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LAMBRIX v. SINGLETARY 117 S.Ct. 1517 (1997) United States Supreme Court

believe from all the evidence that the death penalty is not justified, then you shall fix the punishment at life imprisonment." Paragraph four also refers only to the aggravator. This juxtaposition of paragraphs and phrases, most of which refer only to the aggravator, may lead to a potential misunderstanding of the instruction.[39]

The dissent reasoned that the instruction, when read in its entirety as the jury would have received it, could reasonably be read to say, "If you find the defendant eligible for death, you may impose the death penalty, but if you find (on the basis of 'all the evidence') that death penalty is not 'justified,' which is to say that the defendant is not eligible for the death penalty, then you must impose life imprisonment."[40] The dissent went on to say that "[w]ithout any further explanation, the jury might well believe that whether death is, or is not, 'justified' turns on the presence or absence of Paragraph 2's aggravating circumstances [ ]—not upon the defendant's mitigating evidence ... ."[41]

The majority concluded that even if the instruction was deficient for not pointing out the existence of the mitigating evidence presented at trial, the jury was more than aware of this evidence. The dissent stated, however, that "the *presentation* of evidence does not tell the jury that the evidence presented is relevant and can be taken into account—particularly in the context of an instruction that seems to exclude the evidence from the universe of relevant considerations."[42]

After this case, defense counsel in Virginia should continue to object to the use of Virginia Model Criminal Instruction 34.125 as vague, confusing, and insufficient to adequately guide the discretion of the jury. If this objection is overruled, counsel should insist that Virginia Model Criminal Instruction 34.127, or a similar general mitigating evidence instruction, be used as well. Virginia Model Criminal Instruction 34.127 explicitly requires the jury to consider "any evidence presented of circumstances which do not justify or excuse the offense but which in fairness or mercy may extenuate or reduce the degree of moral culpability and punishment."[43] Further, defense counsel should continue requesting specific instructions on the statutory mitigating factors relevant in their case. The *Buchanan* Court only held that giving an instruction on mitigating evidence is not constitutionally required. Trial judges, however, are not prohibited from giving such instructions and may, in their discretion, choose to do so in any case.

Summary and analysis by:
Brian S. Clarke

[39] *Buchanan*, 118 S.Ct. at 764 (Breyer, J., dissenting).
[40] *Id.* (Breyer, J., dissenting).
[41] *Id.* (Breyer, J., dissenting).
[42] *Id.* at 766 (Breyer, J., dissenting) (emphasis in original).
[43] Virginia Model Jury Instructions, Criminal, Instruction No. 34.127 (1993 & Supp. 1995) & *Buchanan*, 118 S.Ct. at 765-66 (Breyer, J., dissenting).

LAMBRIX v. SINGLETARY

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FACTS

Cary Michael Lambrix was convicted in Florida state court on two counts of first-degree murder for the 1983 killing of a man and woman who, after meeting Lambrix and his girlfriend at a local tavern, had returned to his trailer for dinner.[1] In the sentencing phase of the trial, the trial court instructed the jury on five aggravating circumstances.[2] One such instruction involved the "especially heinous, atrocious, or cruel" (HAC) aggravator.[3] The jury issued an advisory sentence of death for each count of murder, and the trial court sentenced Lambrix to death on both counts after finding five aggravating factors with respect to the murder of one of the victims, four aggravating factors with respect to the murder of the other victim, and no mitigating factors with respect to either murder. The Florida Supreme Court upheld Lambrix's convictions and sentences on direct appeal.[4]

Lambrix made multiple attempts to obtain collateral relief, all of which were subsequently denied. He next sought a writ of habeas corpus in the United States District Court for the Southern District of Florida, which rejected all of his claims. He appealed the decision to the United States Court of Appeals, Eleventh Circuit.[5] While that appeal was pending, the

