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LEWIS v. JEFFERS 110 S. Ct. 3092, 111 L.Ed.2d 606 (1990)

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LEWIS v. JEFFERS

110 S. Ct. 3092, 111 L.Ed.2d 606 (1990)
United States Supreme Court

FACTS

After injecting his ex-girlfriend with a lethal dose of heroin, Jimmie Wayne Jeffers choked the victim until she died and then hit the dead victim in the face several times. When his current girlfriend arrived on the scene, Jeffers ordered her to inject more heroin into the victim and to choke her while he took pictures so that he could prove she was an accomplice to the ex-girlfriend's murder. An Arizona jury convicted Jeffers of first-degree murder and the trial judge sentenced Jeffers to death after finding two aggravating factors: (1) Jeffers created a grave risk of death to another person in the commission of a murder, and (2) Jeffers committed the murder in an especially heinous, cruel, and depraved manner. Ariz. Rev. Stat. Ann. § 13-703(F)(3) (1989). On direct review, the Arizona Supreme Court vacated Jeffers' death sentence and remanded for resentencing in light of the United States Supreme Court's decision in *Lockett v. Ohio*, 438 U.S. 586 (1978), which requires the consideration of anything offered as mitigation evidence.

At the second sentencing hearing, the trial judge again found the same aggravating circumstances with no mitigating factors and sentenced Jeffers to death. The Arizona Supreme Court affirmed the sentence but reversed the trial judge's finding that Jeffers "knowingly created a grave risk of death to another person . . . in addition to the victim of the offense." The court also concluded that the State had failed to prove the "cruelty" aggravating factor beyond a reasonable doubt. However, the Arizona Supreme Court upheld the death sentence, holding that the events surrounding the murder supported the finding that the murder was especially heinous and depraved. Jeffers eventually petitioned for a writ of habeas corpus in U.S. District Court, alleging that Arizona's interpretation of its "especially heinous or depraved" aggravating circumstance was unconstitutionally overbroad and vague and that his sentence was unsupported by the evidence.

The District Court noted that under Arizona law a murder that is especially heinous and depraved "includes the infliction of gratuitous violence upon the victim and the indication that the defendant committed the crime with relish." *Jeffers v. Ricketts*, 627 F. Supp. 1334, 1360 (Ariz. 1986) (citations omitted). Based on the facts of the crime, the court rejected Jeffers' constitutional challenge to the statute. The Court of Appeals for the Ninth Circuit, however, struck down Jeffers' death sentence as arbitrary because the "standard of heinousness and depravity delineated in prior Arizona cases cannot be applied in a principled manner to Jeffers." *Jeffers v. Ricketts*, 832 F.2d 476, 486 (9th Cir. 1987). In reaching its decision, the Ninth Circuit reviewed a number of Arizona Supreme Court decisions which both defined and applied the "especially heinous . . . or depraved" circumstance. Then the court compared the facts of those cases with the facts of Jeffers' case. The state petitioned the United States Supreme Court for certiorari.

HOLDING

The Supreme Court reversed the judgment of the Ninth Circuit and reinstated the death sentence for the following reasons:

a) Arizona's "especially heinous, cruel, or depraved" aggravating circumstance, as narrowed and applied, is constitutionally sufficient.

The Court saw its decision in *Walton v. Arizona*, 110 S. Ct. 3047 (1990) as controlling in this case. In *Walton*, the Court determined Arizona's "especially heinous, cruel or depraved" aggravating circumstance was constitutionally sufficient because the Arizona Supreme Court gave substance to the operative terms of the statute through

definitions. The Court concluded that the definitions gave meaningful guidance to the sentencer and thus the aggravating circumstance was constitutional. *Id.* at 3058. The *Jeffers* Court held that its decision in *Walton* "squarely forecloses any argument that Arizona's aggravating circumstance, as construed by the Arizona Supreme Court, fails to channel the sentencer's discretion." *Lewis v. Jeffers*, 110 S.Ct. 3092, 3100-3101 (1990). The Court failed to mention that its *Walton* decision relied primarily on the conclusion that the murder was especially *cruel*. The Supreme Court did not grant review of the adequacy of the Arizona Supreme Court's construction of "cruelty" in this case.

b) A rational factfinder could have reached the conclusion that Jeffers' conviction was supported by the evidence.

