Capital Defense Journal

Volume 1 | Issue 1 Article 14

Fall 12-1-1988

MAYNARD v. CARTWRIGHT 108 S.Ct. 1853 (1988)

v. Arkansas, 435 U.S. 475, 98 S.Ct. 1173, 55 L.Ed.2d 426 (1978); *Chapman v. California*, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 17 C.Ed.2d 705 (1967); and *White v. Maryland*, 373 U.S. 59, 83 S.Ct. 1050, 10 L.Ed.2d 193 (1963) to support this proposition.

In this case the Court stressed that the effect of the Sixth Amendment violation is limited to the admission into evidence of Dr. Grigson's testimony at the sentencing hearing. Consequently, the error did not pervade the entire proceeding. Nevertheless, the erroneous admission of the psychiatric testimony might have affected the capital sentencing jury and accordingly, the court held that the *Chapman* harmless error rule applies to the admission of psychiatric testimony in violation of the Sixth Amendment right set out in *Estelle v. Smith*. The Court, citing *Chapman v. California*, 386 U.S. 18, 87 S.Ct. 824 (1967) stated that the question to be addressed is whether the State has proved beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained. Here the Court found that Dr. Grigson's testimony "stands out both because of his qualifications as a medical doctor specializing in psychiatry and the powerful content of his message . . . he told the jury that Satterwhite was beyond the reach of psychiatric rehabilitation."108 S.Ct. at 1799. Accordingly, the Court found the error not to be harmless beyond a reasonable doubt and reversed the judgment of the Texas court of Criminal Appeals insofar as it affirmed Satterwhite's death sentence and remanded the case for further proceedings.

APPLICATION TO VIRGINIA

In Virginia as in Texas, the finding of future dangerousness can be critical to the imposition of the death sentence. §19.2-264.2 of the Virginia Code enumerates the conditions for the imposition of the death sentence in language very similar to that cited by the court in *Satterwhite* at 1798. The Virginia code states; "In assessing the penalty of any person convicted of an offense for which the death penalty may be imposed, a sentence of death shall not be imposed unless the court or jury shall . . . find that there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing serious threat to society . ." Va. Code Ann., §19.2-264.2 (1983).

The Commonwealth must comply with the Sixth Amendment requirement set out in *Estelle v. Smith,* that defense counsel be given advance notice of a psychiatric examination encompassing the issue of future dangerousness. Under the Court's application of the *Chapman* harmless error analysis, failure to comply with the notice requirement, coupled with a failure on the part of the State to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained, may result in reversal. It is important to note, that admission of psychiatric testimony in violation of this Sixth Amendment right to notice will not result in automatic reversal (as is the case in which the violation of a Sixth Amendment right affects the entire criminal proceeding), but neither will it easily be deemed harmless error. (Cecilia A. McGlew)

MAYNARD v. CARTWRIGHT

108 S.Ct. 1853 (1988)

FACTS

On May 4, 1982 Cartwright killed his employers Mr. and Mrs. Hugh Riddle in their Oklahoma home. He shot and killed Mr. Riddle, shot and stabbed Mrs. Riddle, and slit her throat. The trial court found Cartwright guilty of first degree murder, and sentenced him to death. The jury based the sentence, in part, on the aggravating circumstances that the murder was 'especially heinous, atrocious or cruel." Okla. Stat, tit 21, § 701.12(4)(19). The Oklahoma Court of Criminal Appeals affirmed on direct appeal, *Cartwright v. State,* 695 P.2d 548, cert denied, 473 U.S. 911, 87 L.Ed.2d 661, 105 S.Ct. 3538 (1983), and affirmed denial of state habeas corpus. *Cartwright v. State,* 708 P.2d 592 (1985), cert denied, 474 U.S. 1073, 88 L.Ed. 2d 808, 106 S.Ct. 837 (1986). The United States District Court denied federal habeas corpus relief. A panel of the Court of Appeals for the Tenth Circuit affirmed, 802 F.2d 1203 (1986), but after rehearing en banc granted relief on the limited claim challenging as unconstitutionally vague the aggravating circumstance that the murder was "especially heinous, atrocious or cruel."

The Court of Appeals for the Tenth Circuit sitting en banc considered the vagueness challenge to the aggravating circumstance and ruled that the words "heinous," "atrocious" and "cruel" were unconstitutionally vague under the Eighth Amendment of the United States Constitution, because the words did not direct the jury's discretion in deciding when the death penalty is appropriate.

Petitioner Maynard sought review of the Tenth Circuit's holding that the aggravating circumstance was unconstitutionally vague in the Supreme Court of the United States.

HOLDING

The United States Supreme Court held unconstituionally vague the statutory aggravating factor that the murder be "heinous, atrocious or cruel." Title 21, §701.12(4). *Maynard v. Cartwright,* 108 S.Ct. 1853, 1860 (1988).

