

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

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### 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

guilty of capital murder by a jury and sentenced to death.

Mr. Chase appealed on grounds of errors related to the guilt and sentencing phases of his trial, and the Supreme Court of Mississippi affirmed his conviction and sentence on February 24, 1994. The Supreme Court of Mississippi denied rehearing on December 8, 1994. On August 7, 1997 the Supreme Court of Mississippi also denied his application for postconviction relief pursuant to the Uniform Post-Conviction Collateral Relief Act (Miss. Code Ann. § 99-39-1 to 99-39-29 (2007)).

Mr. Chase petitioned for a writ of *habeas corpus* with the United States District Court for the Southern District of Mississippi. The court denied relief but issued a certificate of appealability on the single question of Mr. Chase's trial counsel's handling of the evidence of Mr. Chase's intellectual disability. On August 7, 2003, the Fifth Circuit Court of Appeals affirmed the denial of *habeas* relief, and they also denied Mr. Chase's petition for panel rehearing and his petition for a rehearing *en banc*. Mr. Chase then petitioned the United States Supreme Court for a writ of *certiorari*, which the Court denied on May 17, 2004.

On May 20, 2004, the Mississippi Supreme Court granted Mr. Chase's application for an evidentiary hearing, based on the Supreme Court's ruling in *Atkins*. The circuit court conducted the hearing on August 16–17, 2010. The circuit court did not agree with the findings, methodology, or lack of more objective psychological testing of Mr. Chase's experts, Drs. Reschly, Gugliano, and O'Brien. The circuit court, relying more heavily on the testimony of the state's expert, Dr. Macvaugh, found that Mr. Chase was not intellectually disabled. Mr. Chase appealed and on January 15, 2013, the Mississippi Supreme Court vacated the lower court's ruling. The Mississippi Supreme Court asserted that the circuit court had simply adopted the proposed findings of fact and conclusions of law submitted by the state. The case was remanded, and the circuit court was instructed to "issue its own findings of fact and conclusions of law" (*Chase*, p 467).

On May 6, 2013, the circuit court again found that Mr. Chase was not intellectually disabled and denied his motion for reconsideration. Mr. Chase appealed once more to the Supreme Court of Mississippi.

### *Ruling and Reasoning*

On April 23, 2015, the Mississippi Supreme Court affirmed the circuit court's decision. In its majority opinion, the court related that it would affirm the circuit court's findings unless they were "clearly erroneous." The court held that the "circuit court did not clearly err by finding that Chase had failed to prove intellectual disability by a preponderance of the evidence" (*Chase*, p 477). The majority also held that the circuit court had not abused its discretion by denying Mr. Chase's motion for a new trial.

In its review, the Mississippi Supreme Court relied on definitions of intellectual disability promulgated by the American Association on Intellectual and Developmental Disabilities (AAIDD) in 2010 and the American Psychiatric Association (APA) in 2013. The court identified in Mr. Chase's appeal three questions:

... (1) whether the circuit court committed errors of fact and law in finding that Chase had not proven significantly subaverage intellectual functioning; (2) whether the circuit court committed errors of fact and law in finding that Chase had not proven significant deficits in adaptive functioning; and (3) whether the circuit court erred by denying Chase's motion for reconsideration without an evidentiary hearing to assess the credibility of those interviewed by Dr. Reschly (*Chase*, p 479).

The circuit court concluded that Mr. Chase had presented sufficient evidence of subaverage intellectual functioning (IQ 71) to warrant consideration of his adaptive functioning. Therefore, much of the opinion in *Chase* focused on the proper evaluation standards of adaptive functioning in individuals with subaverage intelligence. The Mississippi Supreme Court referenced its own opinion in *Goodin v. State*, 102 So. 3d 1102 (Miss. 2012), which held that intellectual disability must be assessed retrospectively, to some extent, because "definitions of mental retardation require onset before age eighteen" (*Goodin*, p 1115). Although many experts testified in the circuit court's hearing, the supreme court focused most of their opinion on the testimony of Drs. Reschly and Macvaugh. Dr. Reschly testified that Mr. Chase had significant deficits in all three adaptive functioning domains under the 2010 AAIDD definition (*Chase*, p 481). Dr. Reschly himself performed no testing of Mr. Chase but rather relied on school records, state hospital evaluations, social security records, and interviews with Mr. Chase's teachers, relatives, and friends, who knew Mr. Chase before age 18. Dr. Reschly testified that these interviews consis-

