

No. 03-633
(CAPITAL CASE)

In the
SUPREME COURT OF THE UNITED STATES

DONALD P. ROPER,
Superintendent, Potosi Correctional Center,
Petitioner,

v.

CHRISTOPHER SIMMONS,
Respondent.

On Writ of Certiorari
to the Supreme Court of Missouri

BRIEF FOR PETITIONER

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Part I: Summary of the Facts

Christopher Simmons, the respondent, was convicted of murder and sentenced to death at the age of seventeen. With his conviction upheld, he filed for a writ of habeas corpus from the Missouri Supreme Court. Based on their interpretation of the eighth amendment, that court granted the writ, subsequently sentencing him to life in prison. However, this is a complete disregard of the Supreme Court's precedent.

1. The Murder

September 9, 1993, is a day that changed Steven Crook's life forever. It was on this day that the woman he loved, married, and vowed to spend the rest of his life with was brutally murdered.

In the days leading up to Shirley Crook's death, her would-be murderer was planning the vicious crime. Christopher Simmons, then age seventeen, told friends Charlie Benjamin, fifteen, and John Tessmer, sixteen, of his plan to burglarize and kill someone. He also expressed the chilling details and methods he would use to commit the crime. First, he would find an innocent victim to rob. Then he would tie the victim up. Finally, he would throw the victim off a bridge. He told his friends that since they were still minors in this disturbing plan, they would "get away with it."

At approximately 2:00 am, Simmons met Tessmer and Benjamin. At the time Simmons and Benjamin left to commit the crime, Tessmer departed from the group. While investigating Shirley Crook's home for a place to enter, they found a window open. By reaching through the window, the respondent and Benjamin were able to unlock a back door and enter the home of the innocent sleeping woman. Simmons then proceeded to turn on a light in the hallway, waking up Mrs. Crook, who was home alone. She called out, "Who's there?" and Simmons entered her bedroom. Because of a previous automobile incident between the two, the respondent and Mrs. Crook recognized each other.

After Mrs. Crook refused to follow Simmons's order to get out of bed, the respondent and Benjamin forced her to the floor. Simmons left the room and found a roll of duct tape while Benjamin guarded the horrified Mrs. Crook. Simmons returned and the perpetrators bound her hands behind her back and taped the victim's mouth and eyes shut. After placing Mrs. Crook into her own minivan, the respondent drove, with his accomplice, from Mrs. Crook's Jefferson County home to Castlewood State Park in St. Louis County.

At this point, one cannot even imagine the terror Mrs. Crook must have felt. Little did she know she had become the innocent victim of a ghastly plot and would never see her Jefferson County home, or her husband, again.

Arriving at the park, Simmons parked near a railroad trestle that connected the two sides of the Meramec River. While Simmons and Benjamin unloaded Mrs. Crook like cargo, they realized she had freed her hands as well as some of the tape on her head. Using their resources to continue the awful scheme, the perpetrators bound Mrs. Crook's

hands and feet again with the strap from her purse and the belt from her bathrobe. They also covered Mrs. Crook's head with a towel from her van before walking her across the railroad trestle. Using electrical tape found on the trestle, the perpetrators hog-tied her hands and feet together before covering her face completely with duct tape. Then Simmons finished his plan. He pushed Mrs. Crook off the trestle into the Meramec River, drowning her. Simmons and Benjamin then threw their victim's purse into the woods and drove the van back to the mobile home park across from the subdivision in which the Crooks lived.

Simmons returned to the original meeting place, and bragged about killing Mrs. Crook "because the bitch seen my face." Then, later that day, Steven Crook, the victim's husband, returned home from an overnight trip to find out that Mrs. Crook had not reported to work as scheduled and the bedroom was in disarray. Mr. Crook decided to file a missing person's report.

Two fishermen were fishing in the Meramec River on the same afternoon. They found Mrs. Crook's body floating about three quarters of a mile downstream from the trestle. The authorities were notified, the body removed, and an examination done. The cause of death was drowning and the medical examiner verified that Mrs. Crook was alive before being pushed from the trestle. The body also had considerable bruising and some fractured ribs that did not result from the fall.

When police learned of Simmons' involvement, they arrested him and took him to the Fenton Police Department. The officers read him his rights, but he waived his right to counsel and confessed to the heinous murder of Mrs. Crook, a completely innocent victim.¹

2. *Trial and sentencing*

Simmons was found guilty by the jury of first-degree murder with three aggravating circumstances: (1) it was committed for the purpose of receiving money or any other thing of value, (2) it was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest of Simmons, and (3) it involved depravity of mind, and as a result, the murder was outrageously and wantonly vile, horrible, and inhuman.² The court, which handled Simmons as an adult because of Missouri law, sentenced Simmons to death.

