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Pritchett v. Commonwealth

557 S.E.2d 205 (Va. 2002)

I. Facts

Estel Darnell Singleton (“Singleton”) was found shot in the head at the Ironto Rest Stop on April 30, 1997. Singleton’s wallet and other personal items were found strewn around his body, but his ATM card was missing from his person. Police learned from the bank that an individual had attempted to use the ATM card and that the bank had a video of this person. A police investigator viewed the tape and recognized the individual as Livingston Pritchett, III (“Pritchett”).¹

The investigator recognized and was familiar with Pritchett because he had recently been a witness in another murder case. Under the pretext of discussing this prior case further, the police lured Pritchett to the State Police Headquarters in Salem where, after some initial friendliness, the police began questioning Pritchett about Singleton’s murder. Pritchett initially denied knowing about the incident. However, under further questioning, Pritchett told the police that he and Singleton had gotten into a struggle when the gun was accidentally fired, killing Singleton.²

Pritchett was indicted in Montgomery County for capital murder, robbery, use of a firearm during a felony, and use of a firearm during a robbery. During the guilt phase of the trial, the Commonwealth introduced into evidence the incriminating statement made by Pritchett to the police. Pritchett testified in contradiction to this alleged confession.³

At trial Pritchett sought to introduce the testimony of two experts to challenge the reliability of the statement introduced by the Commonwealth.⁴ The Commonwealth objected to Pritchett’s evidence on the grounds that it was inadmissible because Pritchett had not pleaded insanity and the testimony would go to Pritchett’s mental state at the time of the crime and further, that the experts had been appointed only to assist the defendant with mitigation evidence during the sentencing phase.⁵ Pritchett continued to assert that the proffered evidence

1. Pritchett v. Commonwealth, 557 S.E.2d 205, 206 (Va. 2002).

2. *Id.* at 206-07.

3. *Id.*

4. *Id.* at 207.

5. *Id.* at 207; *see also* Appendix at 118-19, Pritchett v. Commonwealth, 557 S.E.2d 205 (Va. 2002) (No. 010030). The Supreme Court of Virginia noted that this argument was incorrect but that on appeal, the Commonwealth corrected the error and stated that the testimony was directed at Pritchett’s mental state at the time of his confession and not at the time of the act. *Pritchett*, 557

was merely to guide the jury as to the weight it should give to the alleged confession.⁶

The court refused to admit the expert testimony on the basis that "such testimony would invade the province of the jury."⁷ None of the testimony by either expert was heard by the jury.⁸ The jury convicted Pritchett of four offenses, including first degree murder.⁹ The jury recommended that Pritchett be sentenced to life for the murder charge and an additional thirteen years for the other charges.¹⁰ Pritchett then moved for a mistrial based on the exclusion of the experts, which the court denied; he also renewed all of his motions, upon which the court renewed all of its rulings.¹¹

Pritchett appealed several issues to the Court of Appeals of Virginia, including the exclusion of the expert testimony.¹² The court held that the proffered expert testimony was an opinion going directly to "whether the defendant's denial of making a confession was true, . . . [it was] a comment on the defendant's credibility," and therefore, because the admission of the evidence was soundly committed to the discretion of the trial court, the trial court did not abuse its discretion.¹³ The court affirmed the trial court.¹⁴ Pritchett appealed several issues to the Supreme Court of Virginia.¹⁵

II. Holding

The Supreme Court of Virginia only "considered the admissibility of proffered expert opinions concerning the mental retardation of the defendant and the susceptibility of mentally retarded persons to suggestive police interrogation."¹⁶ The court held that the experts' testimony should have been admitted because it was evidence relevant to the reliability of Pritchett's confession.¹⁷ Further, the court held that this error was not harmless, and remanded the case for a new trial.¹⁸

S.E.2d at 208 n.*.

6. *Id.* at 207; see also Appendix at 120, *Pritchett* (No. 010030).
7. *Pritchett*, 557 S.E.2d at 208.
8. *Id.* at 207.
9. *Id.* at 206.
10. *Id.*
11. *Id.*; see also Appendix at 179-90, *Pritchett* (No. 010030).
12. *Pritchett*, 557 S.E.2d at 206.
13. Appendix at 204-05, *Pritchett* (No. 010030).
14. *Id.* at 206. One judge dissented, finding that the evidence should have been admitted because mental retardation is outside the knowledge range of the normal jury. *Id.* at 223.
15. *Pritchett*, 557 S.E.2d at 206.
16. *Id.*
17. *Id.* at 208.
18. *Id.*

