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MU'MIN v. VIRGINIA

111 S. Ct. 1899 (1991)
United States Supreme Court

FACTS

Dawud Majid Mu'Min was convicted of capital murder in the Virginia Circuit Court, Prince William County. The Virginia Supreme Court affirmed his conviction. 239 Va. 433, 389 S.E.2d 886. See case summary of *Mu'Min v. Commonwealth*, Capital Defense Digest, Vol. 3, No. 1, p. 17 (1990). Subsequently, Mu'Min was granted certiorari by the United States Supreme Court. Mu'Min's case garnered substantial pre-trial publicity. Mu'Min claimed that his sixth amendment right to a fair and impartial jury and his fourteenth amendment right to due process were violated when the trial judge refused to permit questioning on voir dire of prospective jurors who had read or heard something about Mu'Min's case as to the content of what they had read or heard. After a motion for individual voir dire was denied, voir dire was conducted by asking the jurors whether they were biased by pretrial publicity. Initially the jurors were questioned as a group and then in panels of four. The examination was conducted in a manner where silence as opposed to an affirmative response indicated impartiality.

HOLDING

The United States Supreme Court held that "content questions" are not constitutionally required. The Court stated that "the trial court's failure to ask [content] questions must render the defendant's trial fundamentally unfair." *Mu'Min v. Commonwealth*, 111 S. Ct. 1899, 1905 (1991)(citing *Murphy v. Florida*, 421 U.S. 794, 799 (1975)). Thus, as with other findings of fact, the Court will not disturb the trial court's finding of juror impartiality unless it is a "manifest error." *Mu'Min*, 111 S. Ct. at 1907 (citing *Patton v. Yount*, 467 U.S. 1025, 1031 (1984))(quoting *Irvin v. Dowd*, *supra*, 366 U.S. 717, 723 (1961)).

ANALYSIS / APPLICATION IN VIRGINIA

Content Questions in Voir Dire are not Constitutionally Required

The Majority stated, "[v]oir dire examination serves the dual purposes of enabling the court to select an impartial jury and assisting counsel in exercising peremptory challenges." *Mu'Min*, 111 S. Ct. at 1908. By the wording, "enabling" and "assisting," the Court suggested that voir dire was more of a procedural device to be used by the judge and defense counsel to insure that the defendant's constitutional rights were not violated. With respect to voir dire, the Court stated, "[t]he trial judge's function . . . is not unlike that of the jurors later on in the trial. Both must reach conclusions as to impartiality and credibility by relying on their own evaluations of demeanor evidence and of responses to questions." *Mu'Min*, 111 S. Ct. at 1904 (quoting *Rosales-Lopez v. United States*, 451 U.S. 182, 188 (1981)). In addition, the Court stated, "our own cases have stressed the wide discretion granted to the trial court in conducting voir dire in the area of pretrial publicity and in other areas of inquiry that might tend to show jury bias." *Id.* at 1906.

In federal courts, the Court's authority is supervisory. As to state courts, the Court's authority "is limited to enforcing the commands of the United States Constitution." 111 S. Ct. at 1903. In *Mu'Min* the Court stated,

the obligation to impanel an impartial jury lies in the first instance with the trial judge, and because he must rely largely on his immediate perceptions, federal judges have been accorded ample discretion in determining how best to conduct the voir dire.

111 S. Ct. at 1904 (emphasis added)(quoting *Rosales-Lopez*, 451 U.S. at 189). *Rosales-Lopez* was decided under the Court's supervisory authority; therefore, if the Court will not tell a federal court how it should conduct voir dire, where the Court "enjoy[s] more latitude in setting standards for voir dire," then the Court will not tell a state court exactly how to conduct voir dire. 111 S. Ct. at 1904 (emphasis added).

Mu'Min relied on two types of cases to support his claim that his constitutional right to a fair and impartial jury and his right to due process were violated when his motion for "content questions" was denied by the trial judge. He relied on cases with strong racial or ethnic overtones and cases with substantial pretrial publicity.

