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An intellectual disability should make a person ineligible for the death penalty.

Cecil Clayton suffered a sawmill accident at the age of thirty-two.¹ He was sawing a log, when a piece of wood broke off and lodged in his head.² Clayton required surgery to remove the piece of wood, in which he lost almost eight percent of his brain and twenty percent of a frontal lobe. Clayton was convicted of capital murder of a sheriff deputy in the State of Missouri in 1996³, twenty four years after the accident. Clayton received a death sentence for that crime.⁴ Clayton appealed the death sentence claiming that he was intellectually disabled due to his brain injury.⁵ The issue here is whether Clayton should be ineligible for the death penalty for a crime he committed after suffering such a great brain injury.

Defining “Intellectual Disability”

Intellectual disability has been used many times as a defense in the court rooms. By using this defense, defense attorneys are asking for the capital punishment to be reduced claiming that their defendant was not competent, and imposing the capital punishment would be unconstitutional by inflicting cruel and unusual punishment.⁶ To better understand this defense, we would need to know what is defined as an intellectual disability. The term intellectual disability, also referred to as “mental retardation,” is defined as “a significant impairment in

¹ State ex rel. Clayton v. Griffith, (2015) Mo. LEXIS 1 at 4

² State ex rel. Clayton v. Griffith, (2015) Mo. LEXIS 1 at 4

³ State ex rel. Clayton v. Griffith, (2015) Mo. LEXIS 1 at 4

⁴ State ex rel. Clayton v. Griffith, (2015) Mo. LEXIS 1 at 1

⁵ State ex rel. Clayton v. Griffith, (2015) Mo. LEXIS 1 at 5

⁶ USCS Const. Amend. 8

intellectual ability accompanied by deficits in skills necessary for independent daily functioning.”⁷ The California Penal Code defines intellectual disability as “a condition of significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before 18 years of age.”⁸

Sub-average IQ of an Offender a Mitigating Factor in Death Penalty Cases

Daryl Renard Atkins was sentenced to death after being convicted of capital murder, abduction, and armed robbery.⁹ Atkins defense appealed the death sentence in the Supreme Court of Virginia.¹⁰ The defense relied on testimony of a forensic psychologist, Dr. Evan Nelson, concluded that Atkins was “mildly mentally retarded.”¹¹ Dr. Evan Nelson based his diagnosis on testimonies of Atkins’ acquaintances, school and court records, and the results of a standard intelligence test that indicated Atkins had an IQ of 59.¹² The Supreme Court of the United States granted certiorari.¹³ After reviewing the case, the higher court concluded that mental retardation does not only require someone to have a sub-average intellectual functioning, but that the individual had significant limitations in adaptive skills. The American Association of Mental Retardation (AAMR) defines mental retardation as follows: "Mental retardation refers to substantial limitations in present functioning. It is characterized by significantly sub-average intellectual functioning, existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work. Mental

⁷ "Intellectual Disability." Merriam-Webster.com. Merriam-Webster

⁸ California Penal Code Section 1376

⁹ Atkins v. Virginia, (2002) 536 U.S. 304, at 307

¹⁰ Atkins v. Virginia, (2002) 536 U.S. 304, at 310

¹¹ Atkins v. Virginia, (2002) 536 U.S. 304, at 308

¹² Atkins v. Virginia, (2002) 536 U.S. 304, at 308-309

¹³ Atkins v. Virginia, (2002) 536 U.S. 304, at 310

retardation manifests before age 18.¹⁴ Mentally retarded individuals have a lower capacity to have logical reasoning, control impulses and process information.¹⁵ These behavioral impairments make a mentally retarded defendant less morally culpable. If the offender has less culpability, the death penalty is not a suitable punishment. The court also held that the execution of criminals who suffer mental retardation was excessive and unusual, which is prohibited by the Eighth Amendment of the United States Constitution.¹⁶ The Supreme Court of the United States reversed and remanded the Supreme Court of Virginia's decision.¹⁷

