

**ROPER v. SIMMONS**  
**125 S.Ct. 1183 (2005)**

In Simmons, 17 year old Christopher Simmons was charged with burglary, stealing, and the kidnapping and first degree murder of Shirley Crook. Intruders had entered Mrs. Crook's home while her husband was away on business, duct taped her eyes, mouth and hands, gagged her and taken her to a railroad trestle that spanned the Meramec River. Once at the railroad trestle, her assailants covered her face with duct tape and bound her hand and feet with electrical wire and threw her off the trestle. Simmons, who was still a junior in high school, was apprehended within days of the crime, after police learned that he had been bragging about his role in the killing. Simmons made a full confession after less than two hours of interrogation and agreed to perform a videotaped reenactment at the crime scene. At his trial, some nine months later, the State introduced his confession and the videotaped reenactment along with testimony from at least one co-conspirator that he had discussed the crime in advance and bragged about it later. Simmons was convicted and the State sought the death penalty.

During the penalty phase, the State offered evidence that the murder was committed for the purpose of receiving money, that Simmons killed Mrs. Crook in an attempt to prevent his arrest for the other crimes he committed the night of the murder, and that the murder involved "depravity of the mind and was outrageously and wantonly vile, horrible and inhuman." In mitigation, Simmons' attorneys called a witness to testify that Simmons had no prior involvement with the juvenile justice system and then several of his family members, a neighbor and a friend to discuss their relationships with Simmons and plead for mercy on his behalf. Both the State and Simmons' attorneys referenced his age in their closing arguments and the judge instructed the jury that they could consider age as a mitigating factor. Simmons' attorneys reminded jurors of the reasons why juveniles of Simmons' age are not allowed to drink, vote, serve on juries. In rebuttal the State told the jury that Simmons' age was not a mitigating factor; rather, the fact that he was only seventeen at the time of the offense should scare them more. The jury found that the State had proven the three aggravating factors that it had submitted for their consideration and recommended the death penalty. The judge accepted the jury's recommendation and sentenced Simmons to death.

Successor counsel sought a new trial, arguing that Simmons' trial counsel had been ineffective because they failed to present testimony from clinical psychologists and other witnesses regarding Simmons' immaturity, impulsivity and his susceptibility to influence and manipulation by others, as well as related information about his background and family life. The trial court denied this Motion and the consolidated appeal of Simmons conviction, sentence, and the denial of post conviction relief were all affirmed by the Missouri Supreme Court. Simmons' petition for a writ of habeas corpus was also denied by the federal courts. Simmons again sought post conviction relief after the United States Supreme Court decided Atkins v. Virginia, 122 S.Ct. 2242 (2002), which held

that the Eighth and Fourteenth Amendments prohibit the execution of a mentally retarded person. Simmons asserted that a similar national consensus had developed against the execution of juvenile offenders as had against the execution of the mentally retarded requiring the abolishment of the juvenile death penalty. The Missouri Supreme Court agreed and set aside Simmons' death sentence.

The United States Supreme Court granted certiorari and affirmed the decision of the Missouri Supreme Court. Justice Kennedy, writing for the Court, detailed the Court's practice of interpreting the Eighth Amendment's proscription against "cruel and unusual punishment" through the lens of history, tradition and precedent. Justice Kennedy further explained this practice as necessitating a review of the nation's evolving standards of decency to determine whether or not a national consensus had been reached as to the acceptability of a particular punishment, as well as a determination by the Court whether in its independent judgment, the punishment passes Constitutional muster. Justice Kennedy then turned to the Court's last decision to address the execution of juveniles, Stanford v. Kentucky, 109 S.Ct. 2969 (1989) and reviewed it in light of Atkins'.

