10-1975

Roberts v. Louisiana

Lewis F. Powell Jr.

75-5844
Roberts v. Louisiana

There was
never a cert memo
in this case. It
was granted before
a memo was written.

Jim Gurley has
written a paragraph
on it in one of
his long memos.

gj.

On the probable cause issue, the CCA refers to the many sightings by witnesses of petitioner's truck, particularly the identification of the pick-up by one of the witnesses as one at which the victim had stopped to converse with the driver earlier in the day. [That this particular identification was known to the police prior to the arrest apparently is conceded by petitioner. cert petition at 52 n. 56.] The CCA also notes the awareness of the arresting officers of the outstanding warrant for petitioner.

In response, the State aligns itself with the CCA.

Discussion: Again, this appears to be a "totality of the circumstances" issue similar to the one raised in Gregg. And again, although certain of the circumstances may be disturbing, the question is a factual one and the determinations below weigh heavily against its merit.

Conclusion: Certiorari may be limited to question 1.

4. ROBERTS v. LOUISIANA, 75-5844:

Facts: The facts provided by the present pleadings are very sketchy. No response has been received. The evidence petitioner was convicted on is not stated either in the cert petition or in the Louisiana Supreme Court opinion. The cert petition does not provide a statement of facts.

The opinion summarily relates that Richard Lowe, an attendant of a gas station, was shot and killed during an armed robbery committed by petitioner and one Calvin Arceneaux. Petitioner and Arceneaux entered the station office unarmed but removed a revolver from a desk drawer and used it to threaten, and finally kill, the attendant. The robbery netted petitioner and his accomplice two guns, two empty money bags and three dollars. The murder weapon was entered into evidence.

Contentions: Petitioner raises only a capital punishment question:

> "1. Whether the imposition and carrying out of the sentence of death for the crime of first degree murder under the law of Louisiana violates the Eighth or Fourteenth Amendments to the Constitution of the United States?"

Discussion: Obviously petitioner confessed or Arceneaux testified at the trial, but no confession issue was raised below and although petitioner raises prosecutorial discretion in his capital punishment argument, he does not allude to any deals made involving Arceneaux. The status of Arceneaux is not revealed. Similarly, no search and seizure issue was raised below. Aside from the capital punishment issue and the Taylor issue (women were excluded from petitioner's grand and petit juries), petitioner raised no substantive federal issues in the State Supreme Court.

Conclusion: The particulars of this case remain to be divulged. On the issues presented, however, there is no need to limit certiorari.

5. WOODSON and WAXTON v. NORTH CAROLINA, 75-5491:

Facts: Petitioners' convictions for first degree (felony) murder were based on their own testimony at trial and on the testimony of two accomplices, Tucker and Carroll, who were permitted to plead to lesser offenses and were sentenced to terms of imprisonment of from 20-30 years.

The testimony established that petitioners, Waxton (age 24) and Woodson (age 23), and two other black men--Tucker (18) and Carroll (19)--planned the armed robbery of an E-Z Shop in Dunn, N. C. Tucker and petitioner Waxton entered the store while Carroll and petitioner Woodson remained in a car outside. As she was about to wait on him, petitioner Waxton shot and killed the white shop attendant. [The North Carolina Supreme Court noted that the only significant difference in the testimony relates to who fired the shot that killed the store attendant; and, since each admitted being one of the four who conspired to rob the shop, legally it makes no difference whether Waxton or Tucker did it. Waxton, understandably, points the finger at Tucker. Tucker accuses Waxton, The testimony of Carroll and Woodson, although not eyewitnesses, strongly implicates petitioner Waxton. No findings are made on this point below.]

Contentions: Petitioners present only the capital punishment question:

> "Whether the imposition and carrying out of the sentence of death for the crime of murder under the law of North Carolina violates the Eighth or Fourteenth Amendment to the Constitution of the United States?"

Conclusion: Certiorari need not be limited.

April 1, 1976

No. 75-5844 ROBERTS v. LOUISIANA

Capital Case - Louisiana Statute

Mandatory death penalty prescribed for a narrow range of offenses, characterized as "murder in the first degree". Murder in the first degree is defined as the killing of a human being:

(1) With specific intent to kill or to inflict great bodily harm:

(a) During the commission of an aggravated felony (kidnapping, rape, burglary or armed robbery);

(b) An on-duty fireman or peace officer;

(c) When the defendant has a prior murder conviction or is serving a life sentence; or

(d) The defendant has a specific intent to kill "more than one person".

(e) For hire.

Some of the factors in the Louisiana statute, that are made elements of the crime itself, are included in other statutes as "aggravating circumstances".