[1] *Lambrix v. Singletary*, 117 S.Ct. 1517, 1521 (1997).
[2] *Lambrix*, 117 S.Ct. at 1524.
[3] *Id.* at 1521.
[4] *Id.*
[5] *Id.*

United States Supreme Court decided *Espinosa v. Florida*,[6] which, because Florida constituted a "weighing" state, bore on Lambrix's claim regarding the improper jury instruction on the HAC aggravator.[7] Lambrix contended that the jury instruction as to the HAC aggravator provided insufficient guidance to limit the jury's discretion and that the trial court's subsequent independent weighing of the aggravating and mitigating circumstances did not cure this error.[8] The court of appeals held Lambrix's habeas proceedings in abeyance to allow Lambrix to assert his *Espinosa* claim in Florida state court.[9] The Florida Supreme Court deemed Lambrix's *Espinosa* claim procedurally barred and rejected it without considering its merits.[10] Lambrix returned to the court of appeals, which declined to acknowledge the procedural bar issue and instead solely considered Lambrix's *Espinosa* claim. The court of appeals determined that *Espinosa* constituted a new rule that, under the edict of *Teague v. Lane*,[11] could not be applied retroactively.[12] The United States Supreme Court granted certiorari.[13]

HOLDING

While noting that courts ordinarily should consider procedural bar issues before proceeding to constitutional issues, the Court declined to resolve the procedural bar issue and instead decided the case on *Teague* grounds.[14] In a majority opinion penned by Justice Scalia, the Court held that the rule of *Espinosa v. Florida* was not "dictated" by pre-existing precedent when the defendant's conviction became final and, instead, that the rule constituted a "new rule" incapable of retroactive application under *Teague*.[15] In so holding, the Court set forth the tripartite inquiry that federal habeas courts should make in conducting a *Teague* analysis.[16] Finally, the Court found that Lambrix's case did not fall within either exception to the bar against retroactivity and, thus, that Lambrix could not avail himself of the rule enunciated in *Espinosa*.[17]

ANALYSIS/APPLICATION IN VIRGINIA

I. The Court's Strained *Teague* Analysis of *Espinosa* "Dictates" a Closer Look

In *Lambrix*, the Court noted that *Espinosa* "did not purport to rely upon any controlling precedent" and suggested that this fact controlled its *Teague* assessment of the case.[18] The Court's interpretation of the substance of *Espinosa's* holding was also determinative of the result it reached. The majority opinion stated that *Espinosa's* "central conclusion" was that "indirect weighing of an invalid aggravator 'creates the same potential for arbitrariness' as direct weighing of an invalid aggravator."[19] Yet, the Court proceeded to cite cases standing for the proposition that jurors' consideration of improper aggravators could be cured by appellate review, and then concluded that these cases did not dictate the result reached in *Espinosa*. In making that argument, the Court argued by implication that *Espinosa's* holding stood contrary to the previously accepted proposition that errors involving improperly vague instructions on aggravators could be cured on appellate review. As the final step in its analysis, the Court set forth three other conclusions regarding the dictates of the law that reasonable jurists could have made at the time that Lambrix's sentence was issued.[20]

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[6]505 U.S. 1079 (1992) (holding that in a "weighing" state in which a judge is required to give deference to a jury's recommended sentence, the Constitution disallows both the judge and the jury from weighing impermissible aggravating circumstances).

[7]*Lambrix*, 117 S.Ct. at 1521.

[8]*Id.* at 1524.

[9]*Id.* at 1522.

[10]The supreme court found that by requesting a limiting instruction on the HAC instruction, Lambrix had preserved the issue at trial. However, his failure to raise the issue on direct appeal resulted in its procedural default. *Id.*

[11]489 U.S. 288 (1989) (holding that "new constitutional rules of criminal procedure will not become applicable to those cases which have become final before the new rules are announced"). *Teague*, 489 U.S. at 310.

[12]*Lambrix*, 117 S.Ct. at 1522.