In those cases with strong racial or ethnic overtones, the Court required a voir dire inquiry regarding racial prejudice. The Court identified two themes which necessitated such an inquiry:

first, the possibility of racial prejudice against a black defendant charged with a violent crime against a white person is sufficiently real that the Fourteenth Amendment (sic) requires that inquiry be made into racial prejudice; second, the trial court retains great latitude in deciding what questions would be asked on voir dire.

Mu'Min, 111 S. Ct. at 1904 (emphasis added). In cases with racial or ethnic overtones, the Court was "careful not to specify the particulars" which a trial court should use to cover the subject of racial or ethnic prejudice. *Id.* at 1908. The Court stated, "[Mu'Min] asserts that the Fourteenth Amendment (sic) requires more in the way of voir dire with respect to pretrial publicity than our cases have held that it does with respect to racial or ethnic prejudice." *Id.* at 1904. Thus, even if the Court were to accept the petitioner's analogy between his own highly publicized case and those cases involving racial or ethnic prejudice, the Court would not require "content questions" on voir dire because an inquiry was already made into pretrial publicity as with the issue of racial prejudice in the racial or ethnic cases and, furthermore, because "content question" are too specific. Ultimately, the Court stated that the issue of whether the trial judge's denial of Mu'Min's motion for content questions violated his constitutional rights was really a question of whether "the trial court's failure to ask these questions render[ed] the defendant's trial fundamentally unfair." *Id.* at 1905.

Mu'Min relied heavily upon *Irvin v. Dowd*, 366 U.S. 717 (1961), to show that the jury was so biased that his rights to a fair and impartial jury and to due process were violated. The Court distinguished *Irvin* from *Mu'Min* by stating, "while the pretrial publicity in this case appears to have been substantial, it was not of the same kind or extent as that found to exist in *Irvin*." *Mu'Min*, 111 S. Ct. at 1907. The Court found that in *Irvin* "[t]wo-thirds of the jurors actually seated had formed an opinion that the defendant was guilty . . .," *Id.* at 1906 (emphasis added), whereas in Mu'Min's case "none . . . indicated that he had formed an opinion as to guilt . . ." *Id.* at 1907 (emphasis added). Also, the Court stated, "[h]ad the trial court in this case been confronted with the 'wave of public passion' engendered by pretrial publicity that occurred in connection with *Irvin*'s trial, the Due Process Clause of the Fourteenth Amendment might well have required more extensive examination of potential jurors than it undertook here." *Id.* at 1907 (emphasis added). Therefore, the Court dismissed Mu'Min's claim as to "content questions" as a constitutional right based upon his showing of pre-trial publicity.

Absent a manifest error in the trial court's determination of juror impartiality, the Court reiterated its unwillingness to overrule a finding

of juror impartiality. To find manifest error the Court must determine “whether the jurors . . . had such fixed opinions that they could not judge impartially the guilt of the defendant.” *Mu’Min*, 111 S. Ct. 1899, 1908 (quoting *Patton*, 467 U.S. at 1035)(emphasis added). In the present case, the Court found that there was no manifest error because “the *voir dire* examination conducted by the trial court in this case was by no means perfunctory.” *Mu’Min*, 111 S. Ct. at 1908. Thus, it is clear that the Court requires a fact specific showing of manifest error in *voir dire* to prove that a defendant’s constitutional rights were violated rather than a constitutionally mandated inquiry in *voir dire* using content questions to insure that his constitutional rights are not violated.

In dissent, Justice Kennedy stated, “the trial judge should have substantial discretion in conducting the *voir dire*, but, in my judgement, findings of impartiality must be based on something more than the mere silence of the individual in response to questions asked *en masse*.” 111 S. Ct. at 1919. Kennedy believed that “a juror’s acknowledgement of exposure to pretrial publicity initiates a duty to assess that individual juror’s ability to be impartial” which mandates a “sufficient colloquy with the individual juror . . .” *Id.* at 1919 (emphasis added). Kennedy was concerned with the “actual impartiality of the seated jurors, and . . . an adequate examination of those . . . jurors . . .” *Id.* at 1918.

The fact that content questions are not constitutionally guaranteed does not foreclose defense counsel from requesting that content ques-

tions be asked on *voir dire* in highly publicized cases. As the majority and the dissent note, the trial judge is afforded ample discretion on *voir dire*. Prior to jury selection, evidence of all pretrial publicity should be offered and it should be forcefully argued that fairness demands a more probing inquiry than the constitutional minimum permitted by *Mu’Min*.