Godfrey and *Maynard* compared

a) *Godfrey v. Georgia* as Controlling Precedent.

The United States Supreme Court saw its decision in *Godfrey v. Georgia,* 446 U.S. 420 (1980) as controlling in this case. In *Godfrey,* the aggravating factor in the Georgia Statute required that the murder be "outrageously or wantonly vile, horrible or inhumane in that it involved torture, depravity or an aggravated battery to the victim." Ga. Code § 27-2534.1

(b)(7)(1978). The sentencing jury based the appropriateness of the death penalty on the finding that the murder was "outrageously or wantonly vile, horrible or inhumane." *Godfrey,* 446 U.S. at 426. The jury did not mention whether the murder "involved torture, depravity or an aggravated battery to the victim." Id. The United States Supreme Court decided that such an application of the aggravating factor was unconstitutional, saying that "there is nothing in these few words, standing alone, that implies any inherent restraint on the arbitrary and capricious infliction of the death sentence." *Godfrey,* 446 U.S. at 428. The Court also stated that the jury could think that any intentional taking of life was 'outrageously or wantonly vile, horrible or inhumane." *Godfrey,* 446 U.S. at 428-429.

b) Aggravating circumstances in *Maynard* and *Godfrey* equated.

In *Maynard* the Court of the United States held that the Oklahoma aggravating circumstance that the murder was "heinous, attrocious or cruel," title 21, section 701.12(4) of the Oklahoma Statutes, and the Georgia aggravating factor as expressed in *Godfrey* that the murder be "outrageously or wantonly vile, horrible or inhumane," section 27-2543.1 (b)(7) of the Georgia Code, violate the discretion guidance requirements outlined in *Furman v. Georgia,* 408 U.S. 238(1972) and *Gregg v. Georgia,* 428 U.S. 153 (1976). *Maynard,* 108 S.Ct. at 1858, 1859. The Court stated that the legislature must guide both the discretion of the jury, and also the discretion of the judge so that the reviewing court can decide if evidence presented at the sentencing stage is sufficient to support a capital sentence. *Id.* at 1858.

c) Aggravating circumstances in *Maynard* and *Godfrey* distinguished.

It is clear from both *Godfrey* and *Maynard* that both statutory aggravating factors are unconstitutionally vague under the Eighth Amendment's guidance of discretion requirement. In *Godfrey,* the state Supreme Court was found to have given an acceptably limiting construction but not applied it to Godfrey's case. In *Maynard,* the Oklahoma Supreme Court was found to have set no standard for itself to give any meaning or content to the factor. The Oklahoma court simply reviewed all the circumstances and decided whether the facts made out the vileness circumstance.

APPLICATION TO VIRGINIA

The Virginia statutory aggravating factor is identical to the aggravating factor at issue in *Godfrey.* Va. Code Ann. § 19.2-264.4 (C)(1988). Thus, the Virginia aggravating factor is unconstitutionally vague under the Eighth Amendment.

Prosecutors may argue several ways to save the Virginia factor. In light of the recent United States Supreme Court decision in *Lowenfield v. Phelps,* 108 S. Ct 546 (1988), an argument can be made that the Virginia statutory definition of capital murder, Va. Code Ann. § 18.2-31(1988), sufficiently narrows the jury's discretion in the guilt stage, thus making a sentence based on an unconstitutional aggravating factor harmless error. This is a weak argument due to the major differences between the Virginia aggravating factors, and the factor at issue in *Lowenfield.* (*See* discussion of *Lowenfield v. Phelps, infra.*) We must await further analysis by the court as to the significance of these differences.

Another argument stems from the Virginia Supreme Court's further definition of both depravity of mind and aggravated battery. The Virginia Supreme Court has held that the jury must specifically find the statutory elements of torture, aggravated battery or depravity of mind to sentence the defendant to death. *Turner v. Commonwealth,* 221 Va. 513, 273 S.E.2d 36 (1980). No definition for torture exists. In *Smith v. Commonwealth,* 219 Va 455, 248 S.E.2d 135 (1978), the court defined an aggravated battery as "a battery which, qualitatively and quantitatively is more culpable than the minimum necessary to commit an act of murder." Id. at 478, 248 S.E.2d at 149. The Virginia Supreme Court defined depravity as "a degree of moral turpitude and psychological debasement surpassing that inherent in the definition of ordinary legal malice and premeditation." Id. It is arguable that these definitions are not sufficient to narrow the jury's discretion, and that in reality, they do not constitute a "narrowing construction," but lead to the confusion and affirmative misguidance of the jury.

Therefore, the question is whether, *if communicated to the jury,* the *Turner* and *Smith* "limiting" constructions save the Virginia factor. It is arguable that they do not. (Sandra Fischer)