Intellectual Disability Caused by a Brain Injury

Cecil Clayton appealed his death sentence in the Supreme Court of Missouri. Clayton's appeal relied on the claim that Cecil suffered from an intellectual disability due to a head injury he received 24 years prior to the crime.¹⁸ According to testimony from family members Clayton's behavior changed after the accident.¹⁹ A defense expert testified that Clayton suffered a loss of almost eight percent of his brain and twenty percent frontal lobe, and this made him incapable of deliberating, planning, or otherwise reflect on a murder when agitated.²⁰ The court rejected Clayton's claim of intellectual disability because during trial, Clayton did not argue his sanity at the time of the murder nor that he was incompetent to stand trial.²¹ The court also rejected Clayton's claim of intellectual disability because the defense failed to show he was actually incompetent.²² The court gave no weight to Clayton's expert witness psychologist Dr.

¹⁴ *Atkins v. Virginia*, (2002) 536 U.S. 304, at 308

¹⁵ *Atkins v. Virginia*, (2002) 536 U.S. 304, at 320

¹⁶ *Atkins v. Virginia*, (2002) 536 U.S. 304, at 321

¹⁷ *Atkins v. Virginia*, (2002) 536 U.S. 304, at 321

¹⁸ *State ex rel. Clayton v. Griffith*, (2015) Mo. LEXIS 1 at 4

¹⁹ *State ex rel. Clayton v. Griffith*, (2015) Mo. LEXIS 1 at 4

²⁰ *State ex rel. Clayton v. Griffith*, (2015) Mo. LEXIS 1 at 4

²¹ *State ex rel. Clayton v. Griffith*, (2015) Mo. LEXIS 1 at 6

²² *State ex rel. Clayton v. Griffith*, (2015) Mo. LEXIS 1 at 6

Foster's testimony about Clayton not being competent.²³ Dr. Foster's testimony contradicted the claim that Clayton was incompetent at the time of his trial, because Dr. Foster testified that Clayton was fully aware of what was going on and that he understood what he was being charged with, the role of the judge, the juror and his own attorney in the process.²⁴ The court relied on another expert witness Dr. Preston's report in which the results found that Clayton was competent.²⁵ Clayton's final argument to claim an intellectual disability, was that he has a significantly sub-average IQ and suffered a lack of adaptive skills.²⁶ Clayton claimed that this would make him categorically ineligible for the death penalty under *Atkins*.²⁷ School records and other evidence showed that Clayton had an average IQ or better, before the age of eighteen and continued until his brain injury in 1972. Missouri law states that the term intellectual disability is a condition involving substantial limitation in general functioning by having significantly sub-average intellectual functioning which is manifested before eighteen years of age.²⁸ Clayton would not be considered intellectually disabled under Missouri law. The Missouri Supreme Court reached a majority decision and affirmed the death sentence of Cecil Clayton.²⁹

Claim of Intellectual Disability Linked to Drug Use

In 2009, a man named Jeremiah Jackson, murdered Tracy Pickryl and attempted to murder Christy Diaz during the course of six robberies, and other crimes in three different counties in the State of Ohio.³⁰ Jackson was convicted of capital murder and attempted murder along with many other charges.³¹ Jackson received a death sentence.³² His defense appealed the

