ation and thorough assessment. In cases in which defendants face the loss not only of their liberty but also of their lives, the assessment of intellectual and cognitive capacity and rational choice about their defense merits meticulous attention, diligence, and analytical consideration.

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Special Considerations and Disposition for Persons With Intellectual Disabilities in the Criminal Justice System

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Developmentally Disabled Defendant Deemed Incompetent to Stand Trial and Dangerous Ordered Held in Protective Custody

In *In re M.A.*, 22 A.3d 410 (Vt. 2011), the Supreme Court of Vermont reviewed a trial court's decision to place a developmentally disabled defendant, who had been found not competent to stand trial for charges of sexually assaulting a minor, in the custody of the Commissioner of Disability, Aging, and Independent Living (DAIL).

Facts of the Case

In February of 2004, M.A. was arrested and charged with sexual assault and lewd or lascivious conduct with a child, following a police investigation into two reports of possible sexual abuse of a nine-year-old girl. The arrest was made after Mr. A. voluntarily agreed to go to the police station for an interview, during which he admitted to committing numerous sexual acts with the identified minor over the course of the previous three years, beginning when he was in his late 20s and the child was 6 years old.

During the four-hour videotaped interrogation, a detective employed a variety of techniques to elicit a confession, including pretending to be Mr. A.'s friend, reassuring him that he was not in custody or in trouble, and implying that it was acceptable for Mr. A. to engage in a sexual relationship with a minor as long as they were "in love." Near the conclusion of the interview, Mr. A. produced a love letter that he had written to the child that implied that he had some understanding that his relationship with her could land him in trouble.

Before his trial, Mr. A. attempted to suppress the statements that he had made during the interrogation as "involuntarily made and the result of oppressive interrogation techniques and his intellectual limitations" (*M.A.*, p 412). Based on the videotape of the interrogation and mental health experts' opinion, the district court denied this motion, concluding that although the interrogation had involved "intense" periods, it was not coercive nor were Mr. A.'s statements made under duress. The court also noted the "essential consistency" of his confession with the alleged victim's testimony. Ultimately, it held his confession to be voluntary.

At jury selection, the defense counsel questioned Mr. A.'s competency to stand trial. Dr. Paul Cotton, MD, a forensic psychiatrist, evaluated Mr. A. He noted that Mr. A.'s full-scale IQ was 52 and testified that, because of his intellectual limitations, he was "incapable of moving beyond a simple fact" and did not have a rational understanding of the trial process or plea agreements (*M.A.*, p 413). The court found him incompetent to stand trial and ordered a placement hearing.

At the placement hearing, during which both the detective and the alleged victim testified, the trial court found by clear and convincing evidence that Mr. A. had "committed sexual assaults and lewd or lascivious behavior" against the child and was "therefore a danger to others" (*M.A.*, p 413). Under Vermont's placement statute (Vt. Stat. Ann. tit. 18, § 8843 (2008)), he was placed in the custody of the Commissioner of DAIL. He appealed to the Supreme Court of Vermont.

Ruling and Reasoning

The Supreme Court of Vermont affirmed the district court's decision to place Mr. A. in the custody of the Commissioner of DAIL. Mr. A. argued two points: that the district court lacked jurisdiction and that there was insufficient evidence to support the finding that he presented a danger of harm to others.

On the first point, the court determined that the Vermont statutes clearly indicated that the criminal court had jurisdiction over his commitment proceedings. On the second point, the supreme court reviewed for clear error the lower court's finding that Mr. A. was a danger to others. It opined that, given the evidence presented—namely, the alleged victim's testimony corroborating Mr. A.'s confession, as well as the letter Mr. A. had written to the child declaring his love—the trial court might reasonably have concluded that he had engaged in lewd and lascivious conduct with the child and therefore posed a danger to others.

The court noted that Vt. Stat. Ann. tit. 13, § 4820(4) (2008) requires a hearing to determine whether a defendant who is found "incompetent to stand trial due to a mental disease or mental defect. . .should be committed to the custody of the commissioner of mental health." The basis for such placement is clear and convincing evidence of the "defendant's mental retardation, dangerousness to others, and availability of least restrictive appropriate treatment" (*M.A.*, p 414).

In writing the majority opinion, Judge Burgess dismissed Mr. A.'s claim that his confession was unreliable due to his developmental disability causing his will to be overwhelmed by sophisticated interrogation techniques, stating, "[T]here is no basis in either the law or the facts presented to conclude that defendant's cognitive limitations, standing alone, rendered his statements involuntary or unreliable" (*M.A.*, p 417).

While concurring with the majority decision to affirm the lower court's findings, Judge Johnson wrote separately to express his concern that neither district judge had sufficiently considered whether Mr. A.'s confession was voluntary and whether his intellectual disability made him overly susceptible to coercive interrogation tactics. The judge cited several examples from the interrogation where Mr. A. seemed to have been unwittingly led to make self-incriminating statements. The judge also referred to several cases in which experts had testified to the "heightened vulnerabilities and susceptibilities of defendants with mental retardation" to the type of interrogation tactics used in this case (*M.A.*, p 420) and asserted that the confession obtained during Mr. A.'s interrogation should have been suppressed. However, he ultimately opined that this suppression would not have changed the credibility of other case facts, which supported that Mr. A. had, at the very least, engaged in lewd or lascivious acts with a child and therefore posed a danger to others (*M.A.*, p 423).