tently indicated that Mr. Chase had significant adaptive functioning deficits from an early age. The circuit court found that Dr. Reschly's conclusions about Mr. Chase's behavior were "based largely on personal opinions and moral judgment" (*Chase*, p 483). Mr. Chase had argued that *Goodin* required the trial court to accept the opinions of Dr. Reschly regarding the credibility of these witnesses. However, the Mississippi Supreme Court deferred to the circuit court as the "sole authority for determining credibility of the witnesses" (*Chase*, p 479).

Dr. Macvaugh's testimony was based on a broader review of evaluations and testing, but he did not conduct third-party interviews as part of his evaluation, as he had "sufficient information with which to reach a conclusion on the question of whether Chase was intellectually disabled" (*Chase*, p 487). This was the focus of the third part of Mr. Chase's appeal. Mr. Chase argued that the circuit court should have reopened the proceedings to hear testimony from these third parties, but the Mississippi Supreme Court ruled that the circuit court did not abuse its discretion by denying Mr. Chase's motion for a new trial.

### Dissent

Three justices joined in a dissenting opinion that disagreed with the majority's conclusions as to the import and veracity of Dr. Reschly's third-party interviews. The dissent asserted that Dr. Reschly had actually correctly followed the guidelines as to "third party interviews" outlined in *Goodin*. More fundamentally, the dissent opined that the current *Atkins* approach that relies on the mental health community to inform the court is flawed. The dissent asserted that:

...a person at age thirty, but before his crime, who suffers a brain injury that results in a 60 I.Q. and severe deficits in two or more areas of social function, is currently eligible to be sentenced to death, simply because his mental disability did not manifest prior to age eighteen [*Chase*, p 494].

The dissenters called for a "judicial definition of intellectual disability that meets constitutional concerns" (*Chase*, p 494).

### Discussion

The Mississippi Supreme Court did not find that the circuit court erred by finding that Mr. Chase had failed to prove intellectual disability by a preponderance of the evidence. However, the court asserted that, since *Atkins* had left the matter of methods or procedures of intellectual disability determination in

capital cases to the states, and since "our Legislature [has] not undertaken that task," the court itself would have to outline such procedures. Citing their own opinion in *Thorson v. State*, 76 So. 3d 667 (Miss. 2011), the court held that for capital defendants to qualify for an *Atkins* defense, they must prove by a preponderance of the evidence that they have significantly subaverage intellectual functioning manifesting before age eighteen, as well as deficits in two or more adaptive skills, and that they are not malingering. The court opined that the trial court had not engaged a "depth of investigation" necessary for assessing intellectual disability for the purposes of *Atkins* (*Chase*, p 486). In reality, in capital case intellectual disability evaluations, in which the defendant's IQ is borderline, as in *Chase*, there is probably no "depth of investigation" sufficient to satisfactorily address the court's concerns. Courts understandably want a concrete, reasonably precise answer in these cases, but in borderline cases, the desire for concrete solutions is misplaced. Although much progress has been made, the current neuroscientific understanding of phenomena such as "functionality" and cognition is limited. The aforementioned standards promulgated for the evaluation of intellectual disability are inherently abstract and lack the precision that courts understandably prefer.

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## Forced Medication to Restore Competency

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### Involuntary Antipsychotic Medication Order to Restore Defendant's Competence to Stand Trial Upheld Using Sell Criteria

In *United States v. Ruark*, 611 F. App'x 591 (11th Cir. 2015) the United States Court of Appeals for the Eleventh Circuit affirmed the district court's decision to medicate an inmate involuntarily with psychotropic medication for the purpose of rendering