No. 20-7805

In the

Supreme Court of the United States

MELVIN KNIGHT
Petitioner

V.

COMMONWEALTH OF PENNSYLVANIA
Respondent

On Petition for Writ of Certiorari
To the Supreme Court of Pennsylvania

RESPONDENT'S BRIEF

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QUESTION PRESENTED

Did the Pennsylvania courts err by requiring the Petitioner to present competent evidence of his diagnosis of intellectual disability before providing an Atkins instruction to the jury when the Petitioner's expert witnesses specifically declined to diagnosis him as intellectually disabled under both the medical and legal standards for intellectual disability?

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TO THE SUPREME COURT OF PENNSYLVANIA

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The Respondent, the Commonwealth of Pennsylvania, by counsel, John W. Peck, Esquire, District Attorney of Westmoreland County, Pennsylvania, and Leo J. Ciaramitaro, Esquire, and Katie L. Ranker, Esquire, Assistant District Attorneys, respectfully petitions for a denial of a writ of certiorari to review the judgment of the Supreme Court of Pennsylvania in this case which affirmed the judgment of sentence for the Petitioner, Melvin Knight, following a sentencing trial at which time a jury imposed a sentence of death.

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OPINIONS BELOW

The Supreme Court of Pennsylvania opinion which affirmed the sentence of death is attached to Knight's Petition for Writ of Certiorari as Appendix A, and is published as Commonwealth v. Knight, 241 A.3d 620 (Pa. 2020). An excerpt of the trial court opinion from The Honorable Rita Donovan Hathaway, P.J., of Westmoreland County Court of Common Pleas is attached to Knight's Petition for Writ of Certiorari as Appendix B. An excerpt from the trial transcript reflecting an oral ruling by President Judge Hathaway is attached to Knight's Petition for Writ of Certiorari as Appendix C.

JURISDICTION

The judgment of the Supreme Court of Pennsylvania was entered on November 18, 2020. Jurisdiction of this Honorable Court is invoked by the Petitioner pursuant to Title 28, U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Petitioner raises issues requiring the interpretation of the Eighth and Fourteenth Amendments to the United States Constitution.

The Eighth Amendment states:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment provides in part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

I. THE PETITIONER WAS ONE OF SIX PERSONS RESPONSIBLE FOR THE KIDNAPPING, TORTURE, AND MURDER OF JENNIFER DAUGHERTY.

Over the course of four days in February 2010, the Petitioner, along with five codefendants, kidnapped, tortured, and brutally murdered Jennifer Daughtery, a 30-year-old woman intellectually disabled woman.

On February 8, 2010, the Petitioner and his pregnant girlfriend, Amber Meidinger encountered the codefendants Ricky Smyrnes, Angela Marinucci, Robert Masters, and Peggy Miller, along with the victim, Jennifer Daugherty, at a bus station in Greensburg, Pennsylvania. Commonwealth v. Knight, 241 A.3d 620, 624 (Pa. 2020) (quoting Commonwealth v. Knight, 156 A.3d 239, 241-43 (Pa. 2016)). The victim, who had the intellectual capacity of a 14-year-old, had planned to stay at Smyrnes' apartment that night before going to a doctor's appointment the following day. Id. Later on in the day, the Petitioner and Meidinger joined Smyrnes, Miller, and Masters at Smyrnes's apartment where they were invited to stay the night. Id. At some point that night, the victim arrived and tried to be intimate with Smyrnes, who rebuffed her and became angry. Id.

The next day, the victim decided to stay at the apartment instead of leaving to go to her doctor's appointment. Id. Smyrnes called Marinucci and informed her of

the victim's advances the night before, and Marinucci became jealous. Id. The codefendants began bullying the victim by ransacking and ruining her purse and clothing. Id. When Marinucci arrived, Marinucci and Meidinger took turns assaulting the victim in the bathroom by striking her in the chest and head and shoving her into a towel rack numerous times, causing her to strike her head. Id. The Petitioner then dragged the victim into the living room where Marinucci poured water on her, and the Petitioner and Smyrnes dumped spices and oatmeal on her head. Id. The victim showered, and the Petitioner forced her to remove her clothes, threw them out the window, and cut off the victim's hair. Id. Later, the Petitioner raped the victim. Knight, 241 A.3d at 625. That evening, Masters and Miller were instructed to stay with the victim and not allow her to leave while the others left for a period of time. Id. Miller reported that the victim was trying to leave, so the Petitioner and his remaining codefendants returned to the house and beat the victim. Id.

