

Cases in Courts

Hon. Michael F. Pietruszka (Ret.)

Thursday, June 6, 2024

**AI Workshop in Neurotechnology, Brain Function and Cognition
Data Science and Artificial Intelligence Strategic Initiative**

**National Courts and Sciences Institute
State Justice Institute**

United States v. Ramsay

United States District Court, S.D. New York; 538 F.Supp.3d 407; January 16, 2024

Background: Defendant who was convicted of murder in aid of racketeering and sentenced to life imprisonment at 18 years old filed a motion for a sentence reduction.

Holdings: The District Court, Jed S. Rakoff, J., held that:

[1] as a matter of first impression, sentencing courts should consider an adolescent offender's immaturity, susceptibility, salvageability, and dependency, when determining whether extraordinary and compelling circumstances exist to support a sentence reduction under the First Step Act;

[2] defendant's age of 18 when he shot into a crowd and killed two people, was an extraordinary and compelling reason warranting a reduction of his then-mandatory life imprisonment sentence;

[3] defendant's childhood upbringing was an extraordinary and compelling reason warranting a reduction of his then-mandatory life imprisonment sentence;

[4] defendant's rehabilitation during his time in prison was an extraordinary and compelling reason warranting a reduction of his then-mandatory life imprisonment sentence;

[5] mandatory nature of defendant's sentence of life imprisonment was an extraordinary and compelling reason warranting a sentence reduction;

[6] a sentence of less than life imprisonment was consistent with statutory sentencing factors, thus, supporting, a sentence reduction; and

[7] extraordinary and compelling circumstances, coupled with consistent statutory sentencing factors, warranted a reduction of defendant's then-mandatory sentence of life imprisonment to a term of 360 months.

Motion granted.

Commonwealth v. Mattis

Supreme Judicial Court of Massachusetts, Suffolk; 493 Mass. 216; January 11, 2024

Background: Following jury trial and denial of his motion for new trial, defendant was convicted in the Superior Court Department, Suffolk County, Christine M. Roach, J., of murder in the first degree and other offenses and was sentenced to mandatory term of life in prison without the possibility of parole. Defendant appealed, and the Supreme Judicial Court, 484 Mass. 742, 146 N.E.3d 414, affirmed convictions but remanded for evidentiary hearing as to whether defendant's sentence violated state constitutional prohibition on cruel or unusual punishment given that he was 18 years old at time of murder. Record was transmitted to Supreme Judicial Court without factual findings, and the Supreme Judicial Court again remanded for further findings. The Superior Court Department, Suffolk County, Robert Ullmann, J., issued factual findings, concluding that mandatory imposition of life without parole for emerging adults, meaning adults who were 18 to 20 years old at time of offense, constituted cruel or unusual punishment, and case was transmitted back to Supreme Judicial Court.

Holdings: The Supreme Judicial Court, Budd, C.J., held that:

[1] sufficient evidence supported finding that emerging adults were neurologically similar to juveniles with regard to impulse control;

[2] sufficient evidence supported finding that emerging adults were neurologically similar to juveniles with regard to risk-taking in pursuit of reward;

[3] sufficient evidence supported finding that emerging adults were neurologically similar to juveniles with regard to peer influence;

[4] sufficient evidence supported finding that emerging adults were neurologically similar to juveniles with regard to capacity for change; and

[5] contemporary standards of decency reflected in statutes of Massachusetts and other states did not support imposing sentences of life in prison without possibility of parole on offenders ages 18 to 20.

State v. Krueger

Court of Appeals of Washington, Division 1;28 Wash.App.2d 549, 540 P.3d 126; October 23, 2023

Sentencing. Eighth Amendment prohibition against sentence of mandatory life imprisonment without parole for juveniles did not extend to youthful offender.

State v. McFarland

Supreme Court of Ohio; 171 Ohio St.3d 1445; September 27, 2023

“Courts should acknowledge our limited understanding of how the brain works. Notably, the United States government has initiated a coordinated effort among public and private institutions and agencies known as the Brain Research Through Advancing Innovative Neurotechnologies Initiative (the “BRAIN Initiative”). The BRAIN Initiative is a collaboration between federal and nonfederal partners with a common goal of accelerating the development of innovative neurotechnologies in aim of producing a “revolutionary new dynamic picture of the brain *954 that, for the first time, shows how individual cells and complex neural circuits interact in both time and space.” (Emphasis added.) See National Institutes of Health, Overview, <https://braininitiative.nih.gov/about/overview>.”