The Court restated its holding in *Jackson v. Virginia*, 443 U.S. 307 (1979), that when a federal habeas corpus claimant alleges that his state conviction is unsupported by the evidence, federal courts must determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jeffers*, 110 S. Ct. at 3103. The Court held that the *Jackson* considerations also apply to review of capital sentences. Like findings of fact, state court findings of aggravating circumstances often require a sentencer "to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Id.* Thus, a state court's finding of an aggravating circumstance in a particular case is arbitrary and capricious only if no reasonable sentencer could have similarly concluded. Given the evidence surrounding Jeffers' murder of his ex-girlfriend, the Court concluded that a rational factfinder could have reached the Arizona Supreme Court's finding that Jeffers committed his murder in an especially heinous and depraved manner.

ANALYSIS/APPLICATION IN VIRGINIA

Jeffers argued before the United States Supreme Court that the Ninth Circuit correctly held that Arizona's construction of its statutory aggravating circumstances contravened the U.S. Supreme Court's decisions in *Godfrey v. Georgia*, 446 U.S. 420 (1980) and *Maynard v. Cartwright*, 486 U.S. 356 (1988). Both *Godfrey* and *Maynard* held that the "vileness" or "heinousness" aggravating factors could be constitutionally applied only if a state supreme court monitored the use of those factors and insured that a narrowing construction of those factors was applied by the sentencer. Jeffers claimed that the Arizona Supreme Court violated *Godfrey* and *Maynard* because it failed to confine the application of aggravating circumstances within constitutionally sufficient narrowing constructions.

The U.S. Supreme Court mischaracterized Jeffers' claim as one of a general right to comparative proportionality review by the appellate court. The Court therefore relied on its holding in *Pulley v. Harris*, 465 U.S. 37 (1984) which covers a broader range of cases than *Godfrey* and *Maynard*. The *Pulley* decision holds that the eighth amendment does not require proportionality review by appellate courts in every case. In other words, the eighth amendment does not require state appellate courts to compare a death sentence with penalties imposed in similar cases before it affirms a sentence of death. *Cf. Godfrey v. Georgia*, 446 U.S. 120 (1980). Because Jeffers' review involved the application of a narrowing construction of an aggravating circumstance, the review was found to be limited to a determination of whether the state court's decision was arbitrary or capricious.

Justice Blackmun filed a dissenting opinion in which Justices Brennan, Marshall, and Stevens joined. Blackmun found fault with the Arizona Supreme Court's narrowing construction of the aggravating factor of "especially heinous, cruel, or depraved manner." *Ariz. Rev. Stat. Ann. § 13-703(F)(6)* (1989). Blackmun reasoned that the Arizona Supreme Court had identified many such factors and had "shown itself so willing to add new factors when a perceived need arises, that the body of its precedents places no meaningful limitations on the application of this aggravating circumstance." *Jeffers*, 110 S. Ct. at 3111. In other words, Arizona's narrowing construction of the aggravating factor is not prospective, but rather retrospective in that it expands the definition to include whatever characterizes the case currently under review.

Blackmun also argued that a proportionality review that involves a comparison between the case under review and prior state court decisions applying the same aggravating factor, is necessary in capital cases no matter what standard of review the habeas court uses. The comparison would be a means of determining whether the state court's application of its construction to the instant case expands the scope of the aggravating factor in such a way as to make a previously valid limiting construction unconstitutionally broad. *Jeffers*, 110 S. Ct. at 3113. The comparison approach would allow a defendant on federal habeas to raise challenges based on how the aggravating circumstance had previously been construed by the reviewing court.

