

Globally, there is a trend toward the abolition of the death penalty. In the United States, there has been a movement to exclude certain groups of individuals, such as the intellectually impaired, from the death penalty based on the Eighth Amendment to the U.S. Constitution (*Atkins v. Virginia*, 536 U.S. 304 (2002)). Individuals with impairments such as head injuries or major mental illnesses may represent a group of similarly situated individuals. This trend suggests an increasingly important role of the forensic psychiatrist or psychologist in identifying such individuals in capital cases.

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Miranda Considerations in Juvenile Defendants

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Evidence Used to Convict Juvenile Derived From Interrogation Obtained While Juvenile Was in Custody Deemed a Violation of His Fifth Amendment Rights by the Ninth Circuit Court of Appeals

In *United States v. I.M.M.*, 747 F.3d 754 (9th Cir. 2014), the Ninth Circuit reviewed the decision by U.S. District Court for the District of Arizona to convict a male juvenile for sexual abuse of a minor. He appealed, arguing that the court should have suppressed his statements under *Miranda*, because he had not been made aware of his rights. The Ninth Circuit considered the circumstances of his interrogation to determine whether he was held in custody at the time he made his self-incriminating statements. The court ultimately opined that his admission was sufficient to convict him, but it also decided that the circumstances under which he gave his testimony were coercive and in violation of his Fifth Amendment rights and reversed the district court's earlier decision, remanding the case for reconsideration.

Facts of the Case

I.M.M., a 12-year-old boy, was playing with his 6 year-old female cousin, M.M., and her 5 year-old brother on an Indian reservation in Arizona at the time of the alleged incident. Their grandfather found M.M. standing in front of the boys with her pants down. She told her grandfather, "They told me to take my clothes off," and then she began crying. M.M.'s mother became involved, and she reported at trial that M.M. had also told her, "[I.M.M.] made her do it." M.M. had not complained of pain and was not asked about what happened to her. She was not checked for signs of assault or taken to a hospital or police station for examination. The police interviewed the grandfather three weeks after the incident. Forensic interviewers took a statement from M.M. two weeks later, and her younger brother provided a statement two months after that.

At trial M.M.'s younger brother took the stand after being found competent to testify. He reported that he had seen M.M. and I.M.M. "having sex," though later admitted he did not know what having sex meant. He described M.M. as sitting on I.M.M.'s lap with both of their pants pulled down and, using euphemisms, related seeing I.M.M.'s penis being put in the part of M.M. that "pooops."

I.M.M. was interviewed by the police more than seven months after the incident. A plain-clothes detective picked up him with his mother and drove approximately 40 minutes to the police station. They were put in a small room, and the door remained closed the entire time I.M.M. was there. The detective did not read I.M.M. his *Miranda* rights, but I.M.M.'s mother signed a Parental Consent to Interview a Juvenile. She then waited in the lobby while I.M.M. was interviewed. The detective told I.M.M., who was 12 years old at the time, that he did not have to answer any questions if he felt uncomfortable. Although I.M.M. was in the sixth grade, he was in special-education classes and had a second-grade reading ability. He also had emotional problems from witnessing his father's attempt to kill his mother and may have been sexually abused by his father.

The detective spent approximately 1 hour questioning I.M.M.. Basic questioning revealed that I.M.M. did not know his own address. For nearly half the interrogation he denied that any sexual conduct had occurred. The detective used what he described as "deception," leading I.M.M. to believe

that his grandfather and M.M.'s younger brother both had reported seeing I.M.M. have sex with M.M. The detective suggested that I.M.M.'s disagreement with his grandfather's and the younger brother's accounts amounted to calling them both liars. In response to the interrogation, I.M.M. eventually stated he told M.M. to take off her clothes and sit on top of him at which time he put his "weenie" in her "butt." The defense filed motions before the trial to suppress these statements on the grounds of coercion and a *Miranda* violation. The district court concluded they were admissible and did not violate *Miranda*, because the boy had not been in custody and the statement was given voluntarily.

Ruling and Reasoning

The Ninth Circuit ruled that I.M.M.'s statements should have been suppressed, as he had not received a warning of his rights under *Miranda*. When police place an individual in custody, the coercion inherent in this situation heightens the risk that the person will not be accorded his Fifth Amendment rights against self-incrimination. I.M.M. was in custody, had not received a warning about his rights, and so could not consider whether he had waived them or not.

The Ninth Circuit used five factors from *United States v. Kim*, 292 F.3d 969 (9th Cir. 2002), to determine whether I.M.M. was in custody at the time of the interrogation. The circuit court determined that the degree to which he was confronted with evidence of his guilt, the amount of pressure used by the interrogator, and the setting and duration of the interrogation would have led a reasonable individual of his age to believe that he was in custody and not free to leave.

The Ninth Circuit also determined that I.M.M. was never read his *Miranda* rights and that the statements made by him should therefore have been suppressed. The detective conceded that he had not informed I.M.M. of his rights, and that failure would have made it impossible for I.M.M. to have waived those rights. This omission was a violation of principles set forth in *United States v. Murphy*, 703 F.3d 182 (2nd Cir. 2012), which determined that it does not suffice for an officer to give warning to an individual while merely standing near or within earshot, but that an officer must clarify the individual's choice to waive his rights under *Miranda*, and an individual in custody must be clearly informed of his rights.