The following day involved an escalating course of torture and abuse to the victim by the Petitioner and his codefendants, involving multiple "family meetings" during which the codefendants discussed and agreed on their next courses of conduct. Id. In the morning, Marinucci pushed the victim to the floor and hit her, and in response, the victim kneed Marinucci in the stomach. Id. Despite the fact that Marinucci was not pregnant, she accused the victim of killing her baby and insisted that Smyrnes choose between her and the victim. Id. The Petitioner and Meidinger later took the victim into the bathroom where they made her drink three

separate concoctions: first, Marinucci's urine; second, a combination of feces and urine; and third, a mixture of powdered detergent, and Meidinger's prescription medication. Id. They forced her to drink these concoctions by striking her in the head with a towel rack until she obeyed, while gagging and ultimately vomiting. Id. The Petitioner later took the victim into the living room, where he and Smyrnes bound her wrists and ankles with Christmas lights and garland, and nail polish was painted onto the victim's face. Id.

The Petitioner and his codefendants finally called a "family meeting" and voted to kill the victim, and Smyrnes forced the victim to pen a suicide note. Id. Smyrnes gave the Petitioner a knife, telling him, "You know what to do." Knight, 241 A.3d at 625. The Petitioner and Meidinger took the victim into the bathroom, forced her to kneel, and turned off the light, before the Petitioner asked her if she was ready to die and stabbed her in the chest and stabbed and sliced her neck. Id. The Petitioner announced to the others that the victim was not dead yet, so Smyrnes took the knife and sliced the victim's wrists, and he and the Petitioner proceeded to choke the victim with the Christmas lights. Id. After a final "family meeting," it was decided that the Petitioner and Smyrnes would dispose of the victim's body by putting her into a garbage can and removing her from the scene. Id. The victim was found the next morning under a truck in a nearby middle school parking lot; her body was found stuffed into a large garbage can, still bound in Christmas decorations and partially covered with plastic bags. Id. at 626.

The Petitioner pleaded guilty to first-degree murder and related offenses, with no agreement as to sentence. Id. At the Petitioner's first penalty trial in 2014, the Respondent pursued the death penalty based on two aggravating circumstances: that the killing was committed while in the perpetration of a felony, and that the killing was committed by means of torture. Id. The jury returned a verdict of death, which was later overturned by the Pennsylvania Supreme Court because the jury failed to find a mitigator despite a stipulation to its existence. See Commonwealth v. Knight, 156 A.3d 239, (Pa. 2016). After a second penalty phase trial, the jury returned a verdict of death, which was affirmed by the Pennsylvania Supreme Court. Knight, 241 A.3d at 624.

II. THE PETITIONER OFFERED NEITHER LAY NOR EXPERT TESTIMONY AT HIS CAPITAL SENTENCING TRIAL THAT ESTABLISHED THE PETITIONER SUFFERED FROM AN INTELLECTUAL DISABILITY.

During the Petitioner's sentencing trial, he offered expert testimony from Dr. Christine Nezu, a clinical psychologist, and Dr. Joette James, a clinical neuropsychologist, regarding the Petitioner's IQ scores and limitations to adaptive functioning.

Dr. Nezu's testimony failed to establish that the Petitioner suffered from an intellectual disability. Dr. Nezu defined an intellectual disability as a "disability in intellectual functioning," such as a person's ability to learn, reason, and "function as an independent adult in the community and in real life in home, school, relationships, in community involvement." (TT at 950). She further explained that

there are three criteria – which she described as three "legs" on a stool – required to make a diagnosis of intellectual disability: first is intellectual functioning, which is usually measured by utilizing psychological and neuropsychological testing; second is adaptive behavioral functioning, which is measured by an assessment of the person's behavior and ability to apply cognitive strengths in the real world; and third is the demonstration of these intellectual and adaptive deficits prior to the age of 18. (TT at 953-54). Dr. Nezu explained that IQ tests are a tool for measuring intellectual functioning, and that the criteria often used for assessing intellectual disability would be two standard deviations below average intelligence range, which places the criteria at "somewhere between 65 and 75 IQ. That's a score on the intelligence test." (TT at 962).