²³ State ex rel. Clayton v. Griffith, (2015) Mo. LEXIS 1 at 9

²⁴ State ex rel. Clayton v. Griffith, (2015) Mo. LEXIS 1 at 10

²⁵ State ex rel. Clayton v. Griffith, (2015) Mo. LEXIS 1 at 30

²⁶ State ex rel. Clayton v. Griffith, (2015) Mo. LEXIS 1 at 46

²⁷ State ex rel. Clayton v. Griffith, (2015) Mo. LEXIS 1 at 46

²⁸ § 565.030.6 R.S.Mo. Supp 2013

²⁹ State ex rel. Clayton v. Griffith, (2015) Mo. LEXIS 1 at 50

³⁰ State v. Jackson, (2014) 141 Ohio St. 3d 171, at 171

³¹ State v. Jackson, (2014) 141 Ohio St. 3d 171, at 179

death sentence on the claim that Jeremiah was intellectually disabled due to a low IQ and drug abuse.³³ Jackson's defense hired clinical psychologist and mitigation expert, Dr. Fabian who interviewed Jackson on numerous occasions and conducted testing.³⁴ Dr. Fabian concluded that Jackson suffered from a cognitive disorder and functions in the borderline range of intelligence.³⁵ Intelligence-test results showed that Jackson had a 75 IQ.³⁶ Dr. Fabian testified that Jackson reported that he had smoked marijuana and PCP the day of the murder and that he had used alcohol and cocaine prior to the offense.³⁷ Dr. Fabian testified about the link between substance abuse and murder and about the likelihood of drugs and alcohol being involved in homicide cases. Dr. Fabian also testified the symptoms of individuals suffer under the effect of PCP.³⁸ He stated that they can hallucinate, feel paranoid, and be delusional.³⁹ Dr. Fabian's testimony failed to link drug abuse to having a low IQ that could have lead him to violence and commit the crime. Jackson also based his appeal on the claims that he suffered headaches during the waiver inquiry and that he had complained to the trial court that he was delusional.⁴⁰ Jackson argues that his defense counsel raised the question that he had a psychological problem.⁴¹ Because of these claims, the prosecution requested that an Atkins hearing be held since such test must be conducted during the trial and not later.⁴² Dr. Michael Aronoff conducted a competency and sanity evaluation of Jackson.⁴³ Dr. Aronoff testified that Jackson has an IQ of 87 and that none of the records that were provided to him suggested that Jackson suffered a mental retardation

³² State v. Jackson, (2014) 141 Ohio St. 3d 171, at 179

³³ State v. Jackson, (2014) 141 Ohio St. 3d 171, at 206

³⁴ State v. Jackson, (2014) 141 Ohio St. 3d 171, at 212

³⁵ State v. Jackson, (2014) 141 Ohio St. 3d 171, at 214

³⁶ State v. Jackson, (2014) 141 Ohio St. 3d 171, at 215

³⁷ State v. Jackson, (2014) 141 Ohio St. 3d 171, at 216

³⁸ State v. Jackson, (2014) 141 Ohio St. 3d 171, at 214

³⁹ State v. Jackson, (2014) 141 Ohio St. 3d 171, at 214

⁴⁰ State v. Jackson, (2014) 141 Ohio St. 3d 171, at 205

⁴¹ State v. Jackson, (2014) 141 Ohio St. 3d 171, at 205

⁴² State v. Jackson, (2014) 141 Ohio St. 3d 171, at 181

⁴³ State v. Jackson, (2014) 141 Ohio St. 3d 171, at 183

before the age of 18, as the Atkins test requires.⁴⁴ Jackson argued that the Atkins hearing was unfair and that it was only done to show he was not mentally retarded.⁴⁵ When in fact, the Atkins test was conducted to give him a fair trial and to ensure the appropriate proceeding to trial with a potential death sentence. The Atkins test would have been favorable to the defense if the results showed Jackson was mentally disabled as they claimed. Although drug abuse may be linked to intellectual disability and lead to violence, it does not make an offender ineligible for the death penalty. Based on all the facts, the Supreme Court of Ohio affirmed the conviction and death sentence of Jeremy Jackson.⁴⁶

IQ Score Alone is Not Sufficient to Prove Intellectual Disability

Hall v. Florida

In California, Kevin Dewayn Boyce also argued that he should not receive a death sentence following his conviction of first degree murder, claiming that he was mentally disabled. In 1997, the defendant and an accomplice robbed two businesses and the people inside.⁴⁷ During the robbery of the first business, while he was robbing the people inside the business, Boyce discovered that one of the victims was an off-duty sheriff's deputy who worked at a facility where Boyce had been previously incarcerated.⁴⁸ Boyce made derogatory remarks to the deputy and his profession before shooting the deputy in the head.⁴⁹ He was charged with the robberies and first degree murder of the deputy with special circumstances of killing a peace officer in

