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## Court rules on death penalty, retardation

**Even if a defendant's total IQ is normal, a deficiency in a particular area may be enough to bar execution, California justices say.**

By Maura Dolan  
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SAN FRANCISCO — A defendant may be spared the death penalty because he is mentally deficient in one area, even if his IQ score falls in the normal range, the California Supreme Court decided Thursday.

The state high court's unanimous ruling rejected an appeals court decision that "full scale" IQ scores — composites of tests of various mental faculties — are the best measure of intelligence. The justices said courts may give greater weight to one measurement of IQ over another and that the best way to measure intellectual functioning may vary from case to case.

The decision gives judges broader discretion to spare defendants from execution for reasons of mental impairment and clarifies a 2005 ruling that allowed death row inmates to challenge their sentences on the grounds of mental retardation. That decision was triggered by a 2002 U.S. Supreme Court ruling that barred execution of mentally retarded inmates.

Because the legal definition of mental retardation does not rely on a fixed IQ score, trial courts may give greater weight to certain kinds of evidence than others, the court said.

"The question of how best to measure intellectual functioning in a given case is thus one of fact to be resolved in each case on the evidence, not by appellate promulgation of a new legal rule," Justice Kathryn Mickle Werdegar wrote.

John Philipsborn, who represented an association of criminal-defense lawyers in the case, said the ruling will affect at least 28 death row prisoners and at least eight defendants who are claiming mental retardation prior to trial.

"It is going to allow greater flexibility in presenting evidence," Philipsborn said.

The decision was a victory for Jorge Junior Vidal, one of several men charged with the murder, torture and sodomy of Eric Jones, 17, near Delano on Jan. 24, 2001.

Vidal and the others reportedly lured Jones into a garage, bound his hands and feet with an extension cord, beat, shocked and sodomized him, then shot him several times, according to published reports. One of the defendants said Vidal blamed Jones for trying to steal his car and had even proposed cutting off Jones' ear with a saw.

Vidal's full scale scores on standard IQ tests have generally been above what is considered mental retardation. A trial judge found that Vidal was mentally retarded because his verbal IQ, indicating verbal problem-solving, comprehension and judgment, showed "subaverage general intellectual functioning."

Vidal's full scale IQ was above the mental retardation range because he scored substantially higher in a part of the test that measured visual perceptions and spatial dimensions, or what an expert called "skills of putting things together in a functional way."

In other words, the defense expert had testified, Vidal appeared to be capable of "putting puzzles together and doing so quickly" but would not necessarily understand why one would do that or be able to follow verbal commands to do so.

The defense experts said that large differentials between the two subsets of IQ were unusual and that a full scale IQ assessment, produced by a mathematical process from the subsets, was not a reliable measure of general intelligence.

But a psychologist testifying for the prosecution said the full scale score was the best indicator of intelligence.

The trial judge decided to place more weight on the verbal score, determining that it was more relevant to such issues as premeditation, deliberation and an ability to distinguish right from wrong.

In ruling for Vidal, the state high court said the law should not dictate how to measure intellectual functioning. Prosecutors may appeal a judge's finding of mental retardation, but the reviewing court should simply consider whether the judge's finding was supported by substantial evidence, the court said.

Tulare County Deputy Public Defender William Mueting, who represented Vidal, said the ruling provided direction both to judges and to lawyers.

Tulare County Deputy Dist. Atty. Barbara J. Greaver, who argued the case for the prosecution, could not be reached for comment.

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