

offense or his competency to stand trial were significant factors” (*Ward*, p 553). The majority opinion concluded that *McWilliams* did not establish new law or answer the question that Mr. Ward was relying on in seeking relief in his motion.

**Dissent**

The dissent in this case argued that other jurisdictions have interpreted the minimum *Ake* requirements differently, citing, “a ‘neutral’ court psychiatrist does not satisfy due process” (*Smith v. McCormick*, 914 F.2d 1153, 1158 (9th Cir. 1990)). The dissent pointed out that in *Ake*, the U.S. Supreme Court asserted that once there is a preliminary finding that the defendant’s mental condition is likely to be a significant factor at trial, that the defendant is indigent, and that the mental condition was relevant to the punishment that the defendant might suffer, then the state must “at a minimum assure the defendant access to a competent psychiatrist who will conduct an appropriate examination and assist in evaluation, preparation, and presentation of the defense” (*Ake*, p 83). In *McWilliams*, the Court opined that Alabama met the examination portion of the *Ake* requirement; however, it had not met the requirement of the mental health expert assisting the defense. The mental health expert did not help the defense prepare examination of witnesses or testify at the hearing, and therefore fell short of *Ake* requirements. The dissent held that Arkansas similarly fell short of the minimum *Ake* requirements, given the Court’s holding in *McWilliams*. Although the dissent did recognize the state’s attempt to evaluate Mr. Ward, it opined that it neglected to fulfill the additional *Ake* requirements. The state’s mental health experts did not assist the defense in evaluating their mental health report, translating this report into legal strategy for the defense, preparing its arguments in regard to Mr. Ward’s defense, or help to prepare direct examinations or in testifying for the defense. The dissent additionally pointed out that the state’s mental health expert who attempted to evaluate Mr. Ward actually testified for the state and not for the defense. The dissent wrote that in *McWilliams* the U.S. Supreme Court held that more is required in *Ake* than what Mr. Ward received.

**Discussion**

In *Ward v. Arkansas*, the Arkansas Supreme Court ruled that Mr. Ward was not entitled to a recall of the mandate of his resentencing in light of the contro-

versial U.S. Supreme Court decision in *McWilliams*. For the forensic evaluator who participates in death-penalty litigation as a defense expert, it will be necessary to understand the complexity of one’s role. The psychiatric expert must follow the principles of striving for objectivity and honesty, while respecting the defendant’s expanded constitutional right to have a mental health expert who not only completes an evaluation and assessment but may be placed in the role of consultant as a member of the defense team, participating in strategic planning and presentation of mitigation, while adhering to foundational ethical principles consistent with the role of a forensic expert.

**Mandatory Life Imprisonment, Adjudication of Competence to Stand Trial, and Developmental Disability**

**Anne Wagner Spina, MD**  
*Resident in Psychiatry*  
*Department of Psychiatry*  
*Wayne State University*  
*Detroit, MI*

**Lisa Anacker, MD**  
*Fellow in Forensic Psychiatry*

**Debra A. Pinals, MD**  
*Clinical Professor of Psychiatry*

*Program in Psychiatry, Law, and Ethics*  
*Department of Psychiatry*  
*University of Michigan*  
*Ann Arbor, MI*

**Life Imprisonment of Defendants with Developmental Disability Is Not Considered Cruel and Unusual Punishment Under the Eighth and Fourteenth Amendments and Competence to Stand Trial Is a Judicial Determination**

DOI:10.29158/JAAPL.3797L4-18

In *Commonwealth v. Jones*, 479 Mass. 1 (2018), the Massachusetts Supreme Court concluded that sentencing a defendant with developmental disability to life in prison without the possibility of parole does not constitute cruel and unusual punishment under the United States Constitution or under the Massachusetts Declaration of Rights. In addition,

the court determined a judge did not abuse his discretion in finding a defendant competent to stand trial despite expert witnesses' testimony to the contrary. Mr. Ryan Jones, the defendant in this case, had raised these two arguments to appeal his conviction of murder in the first degree. The court affirmed his conviction.

#### *Facts of the Case*

A jury indicted Mr. Jones of murder in the first degree in August 2006 for the July 2006 murder of Valerie Oransky. Mr. Jones had maintained employment as a restaurant dishwasher for over three years and had "generally satisfactory" performance except for disagreements with his manager, Ms. Oransky (*Commonwealth*, p 4). Mr. Jones reportedly told employees at the restaurant about his frustrations with Ms. Oransky, and even indicated to a coworker that he would "stab or strangle" Ms. Oransky (*Commonwealth*, p 4). Ultimately, Ms. Oransky was found stabbed, strangled, and beaten in the restaurant bathroom after Mr. Jones and the victim were seen walking to the bathroom together. Mr. Jones initially attributed the stabbing to a masked assailant, but soon admitted to attacking Ms. Oransky himself.

Mr. Jones pled not guilty, with a planned defense of not guilty by reason of insanity secondary to a developmental disability. Mr. Jones' testing as a youth, which was reviewed during forensic examination, revealed that he tested in the borderline to low-average range on intelligence quotient (IQ) tests, but reportedly demonstrated significant impairment in "language processing and verbal communication and understanding" from a young age (*Commonwealth*, p 8). Mr. Jones identified his disability as secondary to an organic brain injury obtained as sequela from childhood spinal meningitis and seizure disorder, as well as a diagnosis of pervasive developmental disorder not otherwise specified (though this diagnosis is used in this case, we note that this is now classified as autism spectrum disorder in DSM-5). In addition to his planned defense, at various points throughout criminal proceedings, Mr. Jones asserted he was not competent to stand trial, also secondary to his developmental disability.