Dr. Nezu testified that the results of her assessment of the Petitioner showed that the Petitioner only satisfied the criteria for one of the three "legs" of intellectual disability. (TT at 964-66). She explained that while the Petitioner's adaptive functioning was significantly impaired and satisfied the criteria for the second "leg", the Petitioner's multiple IQ tests which had been provided to her reported scores ranging from 77 to 97, so the Petitioner's testing history did not confirm an intellectual functioning in the 65 to 75 range, which would be two standard deviations below the standard range of the average IQ range. (TT at 965-66, 975, 983). Dr. Nezu ultimately concluded that she "[could not] confirm a diagnosis of intellectual disability as per required by the State of Pennsylvania and the criteria it uses." (TT at 966). As Dr. Nezu explained early in her testimony:

> [T]he Commonwealth of Pennsylvania accepts the criteria for intellectual disability that's defined by the Diagnostic and Statistical Manual published by the American Psychiatric Association as well as the Association [sic] American Association on Intellectual and Developmental Disabilities, one of the organizations that I'm a member of. Both of those definitions are very much the same so that they are ones that have been adopted in Pennsylvania, that is, that there is significantly subaverage intellectual functioning, that there are significantly deficient adaptive skills and that they existed before the age of 18.

(TT at 955). Dr. Nezu concluded that based on her testimony, the Petitioner did not satisfy his burden to prove that he is intellectually disabled pursuant to Atkins v. Virginia. (TT at 976).

Dr. James's testimony likewise did not establish that the Petitioner suffered from an intellectual disability. Dr. James testified that she performed a neuropsychological assessment of the Petitioner, which included an IQ test but did not assess the Petitioner's adaptive functioning. (TT at 781, 788). The IQ test performed by Dr. James yielded a score of 77, which is considered to be in the "borderline range." (TT at 781). The opinions of Dr. James which were offered to the jury by the Petitioner related primarily to the applicability of certain capital case mitigators. Despite testifying that the Petitioner suffered from a number of neurodevelopment disorders which would impair his functioning in the real world, Dr. James testified that she did not and would not diagnose the Petitioner with intellectual disability. (TT at 813).

Petitioner offered additional lay witnesses, including Petitioner's mother, second grade teacher, and a friend. (TT at 897, 913, 1039). None of these witnesses

established any facts or opinions concluding that the Petitioner suffered from an intellectual disability.

III. THE TRIAL COURT DECLINED TO PROVIDE THE JURY WITH AN INSTRUCTION RELATED TO INELIGIBILITY FOR THE DEATH PENALTY DUE TO INTELLECTUAL DISABILITY PURSUANT TO *ATKINS V. VIRGINIA.*

At the conclusion of the testimony at the sentencing trial, the Petitioner requested that the trial court provide the jury with an Atkins instruction. (TT at 1087). The trial court declined to offer such an instruction on the basis that no evidence was offered to support the first or third prong of the intellectual disability criteria. (TT at 1087-88).

ARGUMENT

I. PENNSYLVANIA DOES NOT MAINTAIN AN IQ REQUIREMENT FOR INTELLECTUAL DISABILITY CLAIMS THAT IS INCONSISTENT WITH THIS COURT'S PRECEDENT OR CLINICAL STANDARDS.

A. IQ REQUIREMENTS FOR CLINICAL DIAGNOSIS OF INTELLECTUAL DISABILITY SHOULD BE CONSIDERED IN CLAIMS OF INTELLECTUAL DISABILITY.

In this Court's seminal case of Atkins v. Virginia, 536 U.S. 304 (2002), the imposition of the death penalty on a "mentally retarded" (now intellectual and developmental disability) was violative of Eighth Amendment's prohibition against

cruel and unusual punishment. This Court in Atkins then left "to the state[s] the task of developing appropriate ways to enforce the constitutional restriction upon their execution of the sentences." Id. at 317 (citing Ford v. Wainwright, 477 U.S. 399 (1986)). This Court recognized that sub-average intellectual function coupled with related limitation to adaptive skills areas and an onset before the age of 18 reflected the then current clinical diagnosis for a finding of what is now referred to as an intellectual and developmental disability. Id. at 308 n.3.

In this Court's opinion in Florida v. Hall, 572 U.S. 701 (2014), it was recognized that state laws regarding IQ scores that fail to take into consideration a standard error of measurement and bar the consideration of a defendant's adaptive functioning are unconstitutional in the context of whether a defendant is eligible for the death penalty. In Moore v. Texas, (Moore II), 586 U.S. _____, 203 L.Ed.2d 1 (2019), this Court reiterated its previous holdings that "a court's intellectual disability determination must be 'informed by the medical community's diagnostic framework'." Id. at 5 (quoting Moore v. Texas (Moore I), 581 U.S. Ct. _____, 197 L.Ed.2d at 416).