The Louisiana statute, to this point, is an attempt to define narrowly the crimes for which a death sanction may be imposed. For the most part, the definitions are fairly specific and objective in identifying the additional factors that must be found.

Under Louisiana law, the jury - in every first degree murder case - must be instructed by the judge that it may find

a verdict for the lesser crimes of second degree murder or manslaughter. Failure so to instruct is reversible error, and the nature of the evidence is immaterial. Thus, the jury has the right, always, to return a verdict of manslaughter rather than for murder.

Capital Cases - Conference

4/2/76

General discussion, subject to further analyses of particular statutes - if desired by any Justice

C.J. - {Same view as in 1972 affirm all cases.

Brennan - {Will never change 1972 view. Reverse all

Stewart - More to be said against Brennan's ~~view~~ today than in 1972. In light of what 35 states have done since 1972, can no longer argue that C/P is incompatible with "evolving standards of decency". These standards - in this context - should be det. by legislatures rather than jud. branch.

Cannot agree that C/P is invalid under 8th & 14th Amend in any & all circumstances. As matter of Const. law, can't say C/P is invalid.

Thought it was invalid in 1972 only because of the sporadic & discriminatory way in which C/P was carried out. Juries had no standards to guide them & jury verdicts could not be reviewed in any intelligent way. Opportunity for discrimination was large.

<u>Stewart</u> (cont)

<u>Ga</u> & <u>Fla</u> have clearly devised valid systems. The crimes are specified & only after conviction - in a separate trial - does the jury address the penalty.

In Ga. jury sentence is binding upon judge but not in Fla. This makes no dif.

In both states appellate review is carefully structured.

Each step in process is designed to minimize error - and afford opportunity for mercy:

Can't "buy" Amsterdam's view (also Charlie Black's) as to the wrongness of the opportunity for discretion. There must be discretion.

<u>Texas</u> statute is close. Not at rest as to its validity.

<u>N.C.</u> doesn't really change pre-<u>Furman</u>. Is invalid.

<u>La</u> - allowing lesser offense convictions is bad - invalid.

Potter thinks neither <u>N.C.</u> nor <u>La</u> avoids his <u>Furman</u> objections. Potter thus thinks both 8th + 14th Amend are relevant. There is a "race" implication, as "rape" is included.

Potter added that bifurcated trial is not <u>required</u>. He thinks N.C. + La statutes are <u>not</u> mandatory, limited to specific offenses.

White - Affirm all four

Agree with much of what Potter said generally.

In 1972 there was #high level of "disproportionality" (sp?). Statutes not evenly enforced.

As far as Furman goes (what Byrne said there), he thinks all 5 of these states have met the standards. These are very different from pre-Furman statutes.

(Both Byrne & Potter recognize "tension" bet. McGautha & Furman)

Sees no difference of Const. dimensions bet. N.C. & La and the statutes of other states.

None of these cases involved rape. Reserves judgment as to C/P for rape (as would I except under most aggravated circumstances)

After discussion - Harry asked me to mark "passing" on N.C.

Marshall - Reverse all - stands by 1972 op.

Blackmun - Affirm all.

Views have not changed.

Attack on "discretion" is an attack on our entire system.

Rape may be different.

(See my notes on separate sheet)

Rehnquist - Affirm all

Stevens - Affirm - Ga, Fla & Tex; Reverse - N.C. & La (?)

Accepts Furman as controlling.

Has no doubt that C/P is a permissible penalty under the Const. Can't agree that "standards" have yet evolved as Amsterdam urges.

When only issue is 8th amend, it may be unusual to make a procedural analysis. But this seems to be the basis of the Stewart/White rationale, & so he accepts this type of analysis.

If we had a rape case, would feel different.* No suggestion of racial bias in three of these states. May be some in N.C. & La statutes.

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* ~~Rape~~ C/P for rape is disproportional

Stevens (cont.)

If a rapist knows he may get death for rape then he has ass incentive to kill the victim (remove the witness).

Now only 5 or 6 states make rape a C/offense.

Affirm in Ga, Fla + Tex.
Reverse, tentatively, in N.C. + La

N.C. statute results in ~~6~~ more executions than pre-Furman (altho Bren accords with Byron's view. Byron was not as concerned with "discretion" as was Stewart. Byron was concerned primarily with infrequency of imposition)

N.C. has no separate sentencing hearing. Also, jury has too much discretion to find lesser offense. (P/P wrote, I need to talk to John — as I don't understand all of his objections to N.C.)

As to Texas, doesn't mind giving not having standards for jury in trial on guilt so long as there is separate hearing on sentence — with standards.

Powell { affirm Ga, Fla + Texas
Possibly affirm La
Passed on N.C. - probably Reverse

I accept Furman as precedent. Also, fair to say that result of Furman has been wholesale in promptness stated to focus re problems.