⁴⁴ State v. Jackson, (2014) 141 Ohio St. 3d 171, at 183

⁴⁵ State v. Jackson, (2014) 141 Ohio St. 3d 171, at 185

⁴⁶ State v. Jackson, (2014) 141 Ohio St. 3d 171, at 230

⁴⁷ People v. Boyce, (2014) 59 Cal. 4th 672 at 679

⁴⁸ People v. Boyce, (2014) 59 Cal. 4th 672 at 680

⁴⁹ People v. Boyce, (2014) 59 Cal. 4th 672 at 679

retaliation for the performance of his duties.⁵⁰ During trial, Boyce defense brought up the claim that Boyce had suffered a mental disability since his childhood.⁵¹ Dr. Kara Cross, a licensed clinical psychologist, conducted tests to measure Boyce's intelligence, brain processing, motor skills, sensory perception, memory and cognition.⁵² The results of the test showed that Boyce had an overall IQ level of 69, reflecting mental retardation. Dr. Cross also tested Boyce to determine if he had brain damage, which revealed that he did have severe impairment in some areas.⁵³ Although Boyce demonstrates significant impairments, Dr. Cross' opinion is that he was not gravely disabled and that he is capable of understanding the difference between right and wrong, truth and a lie, and cause and effect.⁵⁴ Dr. Samuel Benson, a psychiatrist, also tested Boyce and opined that Boyce in fact did have some brain damage and learning disability. Dr. Benson also acknowledged that defendant was capable of making choices such as deciding to shoot someone or not.⁵⁵ The court determined that even though Boyce offered evidence of mental disorders and sub-average intelligence, there was not enough evidence that either of these conditions played a role in the murder.⁵⁶ He Court also held that even Boyce's own experts determined he could differentiate right from wrong and that he was also capable of making decisions.⁵⁷ The Court also found that Boyce's crime was motivated by racial hatred and animosity toward police, and found that Boyce was not acting under the influence of a mental or

⁵⁰ People v. Boyce, (2014) 59 Cal. 4th 672 at 679

⁵¹ People v. Boyce, (2014) 59 Cal. 4th 672 at 685

⁵² People v. Boyce, (2014) 59 Cal. 4th 672 at 685

⁵³ People v. Boyce, (2014) 59 Cal. 4th 672 at 684

⁵⁴ People v. Boyce, (2014) 59 Cal. 4th 672 at 685

⁵⁵ People v. Boyce, (2014) 59 Cal. 4th 672 at 686

⁵⁶ People v. Boyce, (2014) 59 Cal. 4th 672 at 720

⁵⁷ People v. Boyce, (2014) 59 Cal. 4th 672 at 720

emotional disturbance and demonstrated no remorse.⁵⁸ Based on all the findings, the Supreme Court of California affirmed the death sentence and remanded the case on the other charges.⁵⁹

Conclusion

An intellectual disability should to be determined solely by a score on an IQ test nor on a brain injury. Many factors should be considered before a court may find a defendant intellectually disabled and find him ineligible for the death penalty. As presented in the cases provided, each one showed different levels and causes of intellectual disabilities. The court has the duty to assure that a defendant receives a fair trial and sentence. A defendant who commits a capital crime but whose defense proves by a preponderance of the evidence that the defendant is someone who is intellectually disabled and that such disability was a mitigating factor in committing the crime, should be ineligible to receive the capital punishment, death.

⁵⁸ People v. Boyce, (2014) 59 Cal. 4th 672 at 720

⁵⁹ People v. Boyce, (2014) 59 Cal. 4th 672 at 732