Mr. Jones had five competency hearings in the Superior Court, including four pretrial hearings between 2007 and 2010 and one mid-trial hearing in 2010. He was found competent to stand trial by judges at all of the hearings except for the second. Of

note, at his third competency hearing, expert witnesses for both the defense and prosecution suggested Mr. Jones was not competent to stand trial, yet the judge in that hearing did find him competent based on a preponderance of the evidence, the standard needed for such a determination in the Commonwealth of Massachusetts. Eventually, after all of his competency hearings, his trial proceeded and he was convicted of murder in the first degree.

Mr. Jones subsequently appealed this verdict with two claims: first, that the judge who heard his third competency hearing erred in finding him competent to stand trial given testimony from both prosecution and defense expert witnesses that suggested he was not competent; and second, that a mandatory life sentence in prison without possibility of parole for a defendant with developmental disability constituted cruel and unusual punishment that violated both state and federal constitutional rights. He asked the court to extend *Atkins v. Virginia*, 536 U.S. 304 (2002), which found it is unconstitutional to sentence defendants with intellectual disability to death. He also cited juvenile cases to support his argument, such as *Miller v. Alabama*, 567 U.S. 460 (2012), which ruled mandatory sentence of life in prison without the possibility of parole for juveniles who commit murder is unconstitutional.

#### *Ruling and Reasoning*

The court affirmed the original conviction and did not grant Mr. Jones' appeal.

The court ruled that the judge at Mr. Jones' third competency hearing did not abuse his discretion in finding him competent to stand trial despite expert witness consensus suggesting the contrary. The court concluded that the determination of a defendant's competency is "ultimately a legal, not a medical, judgment" and that a judge can, in addition to considering expert testimony, also use his own "observations of the defendant's demeanor and behavior" (*Commonwealth*, p 14). The court noted the judge at the third hearing used the correct competency standard, appropriately placed the burden on the Commonwealth to prove the defendant's competency by a preponderance of the evidence, and also wrote a detailed memorandum explaining the reasons for his conclusions. Finally, the court remarked that competency is best measured closest to the time of the trial, and noted that Mr. Jones had two subsequent competency hearings after the third hearing in ques-

tion that also found him competent to stand trial, including a mid-trial hearing that reflected his competence during the actual trial and thus was a close example of his competence at a time of greatest demand. Therefore, the court found no error on the third judge's determination of competency.

Regarding Mr. Jones' second contention, the court found that it was not cruel and unusual punishment to mandate a defendant with developmental disability to life in prison without the possibility of parole. They noted that when deciding whether a punishment is cruel and unusual, courts often look to society standards and previous legislation, and they remarked that previous courts have declined to extend *Atkins* to prohibit mandatory sentences of life without parole for people with intellectual or developmental disabilities, though these were largely in unpublished opinions (*Commonwealth*, p 17). The court also commented on the differences between the death penalty and life imprisonment, observing "the concerns are less extreme" when facing life in prison versus the death penalty (*Commonwealth*, p 18). In addition, the court declined to equate the protection of juvenile defendants to adult defendants with developmental disability, noting that to do so would require "significant extrapolation from existing precedent" and also remarking that the prospect of rehabilitation may be less for adult defendants with developmental disabilities compared with juveniles (*Commonwealth*, p 16). The court noted that the adolescent brain is still developing, leading to impulsive behavior and a better prospect of rehabilitation, whereas developmental disability is an "immutable condition" (*Commonwealth*, p 17).

*Discussion*

*Commonwealth* addresses two key points that are of interest to the forensic psychiatrist. First, the case is a reminder that competency is a legal, not a clinical, decision. The trier of fact is not obligated to follow recommendations from expert medical testimony, even if multiple experts agree. *Commonwealth* also mentions basic components of competency determinations, reiterating the fluidity of competency and that it may change with variations in mental condition, treatment, and education. In addition, *Commonwealth* explains further that competency can shift throughout legal proceedings. When there are multiple competency hearings, each must be conducted *de novo*, and although past data may be relevant, evaluators and judges must

look at the facts as they present at the time. In this case, the court also highlighted that observations made closest to the time of trial will have weight that may be more significant than an individual's competence prior to trial proceedings.

*Commonwealth* also takes the position in its determination that mandating a defendant with developmental disability to life in prison without possibility of parole does not constitute cruel and unusual punishment. Clinically, it is noteworthy that *Atkins v. Virginia* was referenced in the defendant's arguments on this point, although that case involved an individual with an intellectual disability. In *Commonwealth*, the case revolved around an individual who primarily had a developmental disability, and clinicians should be attuned to these differences. Courts may or may not distinguish these constructs in their rulings. Regardless, *Commonwealth* considers some of their similarities and differences and declined to extend *Atkins* in this case, focusing instead on distinguishing execution of defendants from life sentences in prison. They note the immutability of developmental disabilities, and similarly declined to extend the findings related to juveniles and life sentences without parole to individuals with developmental disabilities. Of interest, however, the court references society's evolving standards, and one wonders whether evolving standards pertaining to the incarceration of individuals with developmental disabilities will shift over time.

## Cruel and Unusual Punishment in Juvenile Sentencing

**Jennifer Baumhauer, MD**

*Resident in Psychiatry*

**Elissa Benedek, MD**

*Clinical Professor in Psychiatry*

*Program in Psychiatry, Law, and Ethics*

*Department of Psychiatry*

*University of Michigan*

*Ann Arbor, MI*

### The Functional Equivalent of Life Without Parole for Juvenile Nonhomicide Offenders Constitutes as Cruel and Unusual Punishment

DOI:10.29158/JAAPL.3797L5-18

In the case of *People v. Contreras*, 4 Cal.5th 349 (2018), the Supreme Court of California considered