The 5 states here have endeavored to meet the wants of Stewart + White.

If a procedural type of analysis is appropriate under Furman, I think Ga, Fla + Tex have devised careful systems - with standards + procedures designed to minimize if not eliminate most of Furman concerns. Also types of offenses narrowed substantially + carefully developed.

La statute, on its face, is one of best. But it does not have bifurcated trial. Then not essential but is a safeguard. Effect of allowing "lesser offense" convictions not clear to me. I'll consider them further.

N.C. codifies pre-Furman law + practice. For reasons others have stated I'm quite doubtful as to its validity under Furman

SUPREME COURT OF THE UNITED STATES

No. 75-5844

STANISLAUS ROBERTS,	)	
	)	
Petitioner,	)	On Writ of Certiorari to the Supreme Court of Louisiana.
	)	
v.	)	
	)	
STATE OF LOUISIANA.	)	

[June 1976]

On August 18, 1973, in the early hours of the morning, Richard G. Lowe was found dead in the office of the gas station at which he worked. He had been shot four times in the head. The police recovered four spent projectiles from a .38 caliber pistol at the scene.

About six months later, the police recovered a gun, subsequently identified as the murder weapon, from a cafe and beer parlor operator. The gun was traced back to the petitioner.[1/] Four men--petitioner, Huey Cormier, Everett Walls, and Calvin Arcenaux--were subsequently arrested for complicity in the murder.

At trial, Cormier, Walls, and Arcenaux testified against petitioner. Their testimony established[2/] that just before

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1/ The gun, a .38 caliber revolver, was readily recognizable. It was an "uncommon type gun," (R. 70), which had been sold to the owner of the gas station by a police officer. The police force had, after the shooting, been instructed to be on the lookout for this gun.

2/ Since petitioner was convicted, we read the testimony in the light most favorable to the prosecution.

midnight on August 17, petitioner had discussed with Walls and Cormier the subject of "ripping off that old man at the station." Petitioner indicated that Arcenaux was to accompany him. Cormier and Walls, however, declined to participate.

Arcenaux testified that on the early morning of August 18, he and petitioner went to the gas station and asked the eventual victim, Lowe, for work. Lowe told them there were no jobs available. They left, but crept back into the station office through a rear entrance while Lowe was outside waiting on a car. There was no evidence to indicate that either petitioner or Arcenaux was armed at this point.

Arcenaux "crawled" to a desk drawer and removed from it a pistol which belonged to the station owner. Petitioner asked Arcenaux to give him the pistol. According to Arcenaux, petitioner "was kind of mad when I had it. He just said he wanted it because he had never killed a white dude before, and he always wanted to kill a white dude." (R. 190). When Lowe returned to the office, petitioner held him by the collar and Arcenaux hit him while they shoved him into a small back room. When they had all been in the room for about five minutes, a car drove up. Arcenaux went out and, posing as the station attendant, gave the motorist about three dollars worth of gas. While still out in front, he heard four shots from inside the station. He went back inside and found Lowe on the floor, bleeding. Petitioner was no longer there. Arcenaux grabbed some empty "money bags" and ran from the station.

Cormier testified that as he was walking home from a bar, he saw Arcenaux run from the filling station. Cormier then went home and went to bed. Some time later he heard a knock on the door. Petitioner was standing at the door, sweating. When Cormier asked petitioner why he was sweating, he replied that "he had just shot that old man . . . at the filling station." Cormier also saw that petitioner was carrying a gun.

Petitioner was indicted by the grand jury on May 9, 1974, on a presentment that he "did unlawfully with the specific intent to kill or to inflict great bodily harm, while engaged in the armed robbery of Richard G. Lowe, commit first degree murder by killing one Richard G. Lowe, in violation of Section One (1) of L.S.A.-R.S. 14:30."[3/] He was found guilty as charged by the jury; the judge, as required by statute, sentenced him to death.

The Louisiana legislature in 1973 revised the Louisiana statutes relating to murder and the death penalty, apparently in response to this Court's decision in Furman v. Georgia, 408 U.S. 238 (1972). Before these amendments, Louisiana law defined only the crime of "murder," as the killing of a human being by an offender with a specific intent to kill or to inflict great bodily harm, or by an offender engaged in the perpetration or attempted perpetration of aggravated arson, aggravated burglary, aggravated kidnapping, aggravated rape, armed robbery or simple robbery, even without an intent to kill.[4/] The jury was free to return a verdict of guilty, guilty without capital punishment, guilty of manslaughter or not guilty.[5/]

The legislature, in the 1973 amendments, changed this discretionary statute to one wholly mandatory, requiring that the death penalty be imposed whenever the jury should find the defendant guilty of the newly described crime of first degree murder. This

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3/ This version of the indictment includes immaterial amendments made May 22, 1974, after the Court had convened on the first day of the trial but before the trial had commenced.

