

Palm Beach County suspect's eligibility for death penalty in long-delayed case may hinge on IQ

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8:27 A.M. — WEST PALM BEACH — His is one of the longest-running death penalty cases in Florida, experts recall.

D'Andre Bannister has sat in jail more than seven years awaiting trial, after being charged with first-degree murder in the death of his stepson, 4-year-old Tarquez Woodson, whom police say Bannister beat to death in August 2002.

Today, the attorneys and judge gathered again, this time to determine if Bannister is mentally retarded and thus ineligible to face the ultimate penalty. One factor under Florida law is having a general IQ score 70 or below.

Despite Bannister scoring an IQ of 72 some years ago, a newly available intelligence test given to him in 2008 gave his defense attorneys the magic IQ score of 69.

"It may have been a blessing in disguise this long passage of time," said defense attorney Ronald Chapman outside court, adding that the new intelligence test — the WAIS-IV — was not available previously.

Testimony of three doctors who evaluated Bannister did not conclude today. Circuit Judge John Hoy could not immediately identify a time he had available to continue testimony at a later date. Hoy has said he will set the case for trial this summer.

Under testing by a defense doctor, psychologist Harry Krop, Bannister scored a general IQ of 69 in 2008.

But under the same testing by a doctor tapped by prosecutors, Bannister scored an IQ of 78 in 2009, according to testimony.

And the protracted delay may have played a part in that as well, Krop testified.

For Bannister, being in a highly structured environment like the jail has likely increased his overall abilities, Krop said.

"To his credit, he has done a lot of things to try to improve himself during the eight years he has been incarcerated," Krop said.

How could Bannister score 69 on an intelligence test and then 78 less than a year later?

Krop opined that he believed Bannister purposefully learned the answers, looking up in a dictionary, for example, some words he did not understand the first time he was tested.

The doctors who testified said that Bannister does not want think of himself as mentally retarded and doesn't want to be seen as such.

So, it's a double-edged sword for Bannister waiting so long for trial, as he may have grown smarter in the meantime — and eligible for execution.

In 2002, the U.S. Supreme Court in the case of *Atkins v. Virginia* barred the execution of mentally retarded people, deciding the practice is "cruel and unusual punishment."

Two months later Bannister was arrested and charged, after Tarquez Woodson died, bruises all over the boy's body, torn internal organs and brain damage.

The case against Bannister languished under a constellation of events: a series of procedural delays, distractions, changes in judges and momentous personal events in the attorneys' own lives.

And his defense attorneys, Chapman and Evelyn Ziegler, have been in no hurry to take his case to trial, with no one forcing their hand.

The delay's multi-layered effect on the outcome is something, of course, only more time will tell.