Fletcher v. State

Court of Appeals of Alaska; 532 P.3d 286, May 12, 2023

Sentencing. Defendant, who was 13 at time of murders, did not receive sentencing in which her youth and its attendant characteristics were properly considered.

State v. Anderson

Supreme Court of Washington, *En Banc*; 200 Wash.2d 266, 516 P.3d 1213; September 08, 2022

Sentencing. Washington's constitutional protection for sentencing of juvenile offenders does not apply in absence of mitigating qualities of youth.

People v. Parks

Supreme Court of Michigan; 510 Mich. 225 987 N.W.2d 161; July 28, 2022

Sentencing. Michigan Constitution bars mandatory life-without-parole sentences for 18-year-old homicide offenders.

State v. Kelliher

Supreme Court of North Carolina; 381 N.C. 558, 873 S.E.2d 366;
June 17, 2022

Juvenile Justice. Juvenile offender's two consecutive sentences of life with parole violated state constitution's prohibition against cruel or unusual punishments.

Goode, et al v. Gaia, Inc., et al v. Light Warrior Legal Fund, LLC, et al

United States District Court, D. Colorado; 2022 WL 596292, No. 20-cv-00742-DDD-KLM; February 28, 2022

Claim Six: Human Trafficking

Claim Six, “enticement into slavery human trafficking,” i.e., human trafficking under 18 U.S.C. § 1590, is asserted against Mr. Goode, GES, Ms. Yanaros, LWLF, and Ms. Lorie. See [#217] at 125. Pursuant to 18 U.S.C. § 1590, it is unlawful to “knowingly recruit[], harbor[], transport[], provide[], or obtain[] by any means, any person for labor or services” in violation of the offenses contained in Chapter 77 of Title 18. The trafficking into servitude provision states that “[w]hoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be subject to the penalties under subsection (a),” which include fines, imprisonment, or both. 18 U.S.C. §§ 1584(b), 1590(b). Section 1595 provides for a private right of action for a victim of “any violation under Chapter 77 of Title 18, including violations of Sections 1584 and 1590.” See, e.g., *Hernandez v. Attisha*, No. 09CV-2257-IEGWMC, 2010 WL 816160, at *2 (S.D. Cal. Mar. 5, 2010).

In connection with this claim, Ms. Montalbano states in part:

“Upon information and belief, [Mr.] Goode, [Mr.] Wilcock, The Enterprise, and John and Jane Does, use [Mr.] Goode’s fraudulent ‘Blue Avian’ and ‘alien’ narratives to entice children, young adults and mature adults all over the world, into being MiLab (MiLitary Abduction) kidnapped and placed into involuntary servitude (volunteers) and/or human trafficked via remote neural interfacing.... Upon information and belief the manipulation into involuntary servitude predominantly involves remotely neural scanning the Targeted Individual’s (TI) brain to non-consensually obtaining their digital brain signature, medically termed ‘EEG Heterodyning Cloning’. Once the EEG clones are obtained (related to CIA MKULTRA A.I. S.A.T.A.N. technology and DOD Sentient World Simulation), it is believed they are used to remote neural interface with [Mr.] Goode and [Mr.] Wilcock’s alien cult followers to mind control them via dream states. These remote neural interfaces are observable by the Targeted Individual/victim (such as [Ms.] Montalbano) as dream state (neural) interactions and/or felt as physical sensations of the body during waking states to include euphoria, sexual, depression, and anxiety. [Mr.] Goode and [Mr.] Wilcock fraudulently tell their cult followers these illicit neural interfacing interactions are ‘spiritual experiences’ with their ‘loving aliens’.... It is believed the main form of human trafficking The Enterprise is currently involved in is done via using illicitly obtained EEG Heterodyning Clones (CIA S.A.T.A.N. [#121-17]) and that they are sold via black markets and/or illicitly used by themselves for ‘dream’ (neural) state experiments, illicit research, involuntary servitude (mind control), sexual encounters, or assaults with [Mr.] Goode and [Mr. Wilcock’s followers, such as having been directly experienced by [Ms.] Montalbano.”

