

based upon negative perceptions from a prior proceeding, and that the state inappropriately considered and put weight on Mr. Cole's prior adjudication of competency.

Discussion

Writ of *habeas corpus* petitions in death penalty cases are governed by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), which limits both the procedural and substantive scope of the writ. Specifically, the law bans successive petitions by the same person and allows claims to succeed only when convictions are contrary to federal law and if there is an unreasonable determination of the facts in light of the evidence. In *Cole*, the majority frequently justifies its conclusions by finding that the state court decision was not based upon both unreasonable application and unreasonable determination of facts, a requirement of 28 U.S.C. § 2254.

When considering the case specifics of *Cole*, it is prudent to understand the implications of *Ford* and *Panetti*. In *Ford*, the majority opined that the Eighth Amendment prohibits infliction of the death penalty on an insane prisoner and that an evidentiary hearing should be held when the question of competence to be executed is raised.

In *Panetti*, general principles from *Ford* are recounted, but there are additional, albeit vaguely articulated, considerations. *Panetti* noted that the execution of a person with mental illness is cruel and unusual punishment. In addition, the Court held that after a substantial threshold showing for insanity is met, the defendant is afforded procedural due process. Further, the Court found that it is improper to adjudicate a petitioner's competency to be executed on factual understanding alone; competency to be executed also requires rational understanding, implying some degree of acceptance. For this reason, the *Panetti* Court found that an improperly restrictive competency test is an Eighth Amendment violation.

Cole is a progeny of *Ford* and *Panetti*. The United States Supreme Court decisions have clearly defined the right to be competent when executed, including a rational understanding of the reason for execution. The AEDPA, however, sets stringent requirements that federal courts must meet to overturn a state court's decision to sentence a person to death. The Eighth Circuit majority did not find that any determinations of the Missouri Supreme Court were both incorrect and unreasonable. The dissent argued that the determination that Mr. Cole had been found competent to stand trial al-

most 15 years earlier was minimally relevant and that the question at hand was whether Mr. Cole was entitled to a full hearing to determine his competency, not whether he was competent. Citing primarily *Ford v. Wainwright*, the dissent concentrated on the procedural shortcomings of the state court, evidenced by the rapid, and arguably incomplete, review of evidence without a formal hearing in an action *sua sponte*.

An evidentiary hearing would have been helpful in assessing Mr. Cole's incompetency claims, in light of the compelling arguments of the dissent. In this matter, the efficiency of the AEDPA goes against the due diligence suggested by *Ford* and *Panetti*. Given the irreversible nature of an adjudication of competency to be executed, a standardized formal review of incompetency claims and a mandatory evidentiary hearing for those who meet the "substantial threshold showing" of incompetency may be prudent. In *Cole* a highly complex legal determination was adjudicated without thorough examination of available evidence or consideration of the necessity of additional evidence and review.

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Analyzing Whether Mental Abnormality Negates a Culpable State of Mind at the Time of the Crime

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The Supreme Judicial Court of Maine Ruled that the Trial Court Correctly Analyzed Whether Evidence of Defendant's Mental Abnormality Negated His Requisite Culpable State of Mind

State v. Graham, 113 A.3d 1102 (Me. 2015), reviewed the decision of a trial court case in Maine in which James Graham was convicted of attempted kidnapping and assault. At trial, Mr. Graham presented evidence suggesting that he had a mental abnormality at the time of the offense that caused him to lack the requisite intent that was a key element of

the crime of attempted kidnapping. Mr. Graham contended that the trial court erred in analyzing his mental-abnormality defense.

Facts of the Case

On May 22, 2013, a woman drove her two-year-old grandson to meet up with her daughter, the child's mother, at a commuter parking lot in Maine. The grandmother and child arrived at the location first. The mother arrived at the lot and parked next to the grandmother. The mother was followed closely by a sport utility vehicle (SUV) that parked nearby. The driver of the SUV, James Graham, got out of the car and approached the grandmother's car. The grandmother was holding her two-year-old grandson when Mr. Graham grabbed the child's forearm and said angrily, "I'm taking him home with me tonight." The grandmother responded, "No, you're not," and Mr. Graham repeated himself. Maintaining his grip on the child, Mr. Graham said, "You don't understand. You have no choice. He's mine now. There's nothing you can do about it." Mr. Graham pulled forcefully on the child's forearm, but the grandmother maintained her hold on the child and ran away.

Mr. Graham yelled after the grandmother that she needed to repent and pray for forgiveness. The women told Mr. Graham that law enforcement officers were on their way. Mr. Graham responded, "You're going to wish you didn't do that," then got into his vehicle and drove away. Shortly thereafter, the mother and grandmother drove their cars on the interstate and Mr. Graham followed them in his car. His car was identified by Maine state troopers and he was pulled over and arrested. When the troopers arrested Mr. Graham, he was calm and complied with the troopers' orders. After obtaining a warrant, one of the troopers searched Mr. Graham's car and found a loaded semiautomatic handgun, brass knuckles, knives, an axe, a machete, paracord, cable ties, straps, and duct tape.

Mr. Graham was indicted on one count of attempted kidnapping and one count of assault. He underwent multiple psychological evaluations and was determined to be competent to stand trial. At his bench trial, Mr. Graham stated on the record that he had decided not to plead not guilty by reason of insanity. His defense argued that at the time of the parking lot incident, Mr. Graham had an abnormal condition of the mind that raised a reasonable doubt as to his intent to kidnap the child.