According to Justice Kennedy, in Stanford, a plurality of justices concluded that there was no national consensus that the use of execution as a punishment for juvenile offenders over fifteen but under eighteen offended contemporary standards of decency such that it constituted cruel and unusual punishment. On the same day, the Court also concluded in Penry v. Lynaugh, 109 S.Ct. 2934 (1989), that the Eighth Amendment did not prohibit the execution of the mentally retarded. In reaching both of these conclusions, Justice Kennedy noted that the Court looked to the number of states that had outlawed the execution of these classes of offenders and concluded that there were not enough states implicated to provide evidence of a national consensus. In both Stanford and Penry, however, the Court refused to impose its own judgment to assess the proportionality of the imposition of the death penalty against the implicated classes.

When the Court returned to the issue of the execution of the mentally retarded in Atkins, Justice Kennedy noted that it conducted a new analysis of the issue in light of contemporary standards of decency. In Atkins, the Court found that in the three years since they had decided Penry, the tide had shifted such that only a minority of states permitted the execution of the mentally retarded, and only then in rare circumstances. However, the Court also looked to Eighth Amendment decisions predating Stanford and Penry and determined that it was also necessary for the Court to impose its independent judgment on the question of the acceptability of the death penalty. The Court then acknowledged that the impairments of mentally retarded offenders make it "less defensible to impose the death penalty as retribution" and less likely that there will be any deterrent effect. On this basis the Court held that standards of decency had evolved to the point that the execution of the mentally retarded constituted cruel and unusual punishment.

Drawing from this precedent, Justice Kennedy first traced the evolution of national attitudes on the juvenile death penalty post Stanford. Justice Kennedy found that five states that had allowed the juvenile death penalty at the time of Stanford had since abolished it, with the result that the majority of states prohibit the execution of juveniles. Additionally, Justice Kennedy noted that in those states that still allowed the juvenile death penalty, it was infrequently used. Justice Kennedy then concluded that there was objective evidence to support a finding of a national consensus against the juvenile death penalty.

After reaching this conclusion, Justice Kennedy detailed the Court's contemplation of the nature of the death penalty as a punishment and the legal precedent restricting its use for a narrow category of the worst crimes and offenders. Justice Kennedy noted that the Court considered this history in the context of scientific and sociological data regarding juveniles, finding that juveniles cannot with any reliability be classified among the worst offenders. The Court recognized three general differences between juveniles and adults, namely juveniles possess: 1) a lack of maturity and underdeveloped sense of responsibility; 2) are more vulnerable and susceptible to negative influences and outside (peer) pressure; and 3) an underdeveloped character without fixed personality traits. The Court then found that these differences mandate recognition that the irresponsible conduct of juveniles is not as morally reprehensible as adults and that even where a juvenile commits a heinous crime, it is unsupportable to conclude that this is evidence of "irretrievable depraved character." The Court also opined that the vulnerability and comparative lack of control that juveniles have over their lives gives them "a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment." The Court concluded that once the "diminished capacity" of juveniles is recognized, it becomes evident that the social purposes of retribution and deterrence that the death penalty serves are not met by executing juveniles. The Court then held that on the basis of the national consensus against the juvenile death penalty and its own assessment of the diminished capacity of juvenile offenders, the Eighth and Fourteenth Amendments bar the imposition of the death penalty on any offender under eighteen years of age.

It is not known at this time what the legacy of Simmons will be for Massachusetts juvenile jurisprudence, however, it is hoped that the Court's recognition of the unique vulnerabilities of juveniles may serve as a reminder to our courts. Specifically, it is hoped that the Court's recognition of the susceptibility of juveniles to negative influences and peer pressure may spark discussion about the appropriateness of joint venture prosecutions and perhaps an overall assessment of the capacity of juvenile offenders to form criminal intent. In a similar vein, it is hoped that the Court's acknowledgements regarding the transitory nature of juvenile character traits and the implications of this for rehabilitative potential, may recharge the debate about the appropriateness of the prosecution of juveniles as youthful offenders and the imposition of adult sentences. Finally, it is hoped that such a strongly worded reminder will reaffirm the Commonwealth's

commitment to support the juvenile courts around the state and lead to the expansion of services that promote youth development.