[13]117 S.Ct. 380 (1996).

[14]*Lambrix*, 117 S.Ct. at 1523-24. The Court briefly discussed the procedural bar issue and suggested that the arguments asserted by Lambrix in response to the state's contention that his claim was procedurally barred seemed "insubstantial." *Id.* at 1523. Citing the "independent and adequate state ground" doctrine and its underlying principles of federalism and comity, the Court suggested that a state court could more properly resolve such a claim and should do so before proceeding to constitutional issues. The Court ultimately declined to rule on the procedural bar issue. *Id.* at 1522-24.

[15]*Id.* at 1525.

[16]The court must first determine the date upon which a defendant's conviction became final. Next, the court must consider whether the then-existing legal landscape and precedent would have compelled the conclusion by the state court that the rule sought by the defendant was compelled by the Constitution. Lastly, if the court determines that the decision enunciated a new rule, the court must decide whether the petitioner's case fits within one of the two exceptions to the bar against retroactivity. *Lambrix*, 117 S.Ct. at 1524-25. The first exception allows for the retroactive application of a rule "if the rule places a class of private conduct beyond the power of the State to proscribe...or addresses a 'substantive categorical guarante[e] accorded by the Constitution,' such as a rule 'prohibiting a certain category of punishment for a class of defendants because of their status or offense.'" *Id.* at 1530, 1531 (citing *Teague*, 489 U.S. at 311 & quoting *Saffle v. Parks*, 494 U.S. 484, 494 (1990) (quoting *Penry v. Lynaugh*, 492 U.S. 302, 329-330 (1989))). The second exception covers "watershed rules of criminal procedure" which implicate constitutional concerns of fundamental fairness and accuracy. *Teague*, 489 U.S. at 311.

[17]*Lambrix*, 117 S.Ct. at 1530-31.

[18]*Id.* at 1525.

[19]*Id.* (quoting *Espinosa*, 505 U.S. at 1082). In this case, the indirect weighing refers to a trial judge's consideration of a sentencing recommendation rendered by a jury after its improper consideration of an invalid aggravator.

[20]*Lambrix*, 117 S.Ct. at 1527-29. The Court stated that a "reasonable jurist" could have reached the following three conclusions: "(1) The mere cabining of the trial court's discretion would avoid arbitrary imposition of the death penalty, and thus avoid unconstitutionality ... (2) There was no error for the trial judge to cure, since under Florida law the trial court, not the jury, was the sentencer ... (3) The trial court's weighing of properly narrowed aggravators and mitigators was sufficiently independent of the jury to cure any error in the jury's consideration of a vague aggravator." *Id.* at 1527-28 (emphasis in original).

The Court's standard for determining whether a defendant should be permitted to avail him or herself of a favorable rule pushes the limits of *Teague* and virtually renders inevitable the wholesale denial of capital defendants' substantively valid constitutional claims. After noting that Lambrix's conviction became final before the Court decided *Espinosa*, the Court explained that its "principal task [was] to survey the legal landscape as of that date, to determine whether the rule later announced in *Espinosa* was dictated by then-existing precedent—whether, that is, the unlawfulness of Lambrix's conviction was apparent to all reasonable jurists."[21] The Court clarified that the proper inquiry was not whether *Espinosa* was a "reasonable interpretation of prior law," but "whether no other interpretation was reasonable."[22] It is difficult to imagine a case in which the members of the Court would collectively speculate and agree that, indeed, all reasonable jurists would have agreed at a certain time that a rule was absolutely dictated by precedent. This rigid standard, with its overwhelming deference to state court decisions, essentially presupposes the denial of defendants' claims.