4/ La. Stat. Ann. § 14:30.

5/ La. Code Crim. Proc. Ann., Art. 814 (1967).

new statute, under which petitioner was charged, provides in part that first degree murder is the killing of a human being when the offender has a specific intent to kill or to inflict great bodily harm and is engaged in the perpetration or attempted perpetration of aggravated kidnapping, aggravated rape, or armed robbery.[6/]

The amended statute describes second degree murder in much the same terms as those used by the prior statute to describe

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6/ La. Rev. Stat. Ann. § 14:30 (as amended by La. Acts 1973, Act 109):

"First degree murder.

First degree murder is the killing of a human being:

(1) When the offender has a specific intent to kill or to inflict great bodily harm and is engaged in the perpetration or attempted perpetration of aggravated kidnapping, aggravated rape or armed robbery; or

(2) When the offender has a specific intent to kill, or to inflict great bodily harm upon, a fireman or a peace officer who was engaged in the performance of his lawful duties; or

(3) Where the offender has a specific intent to kill or to inflict great bodily harm and has previously been convicted of an unrelated murder or is serving a life sentence; or

(4) When the offender has a specific intent to kill or to inflict great bodily harm upon more than one person; [or]

(5) When the offender has specific intent to commit murder and has been offered or has received anything of value for committing the murder.

For the purposes of paragraph (2) herein, the term peace officer shall be defined and include any constable, sheriff, deputy sheriff, local or state policeman, game warden, federal law enforcement officer, jail or prison guard, parole officer, probation officer, judge, district attorney, assistant district attorney or district attorneys' investigator.

Whoever commits the crime of first degree murder shall be punished by death."

[In 1975, §14.30(1) was amended to add the crime of aggravated burglary as a predicate felony for first degree murder. Act No. 327, West's La. Sess. L. Serv. 1975, at 570-571.]

murder.[7] Second degree murder is the killing of a human being when the offender has a specific intent to kill or to inflict great bodily harm, or when the offender is engaged in the perpetration or attempted perpetration of certain specified felonies, including armed robbery, even though the offender has no intent to kill.

Under the former statute, the jury had the choice in any case where it found the defendant guilty of murder of returning either a verdict of guilty, which required the imposition of the death penalty, or a verdict of guilty without capital punishment, in which case the punishment was imprisonment at hard labor for life.[8] Under the new statute the jury is required only to determine whether both conditions existed at the time of the killing; if there was a specific intent to kill, and the offender was engaged in an armed robbery, the offense is first degree murder and the mandatory punishment is death. If only one of these conditions existed, the offense is second degree murder and the mandatory punishment is

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7/ La. Rev. Stat. Ann. § 14:30.1 (enacted La. Acts 1973, Act 111):

> "Second degree murder.
> Second degree murder is the killing of a human being:
> (1) When the offender has a specific intent to kill or to inflict great bodily harm; or
>
> (2) When the offender is engaged in the perpetration or attempted perpetration of aggravated arson, aggravated burglary, aggravated kidnapping, aggravated escape, armed robbery, or simple robbery, even though he has no intent to kill.
>
> Whoever commits the crime of second degree murder shall be imprisoned at hard labor for life and shall not be eligible for parole, probation or suspension of sentence for a period of twenty years."

[In 1975, §14:30.1 was amended to increase the period of parole ineligibility from twenty to forty years following a conviction for second degree murder. Act. No. 380, West's La. Sess. L. Serv. 1975, at 665.]

8/ La. Code Crim. Proc. Ann. § 814 (1967) enumerated "guilty without capital punishment" as one of the responsive verdicts available in a murder case. La. Code. Crim. Proc. Ann., Art. 817 (1967) provided

imprisonment at hard labor for life. Any qualification or recommendation which a jury might add to its verdict--such as a recommendation of mercy where the verdict is "guilty of first degree murder"--is without any effect.[9/]

Thus, like the North Carolina statute discussed in Woodson v. North Carolina, ante at , the Louisiana murder statute leaves no room at all for an individualized determination of whether the death penalty is appropriate for the particular criminal who has committed this particular crime in this particular way.

9/ La. Code Crim. Proc. Ann., Art. 817 (1975 Supp.) (as amended by La. Acts 1973, Act 125 § 1.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 17, 1976

Re: No. 75-5844 - Roberts v. Louisiana

Dear Byron:

Please join me in your dissenting opinion.

Sincerely,

WHR

Mr. Justice White

Copies to the Conference