Discussion

The Fourteenth Amendment and the Americans with Disabilities Act (Pub. L. No. 101-336, 104 Stat. 327 (1990), 42 U.S.C. § 12101 et seq.) both mandate that individuals with disabilities receive equal protection under the law. This case presents two interesting questions with regard to mentally disabled defendants.

First, should such individuals be afforded additional protections to ensure their Fifth Amendment rights against self-incrimination? Judge Johnson cited previous cases in which the Supreme Court of Vermont took care to protect the rights of juveniles. For instance, in *In re E.T.C*, 449 A.2d 937 (Vt. 1982), the court concluded that "the trial court was in error in not granting [a] juvenile's motion to suppress inculpatory statements" because an interested adult was not involved in the juvenile's waiving of his *Miranda* rights. In *State v. Piper*, 468 A.2d 554 (Vt. 1983), the court opined that those under 18 years of age are entitled to have an adult who is interested in their welfare present when agreeing to a custodial interrogation but that the protection does not apply to juveniles not in custody. Similarly, Mr. A. was not in custody and therefore not apprised of his *Miranda* rights, although his capacity to understand that he was not being detained was questionable. Judge Johnson's opinion diverges from the majority opinion, in that he compares Mr. A.'s status to that of a juvenile. He argues that, like a juvenile, Mr. A. lacked the capacity to understand the full consequences of his interrogation and confession, and, that, therefore, "[i]n the criminal context, this confession should have been suppressed" (*M.A.*, p 421).

Second, what are the disposition options for individuals with intellectual disabilities who commit criminal acts and are found incompetent to stand trial? *Jackson v. Indiana* (406 U.S. 715 (1972)) mandated that an individual found incompetent and not restorable to competency either be released or undergo the same civil commitment proceedings that would normally be required to for indefinite commitment. In the case under discussion, Mr. A. was committed in criminal court to the custody of the Commissioner of the DAIL. According to Vt. Stat. Ann. tit. 18, § 8843(c) (2008), if the court orders an

individual committed to the commissioner's custody, placement must be in the "least restrictive environment consistent with the respondent's need for custody, care and habilitation for an indefinite or a limited period." However, when states are forced to make such determinations, to what extent is the focus on care and habilitation versus custody and detention? For how long should Mr. A. be committed? The Commissioner of DAIL presumably faced several challenging decisions regarding the level of restriction to place on Mr. A. These decisions are complex and involve weighing the interests of society (i.e., public safety) against the interests of the defendant (i.e., treatment and rehabilitation). This case highlights the complexity of determining dispositions for defendants who are not easily restored to competence or are deemed unrestorable, especially when politically charged crimes are involved. It underscores the need for better research in predicting restorability and identifying how best to approach the care and custody of such individuals (Parker GF: The quandary of unrestorability. *J Am Acad Psychiatry Law* 40:141–6, 2012).

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Missouri Supreme Court Reverses Judgment on a Wrongful-Death Claim Following a Suicide

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Plaintiff's Suicide in a Personal Injury Case: Controversy Surrounding the Causation and Implications of Suicide

In *Kivland v. Columbia Orthopaedic Group*, 331 S.W.3d 299 (Mo. 2011), the Missouri Supreme Court clarified the role of suicide in a claim of wrongful death from alleged medical negligence. Specifically, the court set out to answer the question of whether voluntary suicide is considered a new and independent intervening act that breaks the causal connection between the alleged act of medical negligence and the death.

Facts of the Case

In January 2005, Gerald Kivland underwent surgery to correct a spinal curvature. Dr. Robert Gaines performed the operation. Afterward, Mr. Kivland was paralyzed from the waist down and experienced constant pain in the affected anatomic area.

He received increasingly powerful painkillers, without relief. Ultimately, a combination of a surgically implanted morphine pump, an antidepressant, and two antianxiety medications also proved ineffective at controlling his pain. In July 2005, Mr. Kivland filed a suit for medical negligence against Dr. Gaines and his employer, Columbia Orthopaedic Group, seeking damages for injury, disability, and suffering. His wife, Jana Kivland, sued for damages due to loss of consortium. Eight months after filing the medical negligence suit, Mr. Kivland committed suicide with a gun.

After his suicide, the lawsuit was amended by adding a wrongful-death claim on behalf of Ms. Kivland and Kristin Bold, Mr. Kivland's daughter. If the wrongful-death claim were deemed not viable, the Kivlands would proceed with the claims of medical negligence and loss of consortium.

The plaintiffs' expert witness, Dr. Michael Jarvis, chief medical director of inpatient psychiatry at Barnes-Jewish Hospital in St. Louis, testified at deposition that Mr. Kivland's suicide was a direct result of the pain from the surgery, that it was not based on a rational choice, and that it therefore was not voluntary.

The trial court granted Dr. Gaines' motion to strike Dr. Jarvis as an expert witness and ruled that the expert would be precluded from testifying at trial as to the cause of Mr. Kivland's suicide. The trial court observed that Dr. Jarvis' opinions were "personal, and not expert, opinions" (*Kivland*, p 312), because Dr. Jarvis did not offer any diagnosis that explained Mr. Kivland's behavior or described his becoming "insane and bereft of reason" (*Kivland*, p 307), which would have consequently caused his suicide to be involuntary. According to the court, the lack of medical diagnosis meant that there was no basis, "factually or scientifically," for Dr. Jarvis' opinions. The court noted that "for Dr. Jarvis to be qualified as an expert, he needed to rely on facts and data that were reasonably relied on by experts in the field