Consequently, it is well established by this Court that state courts must look to the medical community's diagnostic framework for the determination of intellectual disability. Currently, the standard generally encompasses (1) deficits in intellectual functions confirmed by clinical assessment and individualized, standardized intelligence testing, (2) deficits in adaptive functioning and (3) onset during the developmental period. Diagnostic and Statistical Manual of Mental

Disorders (5th ed. 2013) (DSM-V) (emphasis added). The respondent does not challenge this concept.

B. PENNSYLVANIA'S RULES FOR CLAIMS OF INTELLECTUAL DISABILITY IN CAPITAL CASES ARE CONSISTENT WITH THE COURT'S HOLDINGS IN ATKINS AND ITS PROGENY.

The Pennsylvania Supreme Court first implemented this Court's Atkins holding in Commonwealth v. Miller, 888 A.2d 624 (Pa. 2005). In Miller, the Pennsylvania Supreme Court held that in order for a defendant to be ineligible for the death penalty based on intellectual disability, the defendant must present evidence of intellectual disability that is consistent with the existing medical diagnostic criteria, namely (1) a limited intellectual function, (2) significant adaptive limitation, and (3) onset prior to age 18. Id. at 630. The Pennsylvania courts recognize this as a three prong test. Most importantly, the court in Miller held that "we do not adopt a cutoff IQ score for determining [intellectual disability] in Pennsylvania, since it is the interaction between limited intellectual functioning and deficiencies in adaptive skills that establish [intellectual disability]." Id. at 631. Later in Commonwealth v. Sanchez, 36 A.3d 24, Pa. 2011), the Pennsylvania Supreme Court held that a 'colorable Atkins issue' should be submitted to the jury for a penalty phase decision. Id. at 62. In doing so, the court in Sanchez held that burden rested on the defendant to prove intellectual disability by a preponderance of evidence. Id. at 63. The court also indicated that "an Atkins claim is not properly

for the fact finder unless there is competent evidence to support the claim, under the standard announced in Miller." Id. at 62 n.19.

During the sentencing trial in this matter, the Petitioner offered the expert testimony of Dr. Christine Nezu, a clinical psychologist, and Dr. Joette James, a clinical neuropsychologist as to his IQ scores and limitations to adaptive functioning. During the trial, neither Dr. James, nor Dr. Nezu offered an expert opinion that Petitioner met the clinical definition for intellectual disability as outlined by the courts or the medical standards. (TT at 813, 975-976). Further, the Pennsylvania Supreme Court noted in the direct appeal of this matter that the Petitioner failed to establish the first prong of its test for intellectual disability, namely a sub-average intelligence as identified by standardized intelligence tests prior to age 18. Commonwealth v. Knight, 241 A.3d 620, 631 (Pa. 2020). The court further relied upon the inability of both defense experts to diagnosis the Petitioner as intellectually disabled as support for the court's conclusion that the trial court did not err in declining to provide an Atkins charge to the jury. Id. Without expert evidence that the petitioner was intellectually disabled under the current clinical and legal standards, an Atkins instruction to the jury would have been contrary to the evidence adduced at the trial. Here, the Pennsylvania courts have determined that evidence of sub-average intelligence and adaptive limitations must be coupled with evidence of the onset of such conditions prior to the age of 18. Miller, supra. This is consistent with current clinical standards and this Court's pronouncements.

C. PENNSYLVANIA DOES NOT HAVE A DOCUMENTATION REQUIREMENT INCONSISTENT WITH THIS COURT'S OPINIONS IN BRUMFIELD AND MOORE.

It is clear that the Pennsylvania Supreme Court adhered to this Court's command in Atkins by its decision in Commonwealth v. Miller, 888 A.2d 624 (Pa. 2005). The Pennsylvania Supreme Court clearly stated that a

> "[p]etitioner may establish his or her [intellectual and developmental disability] under either classification system [AAIDD or APA DSM] and consistent with this holding, assuming proper qualification, an expert presented by either party may testify as to [intellectual and developmental disability] under either classification system. Moreover, consistent with both of these classification systems, we do not adopt a cutoff IQ score for determining [intellectual and developmental disability] in Pennsylvania since it is the interaction between limited intellectual functioning and deficiencies in adaptive skills that establish [intellectual and developmental disability]."

Miller at 631.

The Petitioner has read a requirement of documenting an IQ score into the law where there is none.