The case is in its present state because on May 3, 2002, Simmons filed for writ of habeas corpus, or a petition to decide whether or not an inmate is imprisoned lawfully,³ with the Missouri Supreme Court. Then, on August 26, 2003, the court resentenced Simmons to life in prison, instead of the death penalty, on the basis that Simmons' eighth amendment

¹ Details of the murder were found in the Petitioner's brief: *Roper v. Simmons* and at FindLaw.com: *Roper v. Simmons*

² Petitioner's brief: *Roper v. Simmons*

³ <http://www.lectlaw.com/def/h001.htm>

rights were violated by the original sentence since he was only seventeen at the time of the murder. At this time, Judge Price dissented, recognizing that the issue was controlled by the precedent set by the United States Supreme Court in *Stanford v. Kentucky*.

Part II: Questions addressed
(Capital Case)

1. Once the Supreme Court holds that a particular punishment is not “cruel and unusual,” can a lower court reach a contradictory opinion based on its own analysis of “evolving standards of decency?”
2. Is the imposition of the death penalty on a person who commits murder at the age of seventeen years “cruel and unusual” and thus prohibited by the Eighth and Fourteenth Amendments?

Part III: Argument

I.

The Supreme Court of Missouri, as a lower court, should be compelled to follow the precedents set by past rulings of the United States Supreme Court.

In principle, stare decisis means that past case decisions set precedents and should be followed. This is especially true of a ruling from the United States Supreme Court. As stated in the Constitution's Article III, the Supreme Court is the highest court in the nation with other courts being inferior. Therefore, it is only logical to infer that a lower court must adhere to the Supreme Court's rulings.

In 1989, the Supreme Court set a precedent in the *Stanford v. Kentucky* case. In that case, the Court decided that the Petitioner, a seventeen-year-old at the time of the murder, was eligible for the death sentence. The decision was based on precedent from past cases as well. The first case used was *Trop v. Dulles*, which said that there is an evolving standard of decency in maturing societies. Another precedent the Court used in *Stanford v. Kentucky* was *Coker v. Georgia*, which stated that a punishment only violated the evolving standards of decency if objective evidence reflects this view in American society. Finally, the Court referenced the *Gregg v. Georgia* idea that the people's legislators are indicators of the standards of decency, not the Court's subjective opinions. After viewing these precedents, the Courts decided that, based on the modern standards of decency, there is not consensus against the execution of sixteen- and seventeen-year-olds.

This long list of Supreme Court precedents should not be cast aside by an inferior court. Since 1989, there has been no significant change seen in this country in regard to the standards of decency. Therefore, since the United States Supreme Court has not had reason to overturn *Stanford v. Kentucky*, the precedent still stands. Inferior courts must follow.

The consequences of inferior courts not following this precedent would be disastrous. This country will end up with subjective rulings from inferior courts that don't reflect the nation or follow the Supreme Court's rulings. This will cause an increase in the frequency of Eighth Amendment cases the United States Supreme Court will have to hear. However, even these rulings of the Supreme Court would have little weight if lower courts can simply choose not to follow them.

The decision of this case can either solidify the United States Supreme Court as the highest court in the land, or it can relinquish the Court's power over inferior courts.

II.

The death penalty for someone who commits murder at the age of seventeen years is not "cruel and unusual" and thus not prohibited by the Eighth and Fourteenth Amendments.

Since the conclusion of *Stanford v. Kentucky*, many states have used its rulings as a guideline for instituting a capital punishment policy. Many such states have decided to allow capital punishment to be available to those minors who they find to have committed heinous crimes at the ages of sixteen or seventeen. But when it comes into question whether it is “cruel and unusual” to sentence a juvenile to the death penalty, it is for the highest courts, and not the lower courts, to decide. And therefore, if the higher courts rule on cases, such as in *Stanford v. Kentucky*, that create precedent for future trials to base rulings upon, it is not justifiable for the lower courts to question its applicability or sensibility to its cases; to overrule the decision of *Stanford v. Kentucky* would create imbalance and unequal justice to the cases that followed it. And furthermore, it is in the best interest of all the courts, not to state whether the death penalty, as a means of punishment for minors, is “cruel and unusual” while there is still no clear national consensus.