III. Analysis / Application in Virginia

Specifically, the evidence in question was the testimony of two psychology experts.¹⁹ The first expert, Dr. Bernice Marcopulos, a Ph.D. in Neuropsychology, testified to Pritchett's mental capacity.²⁰ It was her opinion that Pritchett was mildly mentally retarded with an IQ of 69, functioning at the level of a seven-year-old and in the bottom two percent of the population.²¹ The second expert, Dr. Stephen Herrick, a forensic psychologist, testified about the functioning of a person like Pritchett.²² His testimony described the susceptibility of mentally retarded individuals to comply with authority figures and specifically Pritchett's high level of interrogative suggestibility.²³ Both Dr. Herrick and Dr. Marcopulos testified that Pritchett had limited communication skills.²⁴

The primary issue with which the court dealt was whether the experts were testifying to the truth of Pritchett's in court testimony or, instead, providing information about mental retardation to the jury which the jury could use to determine the reliability to give Pritchett's confession.²⁵ The result in this case turns largely on characterization. This idea is evidenced by the Supreme Court of Virginia's statement that Dr. Herrick's testimony could be construed as "an inadmissible statement regarding Pritchett's veracity."²⁶ Therefore, the practitioner must pay close attention to the way in which he characterizes evidence. The evidence must be construed as evidence going to the reliability of the defendant's confession, but cannot be evidence on the defendant's mental condition at the time of the crime or evidence going to the credibility of his in court testimony. The practitioner must be extremely careful, at all stages, to characterize the evidence in this way.

Second, the testimony of the expert must be carefully tailored to meet this standard and not cross over the line. "[A]n expert may testify to a witness's or defendant's mental disorder and the hypothetical effect of that disorder on a person in the witness's or defendant's situation, so long as the expert does not opine on the truth of the statement at issue."²⁷ In this case, both experts testified about Pritchett's specific mental condition and the effect of this condition on his communication skills, generally and under the influence of authoritative individuals.²⁸ This point is very important because if the expert testifies in any way about the defendant's veracity, the trial court will exclude the testimony and this

19. *Id.* at 207.

20. *Id.*; Appendix at 128, *Pritchett* (No. 010030).

21. *Pritchett*, 557 S.E.2d at 207. Appendix at 131, *Pritchett* (No. 010030).

22. *Pritchett*, 557 S.E.2d at 207.

23. *Id.*

24. *Id.*

25. *Id.* at 207-08.

26. *Id.* at 208.

27. *Id.* (citing *Fitzgerald v. Commonwealth*, 292 S.E.2d 798, 806 (Va. 1982)).

28. *Id.* at 207.

exclusion is not error.²⁹ Therefore, counsel must properly prepare the expert's testimony so that it only covers the appropriate material.

Third, portraying evidence to be something with which jurors have no outside knowledge that aids the jurors' factual decision will be successful. In discussing the evidence in this case the court stated that because "it merely presented information on subjects unfamiliar to the jury that would assist it in determining the reliability of Pritchett's confession . . . this testimony should have been admitted."³⁰ Most mental conditions are likely out of the jury's knowledge range and counsel must emphasize this fact when attempting to introduce similar evidence. The practitioner can also make the argument that even if the mental condition is not completely foreign to the jury, the jury may be unfamiliar with the effect of the condition in certain hypothetical situations. Thus, again, characterization is key.

This case also highlights the uses of appointed mental experts. Defense counsel not only used appointed psychological experts for mitigation during the sentencing phase, but in the guilt phase of the trial.³¹ Under Virginia Code Section 19.2-264.3:1, a defendant is entitled to appointment of an expert to evaluate his mental condition for relevant issues in sentencing.³² The statute does not say whether the experts may testify during the guilt phase on mental issues other than sanity, but neither does the statute prohibit such testimony.³³ Therefore, if defense counsel succeeds in having an expert appointed, the practitioner should evaluate whether the expert may also be valuable to guilt phase issues such as confessions.

IV. Conclusion

This case illustrates several important points regarding the use of mental experts. First, a mental expert can be valuable both in the sentencing and guilt phases. Second, this expert testimony can be used for a greater array of issues than just sanity, as here where it could have persuaded the jurors that the defendant may have falsely confessed. To achieve these objectives counsel must be painstakingly careful in three ways: (1) always characterize the evidence as testimony about the reliability of the defendant's statement; (2) ensure that the witness only testifies about the defendant's condition and the hypothetical effect of that condition; and (3) make the testimony a valuable aid to the jury. Lastly, defense counsel in this case did everything correctly to aid his client and preserve error for review.

Kathryn Roe Eldridge

29. *Id.* at 208.

30. *Id.*

31. *Id.* at 207.

32. VA. CODE ANN. § 19.2-264.3:1(A) (Michie 2000) (outlining procedure for appointment of a mental health expert).

33. VA. CODE ANN. § 19.2-264.3:1(E) (Michie 2000) (outlining procedure for defense to notice the Commonwealth of intent to use "an expert witness to support a claim in mitigation").