II. The Importance of Arguing Both *Teague* Exceptions

In the face of a *Teague* analysis, defense counsel should argue that the defendant's case falls within both exceptions. The first exception covers rules that insulate a class of private conduct from governmental proscription or provide substantive categorical guarantees for a particular class of defendants.[23] It appears that in *Lambrix*, defense counsel contended only that Lambrix's case fell within the first exception, and the Court flatly rejected this contention.[24] The second exception covers "watershed rules of criminal procedure" that implicate concerns of fundamental fairness and accuracy.[25] Lambrix's counsel did not argue that *Espinosa* claims fall within the second exception.[26] The Court indicated that it would not have been receptive to such an argument.[27] However, as a general proposition, in striving to obtain for a defendant the benefit of a "new rule," defense counsel should construct arguments for both exceptions.

III. The Dissent's Compelling Case for Retroactive Application of *Espinosa*

Justices Stevens' dissenting opinion, which was joined by Justices Ginsburg and Breyer, set forth a compelling dissent which disputed the majority's analysis of both the meaning of *Espinosa* and the legal landscape at the time that Lambrix's conviction became final. The dissent concluded that, in fact, precedent did dictate the rule announced in *Espinosa*.[28] According to the dissent, the Court succeeded in qualifying Espinosa as a new rule incapable of retroactive application only by interpreting *Espinosa's* holding in an unreasonably broad manner.[29] Justice Stevens stated as follows:

> The majority apparently construes *Espinosa* as holding that the constitutional error in a jury instruction will 'automatically render a defendant's sentence unconstitutional.' ... But in holding that a trial judge's sentence may be infected by the jury's consideration of an invalid aggravating factor, *Espinosa* did not address the entirely separate question of whether the jury's error could be cured or considered harmless either at the trial or the appellate level.[30]

The dissent argued that by imposing a "novel interpretation" upon *Espinosa's* holding, the majority was able to manipulate its selection of legal precedent and thus cast doubt upon whether the rule announced in *Espinosa* was dictated by precedent.[31]

The dissent's compelling argument reveals the extent to which the majority was willing to stretch its analysis to reach what is ostensibly the desired result—the denial of relief to defendants whose constitutional claims are otherwise valid. The majority's assessment of *Espinosa's* holding appears on its face to be more generous toward defendants but, in actuality, was crafted for purposes of defining it as a "new rule."[32] By improperly broadening the holding of *Espinosa*, the Court succeeded in denying virtually all prospective claimants the benefit of its retroactive application.

Summary and analysis by:
Anne E. Duprey

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[21] *Id.* at 1525 (emphasis in original).

[22] *Id.* at 1530 (emphasis in original).

[23] *Lambrix*, 117 S.Ct. at 1530-31. The availability of a valid argument with respect to the first exception would seem to depend directly upon the substance of the new rule at issue in a particular case.

[24] *Id.* at 1531.

[25] *Teague*, 489 U.S. at 311. In *Saffle v. Parks*, 494 U.S. 484, 495 (1990), the Court explained, "Although the precise contours of this exception may be difficult to discern, we have usually cited *Gideon v. Wainwright*, 372 U.S. 335 (1963), holding that a defendant has the right to be represented by counsel in all criminal trials for serious offenses, to illustrate the type of rule coming within the exception."

[26] In contrast to the first exception, the success of arguments with respect to the second exception would seem to depend upon the defense counsel's characterization of the right embodied in the new rule. Defense counsel must seek to characterize that right as being so primary and fundamental as to constitute a "watershed" right. One possible strategy may be to link the right granted by the new rule to another right that the courts have deemed (or seem more likely to deem) a "watershed" right.

[27] *Lambrix*, 117 S.Ct. at 1531.

[28] *Id.* at 1531-34.

[29] *Id.* at 1532.

[30] *Id.*

[31] *Lambrix*, 117 S.Ct. at 1532.

[32] The Court interpreted *Espinosa's* holding as dictating that a jury's consideration of invalid aggravating factors automatically renders the defendant's sentence unconstitutional. With that facially defendant-friendly interpretation of the holding, the Court deprived many potential claimants of the ability to avail themselves of Espinosa's rule.