Ms. Montalbano’s allegations here regarding the kidnapping and involuntary servitude of children and adults are, at best, speculative. In addition, even assuming that dream states could somehow be used as a means of human trafficking, such actions would not constitute recruiting, harboring, transporting, providing, or obtaining a person for labor or services. In other words, the Court is aware of no legal authority holding that a “person” under the statute is equivalent to the person’s “dream state.”

Dorsey v. State

Supreme Court of Iowa; 975 N.W.2d 356

Background: Defendant, who had been convicted of murder in the first degree and was sentenced to life in prison without the possibility of parole, filed a fifth petition for post-conviction relief. The District Court, Polk County, Robert B. Hanson, J., granted the State's motion for summary disposition. Defendant appealed. The Court of Appeals affirmed. Defendant petitioned for certiorari review.

Holdings: The Supreme Court, McDonald, J., held that:

[1] the statute of limitations governing post-conviction-relief proceedings did not bar defendant's post-conviction challenge to his sentence for murder;

[2] defendant's post-conviction motion to correct illegal sentence was not barred by res judicata; and

[3] defendant, who was 18 years and five days old at the time he committed murder, was not entitled to a *Miller v. Alabama* hearing before the imposition of a life sentence.

Petition for writ of certiorari granted and writ annulled.

State v. Comer

Supreme Court of New Jersey; 249 N.J. 359, 266 A.3d 374;
January 10, 2022

Sentencing. Under the New Jersey Constitution, juveniles may petition the court to review their sentence after 20 years.

Diatchenko v. District Attorney for Suffolk Dist.

Supreme Judicial Court of Massachusetts, Suffolk; 466 Mass. 655, 1 N.E.3d 270; December 24, 2013

Sentencing. Miller's prohibition against mandatory life sentences for juvenile offenders applied retroactively to cases on collateral review.

Miller v. Alabama

Supreme Court of the United States; 567 U.S. 460, 132 S.Ct. 2455; June 25, 2012

Sentencing. Mandatory sentence of life without parole for juvenile convicted of homicide violates Eighth Amendment.

In the Matter of the Personal Restraint of Kurtis William MONSCHKE, Petitioner.

In the Matter of the Personal Restraint of Dwayne Earl BARTHOLOMEW, Petitioner.

Supreme Court of Washington, *En Banc*; 197 Wash.2d 305

Background: Petitioners, each of whom had been convicted of aggravated first-degree murder when they were 19 or 20 years old, which convictions had been affirmed on direct appeal, 101 Wash.2d 631, 683 P.2d 1079, and 133 Wash.App. 313, 135 P.3d 966, filed personal restraint petitions in which they challenged the constitutionality of their resulting mandatory, nondiscretionary sentences of life imprisonment without the possibility of parole. The Court of Appeals transferred petitions to Supreme Court without ruling on the merits.

Holdings: The Supreme Court, McCloud, J., held that:

[1] the one-year time limit for filing a personal restraint petition did not apply to petitions, and

[2] state constitutional provision prohibiting cruel punishment prohibited the mandatory life sentences.

Petitions granted.

United States v. Semrau

693 F.3d 510 (6th Cir. 2012); 2010 WL 6845092 (W.D. Tenn. 2010).

This case was the first attempt to introduce fMRI lie detection into a federal criminal trial. The court found that it did not meet the standards of the Federal Rules of Evidence.

Graham v. Florida

Supreme Court of the United States; 560 U.S. 48, 130 S.Ct. 2011; May 17, 2010

Juvenile Justice. Eighth Amendment prohibits imposition of life without parole sentence on juvenile offender who did not commit homicide.

Roper v. Simmons

Supreme Court of the United States; 543 U.S. 551, 125 S.Ct. 1183; March 01, 2005

Death Penalty. Imposition of death penalty on juvenile offenders is unconstitutional.

Ford by Pringle v. Philadelphia Housing Authority

Commonwealth Court of Pennsylvania; 789 A.2d 360; Dec. 5, 2001

Minor resident of public housing brought action against city housing authority, alleging personal injury from lead paint exposure. After disqualifying resident's two expert witnesses, the Court of Common Pleas, Philadelphia County, No. 2467 October Term 1999, Cohen, J., granted nonsuit. Resident appealed. The Commonwealth Court, No. 1086 C.D. 2001, Pellegrini, J., held that neuroscientists were qualified to give expert testimony.