If content questioning is denied and there are additional adverse rulings affecting jury selection, including further restrictions on *voir dire*, these denials can be evidence of an aggregate violation of the sixth amendment right to a fair and impartial jury and the right to effective assistance of counsel.

Issues which could affect a defendant’s constitutional rights should be alleged individually and in the aggregate. For example, denial of a change of venue or of individual *voir dire* standing alone may not constitute a sixth amendment violation but if considered with restrictions on *voir dire*, such as in *Mu’Min*’s case where the court also denied his motion for additional peremptory challenges, all of these denials may add up to an error of constitutional magnitude. The Virginia Capital Case Clearinghouse has available a model composite motion addressing the denial of change of venue, additional peremptory challenges, individual *voir dire* and other *voir dire* restrictions.

Summary and analysis by:
Marcus E. Garcia

COLEMAN v. THOMPSON

111 S. Ct. 2546 (1991)
United States Supreme Court

FACTS

Roger Keith Coleman was sentenced to die as a result of his conviction for rape and capital murder. The Virginia Supreme Court affirmed both the convictions and the sentence. *Coleman v. Commonwealth*, 226 Va. 31 (1983). Coleman appealed to the United States Supreme Court, but was denied certiorari. *Coleman v. Virginia*, 465 U.S. 1109 (1984).

Coleman then filed a writ of habeas corpus in state court, raising numerous federal constitutional claims, including some that he had not raised on direct appeal. The Circuit Court did not provide any relief. Coleman then filed a notice of appeal with the Circuit Court 33 days after entry of final judgment and subsequently filed a petition for appeal in the Virginia Supreme Court.

The Commonwealth filed a motion to dismiss Coleman’s appeal on the ground that it violated Virginia Supreme Court Rule 5:9 which provides that no appeal shall be allowed unless a notice of appeal is filed with the trial court within 30 days of final judgment. The Virginia Supreme Court did not act immediately on the Commonwealth’s motion, and both parties filed several briefs on the subject of the motion to dismiss and on the merits of the claims in Coleman’s petition. Nonetheless, the Virginia Supreme Court dismissed Coleman’s appeal. The court order recited the procedural history of Coleman’s appeal and stated only that “upon consideration whereof, the motion to dismiss is granted and the petition for appeal is dismissed.” The United States Supreme Court again denied certiorari. *Coleman v. Bass*, 484 U.S. 918 (1987).

Coleman next filed a habeas petition in federal court, presenting four federal constitutional claims that he had raised on direct appeal in the Virginia Supreme Court and seven claims that he had raised for the first time in state habeas. The United States District Court concluded that the

dismissal of his appeal in state habeas had the effect of a procedural default for Coleman’s seven claims.

The United States Court of Appeals for the Fourth Circuit also held that Coleman had defaulted all of the claims that he had raised for the first time in state habeas and affirmed the lower court’s decision. *Coleman v. Thompson*, 895 F.2d 139 (1990). Coleman argued that under *Harris v. Reed* the federal courts could not treat the Virginia Supreme Court’s denial as a procedural default because the court had not “clearly and expressly” specified the basis of its opinion. The Fourth Circuit held that the Virginia Supreme Court’s decision rested on adequate and independent state procedural grounds and that Coleman had not shown cause to excuse the default. The United States Supreme Court granted certiorari.

HOLDING

The United States Supreme Court cited the concerns of federalism and comity in affirming the lower court’s decision. The Court held that the Virginia Supreme Court’s decision “fairly appears” to rest primarily on state law because the dismissal does not mention federal law and because the underlying dismissal motion was based solely upon state procedural grounds of failure to give timely notice of appeal.

More broadly, the Court held that review of a federal claim defaulted in state court on adequate and independent state grounds is barred unless the petitioner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claim will result in a fundamental miscarriage of justice.

The Court also rejected Coleman’s contention that late filing by his attorney could serve as “cause” for the default. The Court responded that attorney error can serve as “cause” only if it is deemed ineffective assistance of counsel violative of the sixth amendment, and that since there