2014), which they had decided subsequent to the civil court's ruling. In *George K.*, Mr. K. was charged with offenses of third degree sexual assault and sexual abuse based on allegations that he had sex with his girlfriend's 15-year-old daughter. Mr. K. maintained that the victim voluntarily engaged in sexual intercourse with him and that the victim was within six weeks of the age of consent. Like J.Y., Mr. K. was found incompetent to stand trial, and the question was raised as to whether the alleged act constituted violence against another person.

In their appellate opinion in *George K.*, the West Virginia Supreme Court acknowledged the ambiguity of the definition of violence as set forth in W. Va. Code § 27-6A-3 (2013) and took steps to define it further. The court emphasized that the reason for evaluating whether a charge constitutes an "act of violence against a person" relates specifically to evaluating future risk of harm to the public by an incompetent person. Violence could be interpreted as "physical harm, severe emotional harm, or severe psychological harm to children" (*George K.*, p 525). In addition, the court asserted that "even if it was established that the child in this case did not and will not suffer any harm as a result of George K.'s acts, it

does not follow that another child subject to a similar encounter in the future would also not suffer severe harm” (*George K.*, p 525).

The supreme court found that, in J.Y.’s case, the circuit court should have viewed the risk of harm to other students rather than focusing on the fact that the incident did not specifically result in harm. Indeed, J.Y. had a loaded gun in his backpack, with additional magazines in his locker, and he had admitted to police on questioning that his intent was to use the gun to scare a girl who had been bullying him. Thus, that he did not show the gun or make any specific threats was immaterial. Rather his actions “posed a significant risk of harm to other students as well as personnel” (*Sims*, p 315). The court also pointed out that J.Y.’s intention was to use the gun to intimidate another student and, but for the actions of the principal, he would likely have succeeded.

The court granted the writ of prohibition and vacated the dismissal order by the circuit court. The appellate court held that possession of a deadly weapon at an educational facility with the intent to intimidate constitutes an act of violence. Thus, an incompetent defendant would have to be committed and remain under the supervision of the court. The court stated that the purpose of the commitment was twofold: obtaining necessary treatment for the defendant and safeguarding the public.

Discussion

In *Sims* the West Virginia Supreme Court formulated an approach for the management of incompetent, but potentially dangerous, juvenile defendants. The W. Va. Code § 27-6A-3(g)(h) (2013) already allowed for the classification and management of incompetent juvenile defendants on the basis of risk to the public. However, the legislature had not clearly defined the meaning of the phrase “act of violence against a person” contained within the act. Strictly constructed, such a phrase would seem to require, at the very least, an act of force or at least the threat of force, but in *George K.* and *Sims*, the court mapped out a much broader interpretation of the phrase. Instead of requiring actual harm, or the threat thereof, the phrase is instead construed in the sense of what harm might occur in the future, as a result of the ongoing risk the defendant poses to the public. This approach is more inherently paternalistic and more related to civil commitment rationales than criminal law approaches. Nevertheless, one might wonder

how the court would have ruled if J.Y. had simply possessed the weapon on school property, with no intent to harm a specific person.

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The Death Penalty and Intellectually Disabled Defendants

Tiffany Gartrell, MD
Fellow in Forensic Psychiatry

D. Clay Kelly, MD
Associate Professor of Psychiatry

*Department of Psychiatry and Behavioral Sciences
 Tulane University School of Medicine
 New Orleans, LA*

The Supreme Court of Mississippi Applies Recently Promulgated Standards of Intellectual Disability in a Determination of Whether a Criminal Defendant Is Intellectually Disabled for the Purposes of the Eighth Amendment

In *Chase v. State*, 171 So. 3d 463 (Miss. 2015), the Supreme Court of Mississippi considered whether the circuit court had made legal errors and had engaged in erroneous fact-finding in denying Ricky Chase postconviction relief from his death sentence because of his intellectual disability, in violation of the Eighth Amendment’s prohibition of cruel and unusual punishment. In *Atkins v. Virginia*, 536 U.S. 304 (2002), the United States Supreme Court held that states could individually define intellectual disability for the purpose of foreclosing the death penalty. The Supreme Court of Mississippi reviewed recently promulgated definitions of intellectual disability as well as procedures that trial courts should employ in making *Atkins* determinations.

Facts of the Case

On August 14, 1989, Ricky Chase and an accomplice robbed the home of an elderly couple in Hazlehurst, MS. During the robbery, Mr. Chase allegedly shot Elmer Hart in the head and killed him. His accomplice pleaded guilty and was sentenced to life in prison. Mr. Chase pleaded not guilty and underwent a trial in which he was found