The Ninth Circuit affirmed the lower court's decision to admit testimony of a seven-year-old witness (M.M.'s younger brother) and decided that the evidence introduced at trial was enough to support I.M.M.'s conviction for knowingly engaging in a sexual act with a minor who had not attained the age of 12. They determined that the lower court erred in admitting into evidence a statement obtained in violation of his Fifth Amendment rights. Based on the statements made by him, which were the sole evidence for his engagement in a sexual act with a minor, the Ninth Circuit held that the evidence supported his conviction; however, the lower court's decision was reversed and remanded, as his statements should have been suppressed because they had been obtained in violation of his *Miranda* rights.

Discussion

Recent Supreme Court cases have focused attention on the cognitive differences between juveniles and adults, placing special emphasis on the effect of maturity on decision-making and culpability. Neurobiology research suggests that adolescents, for example, may be more impulsive because of the still-developing executive function. As a result of the recognition of the distinctive differences in developing youths, the Supreme Court has in recent times abolished the death penalty (*Roper v. Simmons*, 543 U.S. 551 (2005)) and mandatory life sentences (*Miller v. Alabama*, 132 S. Ct. 2455 (2012)) for juveniles.

Stage of developmental maturity and cognitive ability should also come into play when considering juvenile *Miranda* rights. Applying the factors of *United States v. Kim* in the current case, it becomes evident that I.M.M. surely would have considered himself in custody when in the company of the detective. The concept of a "right" in itself may be incomprehensible to many children, as from a child's perspective, there are no absolute rights and parents and adults set strict limitations on what children can or cannot do. Therefore, there is a question of whether certain children might ever truly comprehend their *Miranda* rights. In the current case, with a 12-year-old defendant essentially functioning at the level of a child much younger, it is doubtful that he had the capacity to understand the concept of *Miranda* rights.

In addition, there is an unaddressed cultural undercurrent present in this case, as it is implied that

I.M.M. is a Native American. A history of strained relations between Native Americans and (presumably non-Native American) authority figures may have reinforced obedience on the part of I.M.M. and his mother, and contributed to a lack of appreciation of their “rights,” which have historically been violated and neglected by the dominant culture in the United States. From a cultural psychiatry standpoint, the silence on this cultural dynamic by the courts is interesting and deserves further exploration.

Ultimately, this case implies that closer scrutiny is warranted in future cases involving the application of *Miranda* to children and adolescents. Special consideration should be placed on determining such individuals’ capacity to comprehend their *Miranda* rights based on their developmental cognitive abilities.

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Brain Injury, Intellectual Disability, and the Death Penalty

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The Supreme Court of Missouri Denied a Petition of Habeas Corpus Citing That an Injury Causing Partial Loss of the Frontal Lobe Did Not Render the Defendant Incompetent to Receive the Death Penalty nor Did It Categorically Render the Defendant Ineligible for the Death Penalty Due to Intellectual Disability

In *State ex rel. Clayton v. Griffith*, No. SC94841, 2015 Mo. LEXIS 24 (Mo. 2015), the Missouri Supreme Court denied the petition for a writ of *habeas corpus* of the petitioner Cecil Clayton. Mr. Clayton contended that he was not competent to be executed because he had sustained a head injury resulting in the partial loss of one of his frontal lobes that qualified him as having an intellectual disability, making him ineligible for the death penalty under *Atkins v. Virginia*, 536 U.S. 304 (2002).

Facts of the Case

Mr. Clayton was convicted of first-degree murder of a law enforcement officer, Deputy Christopher Castetter. The crime occurred after a convenience store clerk witnessed an argument between Mr. Clayton and his girlfriend and called police. The Purdy, Missouri, police chief arrived, separated the couple, and ensured that they left the store separately. Within the hour, Mr. Clayton went to his girlfriend’s house, but she was not there. The girlfriend’s sister called the police and Deputy Castetter was dispatched to the scene. A few moments later, other deputies arrived and discovered that Deputy Castetter had been shot in the forehead. Mr. Clayton went to a friend’s house, confessed, and asked the friend to provide a false alibi. They returned to his residence. When police arrived, he was discarding an object into a pile of concrete blocks where the murder weapon was later found.

The crime was committed in 1996 when Mr. Clayton was 56 years old. At age 32, he had sustained a head injury while working at a sawmill when a piece of a log broke off and was lodged in his head. He lost nearly 8 percent of his total brain mass and 20 percent of a frontal lobe. His brother testified that after his injury, Mr. Clayton separated from his wife, began drinking, and became impulsive. He was also unable to work and more prone to violent outbursts. Mr. Clayton argued that his head injury rendered him blameless for the murder of the deputy and made him incapable of forming the specific intent to commit murder. After being found guilty, Mr. Clayton was sentenced to death.

Since his conviction, Mr. Clayton has filed four appeals: In *State v. Clayton*, 995 S.W.2d 468 (Mo. 1999) (*Clayton I*), Mr. Clayton’s conviction was upheld. In *Clayton v. State*, 63 S.W.3d 201 (Mo. 2001) (*Clayton II*), Mr. Clayton’s motion for postconviction relief was denied. In *Clayton v. Luebbers*, 2006 WL 1128803 (W.D. Mo. 2006) (*Clayton III*), Mr. Clayton’s federal petition for *habeas corpus* was denied. The decision from *Clayton III* was affirmed by the U.S. Eighth Circuit Court of Appeals in *Clayton v. Roper*, 515 F.3d 784 (8th Cir. 2008) (*Clayton IV*).

In this appeal, Mr. Clayton asserted three reasons that he should be granted a writ of *habeas corpus*. First, he claimed that he was incompetent to be executed under *Ford v. Wainwright*, 477 U.S. 399 (1986), *Panetti v. Quarterman*, 551 U.S. 930 (2007), and Mo. Rev. Stat. § 552.060.1 (2000). Second, he