Reversed and remanded.

FRANKLIN/MILLER HEARING

“The U.S. Supreme Court ruled in *Miller v. Alabama* and *People v. Franklin* that lengthy sentences given to youthful offenders violate the 8th Amendment. The rationale was that the length of time was cruel and unusual punishment without an evaluation of an individual’s upbringing, juvenile record, maturity, capacity to learn and understand, and the facts of the case.”

- Vienna Psychological Group

***Miller v. Alabama*, 567 U.S. 460 (2012)**

***People v. Tyrus Lamar Franklin*, 63 Cal. 4th 261 (2016)**

Utilizing Neuroscience and Artificial Intelligence in *Miller/Franklin* Hearings

Neuroscience:

Brain Development Studies:

Use: Presenting evidence on the neurological development of adolescents.

Explanation: Neuroscientists can demonstrate that the brains of juveniles are not fully developed, particularly in areas related to impulse control, decision-making, and understanding consequences. This can support the argument that juveniles are less culpable than adults.

Neuroimaging:

Use: Using MRI and other brain imaging technologies.

Explanation: Showing differences in brain structure and function between juveniles and adults can illustrate the reduced culpability and higher potential for rehabilitation in juveniles.

Artificial Intelligence:

Risk Assessment Tools:

Use: AI algorithms to evaluate the risk of recidivism.

Explanation: These tools can analyze a wide range of data to predict the likelihood of reoffending, potentially showing that a juvenile offender has a lower risk of future criminal behavior.

Predictive Analytics:

Use: AI systems to assess the potential for rehabilitation.

Explanation: By examining patterns in similar cases, AI can provide insights into the factors that contribute to successful rehabilitation, helping to argue for more lenient sentences.

Behavioral Analysis:

Use: AI to analyze past behavior and future potential.

Explanation: AI can process large datasets including educational records, psychological assessments, and social history to provide a comprehensive analysis of the juvenile's growth and potential.

Hearings

Types of Experts in *Miller/Franklin*

Neuroscientists:

Role: Testify about the brain development of adolescents and its implications on behavior and decision-making.

Psychologists/Psychiatrists:

Role: Provide insights into the mental and emotional development of the juvenile, including assessments of maturity, capacity to learn, and understand their actions.

AI and Data Science Experts:

Role: Explain the methodologies and findings from AI risk assessments and predictive analytics, validating the tools' accuracy and relevance.

Educational Experts:

Role: Discuss the juvenile's academic history, learning capabilities, and potential for growth and rehabilitation through educational programs.

Social Workers:

Role: Offer a detailed account of the juvenile's upbringing, family environment, and social history to provide context for their actions and potential for rehabilitation.

Criminologists:

Role: Analyze the juvenile's criminal behavior within the broader context of societal and developmental factors, supporting arguments for rehabilitation over punishment.

Recent Neurotechnology Legislative Trends

Who's Reading Your Mind? Exploring the Intersection of Neural Data and Privacy Protections

By Frances Green, Paul DeMuro and Eleanor Chung

New York Law Journal - May 22, 2024

This article highlights recent laws and legislation surrounding the protection of "sensitive data," such as biological and neuro data, when it comes to neurotechnologies, especially as these technologies quickly move into the realm of consumer products.

COLORADO HOUSE BILL 24-1058 (Colorado Revised Statutes, 6-1-1303, (2.5), (16.7), (24)(b), (24)(c), (24)(d))

"CONCERNING PROTECTING THE PRIVACY OF INDIVIDUALS' BIOLOGICAL DATA, AND, IN CONNECTION THEREWITH, PROTECTING THE PRIVACY OF NEURAL DATA AND EXPANDING THE SCOPE OF THE "COLORADO PRIVACY ACT" ACCORDINGLY"

CALIFORNIA SENATE BILL No. 1223 (*1798.99.90, 1798.130, 1798.140, and 1798.185 of the Civil Code*)

This bill would define "sensitive personal information," for purposes of the CCPA, to additionally include a consumer's neural data, and would define "neural data" to mean information that is generated by the measurement of the activity of an individual's central or peripheral nervous systems that can be processed by, or with the assistance of, neurotechnology, as defined, and would make conforming changes.