In order for the courts to consider whether or not there exists a national consensus for or against the death penalty being applicable to minors, there must be an act of legislation that demonstrates it. Because the legislative branch is employed by the people of the states, and the legislation must at all times represent the will of the people, the legislation must act as a voice for the people when deciding standards of decency. *Gregg v. Georgia*. After *Atkins v. Virginia*, a national consensus developed against the execution of mentally retarded offenders who had committed first degree murder. *Atkins*. This was proven by the immense amount of legislative acts following the outcome of the trial. The majority responded to the case by abolishing capital punishment for mentally retarded individuals, proving that society saw these offenders as “less culpable than the average criminal.” *Atkins v. Virginia*. However, because more than eighteen legislatures have set the death penalty eligibility age to sixteen, and fourteen legislatures from other states have abolished capital punishment altogether, it clearly does not show that there is a national consensus regarding whether or not criminals under eighteen years of age may be executed. *Thompson v. Oklahoma*. The only consensus it may show, is that many states do consider there to be a proxy that forms at sixteen. Mr. Simmons was seventeen when his crime was committed, and therefore any consensus that would seem at all clear would allow his execution because he was above the popular age limit.

When the framers wrote the Constitution, they did not leave clear instruction on how to interpret and/or uphold the Eighth Amendment. So, knowing that society’s views change, it is up to the highest courts to decide what is “cruel and unusual.” *Coker v. Georgia*. Statistics cannot be used to guide the courts, because a prosecution may find it justifiable to tell juries that executions of such juvenile offenders are morally substandard, and thus creates a rarity of cases to conclude with an execution of a juvenile. Therefore, the only guidelines a court may use are precedents such as *Stanford v. Kentucky*. In the case, an offender of seventeen years and four months committed a capital crime of murder, and was sentenced to death. The court denied the offender the right to be tried in the juvenile courts, stating that his age would be a mitigating circumstance. *Stanford*. *Stanford v. Kentucky* concluded that: (1) individualized consideration is a constitutional requirement, (2) polls and statistics are too uncertain to base constitutional law

upon, (3) and finally and most importantly, that “the imposition of capital punishment on an individual for a crime committed at sixteen or seventeen years of age does not constitute cruel and unusual punishment under the Eighth Amendment.” *Stanford v Kentucky*. Parallel to *Stanford*, in *Gregg v. Georgia* the higher court found that “capital punishment for the crime of murder cannot be viewed as invariably disproportionate to the severity of that crime.” Multiple precedents came to the same conclusion about first-degree murder in accordance to capital punishment.

Competency can be questioned with any age, with any state of mind; and since *Atkins* many states have scrutinized how competency affects sentencing. Circumstances that define the crime can also be used as a means for developing the punishment. Under the special circumstances implied in *Gregg v. Georgia*, Simmons can account for each one. Simmons committed the murder while in the commission of burglary; he committed the murder for the purpose of receiving money and the use of the victim’s car in her disposal, for the purpose of sheer amusement, and he committed a murder that was “outrageously and wantonly vile, horrible, and inhuman.” *Gregg v. Georgia*. When Simmons filed a petition against his sentencing, he argued that *Atkins*’ precedents applied to his case. In *Atkins*, the offender was diagnosed as mentally retarded before conviction, and because of his mental retardation, he was less able to understand fully the process of his crime and execution and be less able to be a viable witness for his own defense. *Atkins v. Virginia*. Mr. Simmons has not been diagnosed as mentally retarded, therefore, he has a far better understanding of his crime and the penalty, and he can be a far better advocate to his own case than would be a mentally challenged individual. To say that a minor’s mental capacity is at all comparable to a mentally challenged individual’s mental capacity is not sensible. *Atkins* is not as applicable as *Stanford* is as a precedent to this case, and so as to ensure the practice of stare decisis, *Stanford* should be upheld.

In *Ford v. Wainwright*, a prisoner sentenced to execution developed alterations to his behavior and was later claimed to be incompetent; and this incompetency rendered him unfit to process his execution. The Court decided that to execute an insane individual was unconstitutional under the *Eighth Amendment*, and to test for competency, an offender would have to be “aware of his impending execution and of the reason for it.” *Ford v. Wainwright*. Simmons was fully aware that he was to be executed, and even more aware as to why. To further solidify his awareness, he could also be found culpable for two of the three inquiries found in *Penry v. Johnson*. Simmons’ conduct was “committed deliberately and with the reasonable expectation that death would result” and was not a response to “provocation by the deceased.” *Penry v. Johnson*. The fact that “the bitch seen my face,” a direct quote from Simmons, does not constitute a provoking circumstance for the delinquent.