Mandating use of the "rational factfinder" standard established in *Jackson v. Virginia*, 443 U.S. 307 (1979), the Court also said that a state court's finding of an aggravating circumstance is arbitrary or capricious "if and only if no reasonable sentencer could have so concluded." *Jeffers*, 110 S. Ct. at 3103. Curiously, the Court also relied on a dissenting opinion by Justice White in *Godfrey v. Georgia*, 446 U.S. 420 (1980). White reasoned that when the issue on review is solely whether a state court properly found the existence of a constitutionally narrowed aggravating circumstance, the Court has never required federal courts "to peer majestically over the [state] court's shoulder so that [they] might second-guess its interpretation of facts that quite reasonably — perhaps even quite plainly — fit within the statutory language." *Id.* at 450. Thus, the Court concluded that "respect for a state court's findings of fact and

application of its own law counsels against the sort of de novo review undertaken by the Court of Appeals in this case." *Jeffers*, 110 S. Ct. at 3102.

The *Jeffers* decision marks a significant change in habeas cases. Lower federal courts must now apply the standard of *Jackson v. Virginia*, 443 U.S. 307 (1979), which says that when a federal habeas claimant alleges that his state conviction is unsupported by the evidence, federal courts must determine only whether any rational trier of fact could have found the essential elements of the crime or the appropriately narrowed aggravating factor beyond a reasonable doubt. Therefore, there will be less supervision of application of the Virginia vileness factor in federal habeas cases.

Virginia, like Arizona, applies its vileness factor retrospectively, expanding the definition to accommodate the case under review. (See case summary of *Mu'min v. Commonwealth*, Capital Defense Digest, this issue.)

At trial, an attempt can be made to combat this unfair "moving target" approach. Defendant should try to obtain notice and an opportunity to defend against factors upon which the Commonwealth will rely and to limit the Commonwealth to those factors. This can be done by filing a pretrial motion for a bill of particulars which compels the prosecution: (a) to identify the aggravating factors upon which the Commonwealth will rely, including how many and which of the three vileness components will be asserted; and (b) to identify the narrowing construction which will be used and to supply evidence supporting that assertion.

If the response from the Commonwealth is general and simply names everything in the statute, the defense attorney should look at the evidence and make a motion to strike factors which are not supported by the evidence, prohibiting the Commonwealth from relying on an aggravating factor, or component thereof, which is unsupported by the evidence.

Summary and analysis by:
Ginger M. Jonas

CLEMONS v. MISSISSIPPI

110 S. Ct. 1441, 108 L.Ed.2d 725
United States Supreme Court

FACTS

In need of cash, Chandler Clemons called a pizza delivery man with the intent to rob him. After taking money and some pizza from the delivery vehicle, Clemons shot the delivery man, Arthur Shorter, even though Shorter begged for his life. Clemons fled the scene and the victim died shortly thereafter. The trial court convicted Clemons of capital murder. At the sentencing hearing, the State presented evidence of two aggravating factors: (1) the murder was committed during the course of a robbery for pecuniary gain, and (2) the murder was an "especially heinous, atrocious, or cruel" killing. Finding both aggravating factors present and that they sufficiently outweighed any mitigating circumstances, the jury sentenced Clemons to death.

On appeal, the Mississippi Supreme Court affirmed Clemons' sentence but found that the Mississippi aggravating circumstance of an "especially heinous, atrocious, or cruel" killing was constitutionally invalid in light of the U.S. Supreme Court's decision in *Maynard v. Cartwright*, 486 U.S. 356 (1988) (holding the "especially heinous, atrocious, or cruel" aggravating circumstance invalid under eighth and fourteenth amendments because the statutory language did not direct the jury's discretion in deciding when the death penalty is appropriate).

However, the Mississippi Supreme Court stated that "when one aggravating circumstance is found to be invalid or unsupported by the evidence, a remaining valid aggravating circumstance will nonetheless support the death penalty verdict." *Clemons v. State*, 535 So.2d 1354, 1362 (Miss. 1988). Clemons petitioned the United States Supreme Court for certiorari, and in an opinion filed by Justice White, joined by Justices Rehnquist, O'Connor, Kennedy, and Scalia, the Supreme Court vacated Clemons' sentence and remanded the case to the Mississippi Supreme Court.

HOLDING

The Court held that the United States Constitution does not prevent a state appellate court from upholding a death sentence that is based in part on an invalid or improperly applied aggravating circumstance, as long as the appellate court either reweighs the aggravating and mitigating evidence or conducts a harmless error review. The Court vacated Clemons' sentence and remanded the case to the Mississippi Supreme Court because it was unclear whether that court correctly employed either of those methods of review.