Mr. Graham was evaluated by one psychologist who testified that at the time of the incident Mr. Graham had a "psychotic break" that caused him to have a distorted perception of reality. This psychologist also testified that there was no evidence that Mr. Graham's "psychotic break" interfered with his ability to act with intent at the time of the incident. Mr. Graham was evaluated by a second psychologist who testified that Mr. Graham was experiencing "psychiatric symptoms" at the time of the incident, which "did not interfere with his . . . ability to engage in goal-directed, planful behavior" (*Graham*, p 1106).

The trial court found that Mr. Graham, because of his "impaired perception of reality," had an abnormal condition of the mind at the time of the incident. However, the trial court did "not find that Mr. Graham's apparent perception of reality raise[d] a reasonable doubt as to his intent to complete the offense of kidnapping" (*Graham*, p 1106). The trial court found that Mr. Graham engaged in "goal-directed, volitional actions" during the incident and concluded that the state had proved beyond a reasonable doubt that Mr. Graham had the requisite intent necessary for the crime of attempted kidnapping. Mr. Graham appealed to the Supreme Judicial Court of Maine regarding whether the trial court correctly analyzed his mental-abnormality defense.

Ruling and Reasoning

The Supreme Judicial Court of Maine ruled that the trial court correctly analyzed whether Mr. Graham's mental abnormality negated his ability to form the requisite intent for the crime of attempted kidnapping. In Maine, evidence of an abnormal condition of the mind can be used to raise a reasonable doubt as to the existence of formation of requisite intent. The trial court considered Mr. Graham's mental-abnormality defense and determined that the evidence of Mr. Graham's mental abnormality did not create a reasonable doubt to the allegation that he acted with requisite intent to kidnap the child. The trial court ruled that the state had proven beyond a reasonable doubt that Mr. Graham had the required culpable state of mind (i.e., he formed the requisite intent) for the attempted kidnapping and assault of the child.

The Supreme Judicial Court of Maine pointed out that just because a person has a mental condition does not mean that his conduct is not intentional. The statutory definition of intentional conduct focuses on the purposeful nature of the conduct and the actor's awareness of its consequences. The Su-

preme Judicial Court of Maine stated, “[I]n evaluating whether evidence of the defendant’s abnormal mental state raises doubt as to the intentional quality of the defendant’s actions, the fact-finder should consider the relationship between the defendant’s mental state and evidence that the defendant in fact acted purposefully and appreciated the consequences of his or her actions” (*Graham*, p 1108). The trial court held that Mr. Graham had a mental abnormality at the time of the incident, but he was acting intentionally at that time, despite the presence of that abnormality. The Supreme Judicial Court of Maine agreed with the way in which the trial court analyzed whether Mr. Graham possessed the requisite intent to commit attempted kidnapping and assault, viewing the evidence most favorable to the state.

Discussion

The holding of *State v. Graham* illustrates the point that having a mental abnormality at the time of an alleged crime does not automatically preclude a person from having a culpable mental state. An individual can be mentally ill when he commits a crime and still be held fully responsible for the crime, because he knew what he intended to do when he committed the criminal act. Compare this with the affirmative defense of pleading not guilty by reason of insanity. Just because a person may have a mental illness at the time of a crime does not mean that the person does not know the wrongfulness of his acts. In the same way, just because a person may have a “mental abnormality” at the time of a crime does not mean that he lacks intentionality (i.e., lacks the requisite criminal intent) in his acts.

The burden of proof for an insanity plea differs from the burden of proof for showing requisite criminal intent. Although the burden of proving insanity varies by state, it typically rests with the defendant. In contrast, the prosecutor always has the burden of proof with regard to whether a defendant formed requisite criminal intent. *State v. Graham* is a case in which the prosecution had to prove a culpable mental state for an attempted kidnapping. Attempted crimes, such as attempted kidnapping, are more difficult for the prosecution to prove requisite intent (compared with completed crimes), because the prosecution must show what is actually in the defendant’s mind at the time of the crime without the ability to show that the defendant committed the criminal act.

According to Maine’s laws, a person who has a mental abnormality at the time of the offense may not be capable of forming requisite intent. Most states allow evidence of a person’s mental disorder to be used in assessing a person’s culpable mental state at the time of the commission of a crime. Contrast this with *Clark v. Arizona*, 548 U.S. 735 (2006), a U.S. Supreme Court decision that allowed the state of Arizona to prohibit defendants from introducing evidence of mental illness to rebut evidence of requisite criminal intent. The decision in *Clark v. Arizona*, 548 U.S. 735 (2006), does not prevent states (e.g., Maine) from using mental health testimony to assist the trier of fact in determining a defendant’s ability to form requisite intent. *State v. Graham* is a clear example of a court weighing whether mental illness rebuts evidence of requisite criminal intent.

The determination of whether a mental abnormality impairs a person’s ability to form requisite criminal intent requires a thorough forensic mental health assessment, including an assessment of mental state at the time of the offense. Forensic psychiatrists and psychologists have the skills needed to perform these evaluations to assist the trier-of-fact to answer the ultimate issue in this type of case.

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Standard for the Disclosure of Mental Health Records When Damages Are Sought for Nonspecific Mental Disability and Mental Pain and Suffering

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Defendants Bear the Burden of Proof When Seeking Patient’s Waiver for Mental Health Records

In *Fagen v. Grand View University*, 861 N.W.2d 825 (Iowa 2015), the Iowa Supreme Court answered