In the instant matter, the Petitioner presented evidence at trial of his limitations in adaptive functioning. However, the Petitioner was unable to provide evidence of an IQ score that was relied upon by his experts that was more than two standard deviations below the mean. In fact, the Petitioner's expert psychologist testified that he was not intellectually disabled pursuant to this Court's pronouncement in Atkins. (TT at 975-976). It is well established that the burden is on the petitioner to establish he is intellectually and developmentally disabled in

order for a jury to decide the question. Commonwealth v. Sanchez, 36 A.3d 24, 62 (Pa. 2011). The Pennsylvania Supreme Court has held that "colorable Atkins issue" should be submitted to the jury for a penalty phase decision. Id. Further, "An Atkins claim is not properly for the fact-finder unless there is competent evidence to support the claim under the standard announced in Miller." Id. at 62 n.19..

Pennsylvania's approach to intellectual and developmental disability is to utilize the standards promulgated by the AAIDD or the APA. See Miller supra. Such a method comports with this Court's holdings and Atkins and subsequent cases. However, the Petitioner was unable to provide competent testimony that he was intellectually and developmentally disabled pursuant to the standards. As such, an Atkins instruction would not have been appropriate as it would have required the jury to speculate as to a mental health diagnosis that had not been given.

D. PENNSYLVANIA DOES NOT HAVE A DOCUMENTATION REQUIREMENT THAT IS CONTRARY TO THE ESTABLISHED CLINICAL STANDARDS FOR DIAGNOSING INTELLECTUAL DISABILITY.

The Petitioner claims that Pennsylvania requires the documentation of an IQ score prior to the age of 18 in order to provide an Atkins instruction to the jury in a capital case. Such is not the standard in Pennsylvania. As the Pennsylvania Supreme Court stated in Sanchez, "The burden is on the proponent of the Atkins claim, usually the defendant, to prove intellectual disability by a preponderance of

the evidence." Sanchez at 63. This concept has not been challenged by the Petitioner. Here, the Petitioner presented two experts who testified as to scores that he received on administered tests. Both of the Petitioner's experts clearly stated they did not diagnosis him as intellectually disabled under the current medical and legal standards. (TT at 813, 975-976). The documented tests administered to the petitioner reflected as not being in the impaired range. Knight at 631.

Consequently, the Pennsylvania Supreme Court in the Petitioner's case did not create an age-based score cut-off but instead viewed all the evidence presented by defense experts and determined the evidence was insufficient to sustain an Atkins instruction based upon a lack of evidence with regard to sub-average intelligence. Contrary to the Petitioner's contention, Pennsylvania courts allow all competent evidence of a defendant's intellectual disability, and no requirement for a documented IQ score exists.

E. PENNSYLVANIA DOES NOT HAVE A DOCUMENTATION REQUIREMENT.

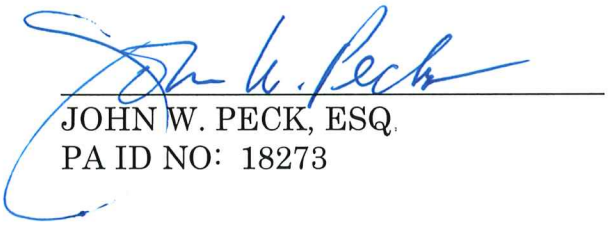
The Petitioner has taken the statement by the Pennsylvania Supreme Court in its opinion on this issue out of context of the entire analysis to create a 'documentation requirement' that does not exist. It is clear from a full reading the Pennsylvania Supreme Court's opinion in this matter, that its decision on the Atkins claims was based instead on a lack of evidence and on testimony by the

petitioner's expert witnesses that the petitioner was not diagnosed with intellectual disability. Knight at 632. The Pennsylvania Supreme Court considered the evidence presented by the Petitioner and found it was lacking with regard to his limited intellectual function as evidenced by standardized IQ tests. Id. Consequently, Pennsylvania's requirements to receive an Atkins instruction do not include a documentation requirement and are not anomalous.

CONCLUSION

The Pennsylvania courts have correctly applied this Court's legal standards in the Petitioner's case and did not create a new requirement to ban a jury from receiving an Atkins instruction. The Pennsylvania courts correctly denied an Atkins instruction on intellectual disability based on a lack of evidence to satisfy the first prong of this Court's test to show sub-average intelligence. Consequently, the writ of certiorari should be denied.

RESPECTFULLY SUBMITTED,



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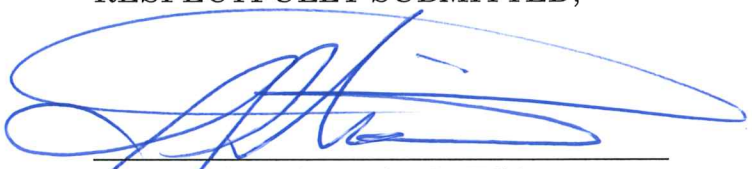

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