The first court in Simmons’ case found him guilty of aggravated first-degree murder, due to two aggravating circumstances. During the first trial, the court judge waved certain mitigating circumstances due to the “brutality of the crime.” A mitigating circumstance possibly applicable to the crime was the nonexistence of a prior criminal record. 565.032. But, Simmons admitted to

smoking marijuana and drinking alcohol on regular occasions, both illegal activities for those under twenty-one years of age. Although the state never prosecuted Simmons for crimes prior to the murder, that did not mean that he wasn't already a criminal. Post-conviction, Simmons was diagnosed with Schizotypal Personality Disorder. This disorder at times affects a person's susceptibility to peer pressure, among other things; however, it was not Simmons who was under peer pressure in the crime, but the two other minors of ages fifteen and sixteen who he enlisted to aid him in his plot for murder. *Lockett v. Ohio*. While the mental disorder could be considered a mitigating circumstance in the crime, it was not until after his sentencing that he was diagnosed, and therefore, it is uncertain when he could have developed this disorder. 565.032. The question as to whether or not Simmons could have received a mental analysis prior to conviction had he been a part of a nurturing family is not distinguishable here.

Simmons was charged with aggravated first-degree murder. He performed the murder at the age of seventeen with the intent to avoid the punishments of those older and equally aware of the consequences who committed the same crimes. Because he committed the crime for the gain of money and for pleasure, it cannot be proven that he could not control his negative emotions that would render him immature and under-processed neurologically and somehow "less culpable." Simmons committed the crime with full awareness of the consequences, but with slight ignorance to the extent to which justice is served in the state of Missouri. Therefore, he understood the consequences of the murder, just not how applicable they could be to him. Simmons had a lack of remorse until he was told he may receive the death penalty, when at this time he broke down in tears. The tears do not show guilt for the heinous murder of Shirley Crook, but for fear of his life being taken as fair punishment. The precedents that are pertinent in this case only found capital punishment "cruel and unusual" when the crimes were disproportionate to the sentencing, when an offender was declared mentally retarded or insane, and when the murder was committed with unsure intent to conclude with death. None of those factors apply to Simmons' actions, and therefore, the precedents set in *Stanford* are the most applicable and should be upheld.

Part IV: Conclusion

Lower courts do not have the authority to overturn a precedent decided by the Supreme Court. It was not for the Missouri courts to decide what is or is not “cruel and unusual” when the Supreme Court had already ruled on this topic in *Stanford v. Kentucky*. In this case a long list of precedents was examined as well. Also, since the United States Supreme Court has not had reason to overturn *Stanford v. Kentucky*, the precedent still stands.

The consequences of lower courts not following this precedent would be disastrous. The country will end up with subjective rulings from lower courts that don’t reflect the nation or follow the Supreme Court’s rulings. The frequency of Eighth Amendment cases in the United States Supreme Court will increase. However, even these rulings of the Supreme Court would have little weight if lower courts can simply choose not to follow them.

The decision of this case can either solidify the United States Supreme Court as the highest court in the land, or it can relinquish the Court’s power over inferior courts.

Stanford v. Kentucky set the precedent for future cases with regard to minors who committed first-degree murders. *Atkins* made it “cruel and unusual” to execute a mentally challenged individual, but *Atkins* does not have the applicability to this case that *Stanford* has. There is no clear national consensus against the execution of a minor that committed a capital crime and no majority of legislative acts for or against to show otherwise. Because Simmons was in full consciousness as to what he was doing, and was doing so at an age purposefully to avoid full punishment, he should be held sufficiently culpable. The courts should maintain stare decisis, and uphold *Stanford v. Kentucky*. His mitigating factors should not hold as much weight as the aggravating circumstances due to the brutality of the crime, and the questionable timing of the diagnosis of his disorder. Missouri law at the time of his crime allowed minors to receive the death penalty, ensuring that the Missouri courts were right to sentence Simmons to the death penalty. It is not “cruel and unusual” according to the most applicable of precedents that could be used as guidelines in this case.

For the reasons stated above, the Court should reverse the decision of the Missouri Supreme Courts and reaffirm its holding in *Stanford v. Kentucky*.

Respectfully submitted,

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Part V: Group roles and precedents used

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Precedents used:

- *Stanford v. Kentucky*
- *Trop v. Dulles*
- *Coker v. Georgia*
- *Gregg v. Georgia*
- *Atkins v. Virginia*
- *Thompson v. Oklahoma*
- *Penry v. Johnson*
- *Lockett v. Ohio*
- *Ford v. Wainwright*