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The "Especially Heinous" Standard: Objective Guidance In Capital Cases?

By Daniel Blinka

Gary D. Maynard
v.
William Thomas Cartwright
(Docket No. 87-519)
Argued April 19, 1988

Cruelty and senselessness characterize all murder cases. Most people would agree, however, that some murders are more vicious and senseless than others. For the extreme cases at either end of the continuum, a distinction is easy to make. But between the extremes is a blurred middle. Some states allow a death sentence where the murder was "especially heinous, atrocious or cruel." The question is whether this standard gives the sentencer any real guidance in determining whether a murderer should die for a crime—or whether it invites a capricious infliction of the death penalty.

ISSUES

The Supreme Court has been asked to decide whether a state death penalty statute is unconstitutionally vague in characterizing an aggravating factor as a murder committed in an "especially heinous, atrocious, or cruel" manner. The Court has been also asked to determine whether a death sentence must automatically be vacated where the jury found there was another valid aggravating circumstance.

FACTS

William Thomas Cartwright was tried in the District Court of Muskogee, Oklahoma, for the first degree murder of Hugh Riddle and the attempted murder of Riddle's wife, Charma. The evening of the murder, the Riddles were watching television. Charma Riddle walked down a hallway toward the bathroom where she was confronted by Cartwright, a former employee, who had somehow entered the home. Armed with a shotgun, Cartwright shot her once in each leg. He then went into the living room where he killed Hugh Riddle with a single blast of the shotgun. In the meantime, Charma Riddle crawled to a bedroom to summon help. Cartwright found her there, told her that he had killed her husband because they had fired him and then slit her throat. Charma Riddle survived the assault and testified against Cartwright.

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The jury convicted him of the murder and the attempted murder counts.

During the penalty phase of the proceedings, the jury determined that there were two statutorily specified aggravating factors in this murder: 1) Maynard knowingly created a great risk of death to more than one person, and 2) the murder was "especially heinous, atrocious or cruel." Following Oklahoma procedure, the jury weighed these aggravating factors against the mitigating factors offered by Cartwright and decided that he should die for murdering Hugh Riddle.

Through a series of appeals, Cartwright brought his case to the Tenth Circuit Court of Appeals, which agreed to decide the validity of the "especially heinous, atrocious, or cruel" aggravating circumstance. The court held that: 1) the death sentence had to be vacated because it was based on a constitutionally invalid aggravating circumstance; 2) the Oklahoma courts failed to apply a constitutionally adequate narrowing construction in this case, and 3) the federal court hearing the appeal should not decide what narrowing construction should be applied by the state of Oklahoma. The Tenth Circuit vacated the death sentence and remanded the case for a redetermination of the sentence (822 F. 2d 1477 (1987)).

The state of Oklahoma brought this matter to the Supreme Court for review.

BACKGROUND AND SIGNIFICANCE

In 1972, the Supreme Court effectively abrogated the capital punishment procedures of thirty-nine states that gave absolute discretion to the sentencer (judge or jury) to select life imprisonment or a death sentence (*Furman v. Georgia*, 408 U.S. 238 (1972)). Most states immediately reenacted capital punishment statutes that followed a variety of patterns. The last sixteen years have been marked by a fierce legal struggle in which opponents of capital punishment have assailed the validity of these procedures in state and federal courts. Several times, the Supreme Court has attempted to clarify *Furman* and balance the Constitution's tolerance of the death penalty with its demand that it be implemented fairly and justly.

Four years after *Furman*, the Court held that the death penalty must be implemented with procedures that guarantee that the sentencer's discretion is "guided" and a death sentence based on objectively defined and acceptable criteria. The goal is to lessen the risks of "wholly arbitrary and capricious actions" (*Gregg v. Georgia*, 428 U.S. 153 (1976)).

Seeking to address these concerns, states enacted statutes that attempted to channel the sentencer's discretion through various procedural devices—such as statutes defining aggravating and mitigating circumstances that characterize murders.

Although the specifics vary greatly from state to state, generally the intent was to enumerate aggravating circumstances that set certain murders apart from other murders. In short, the idea was to distinguish the murders that call for the death penalty from those that do not. This has been no easy task. Such categorization of future murders uses general language. This language has invited attacks that legislatures have so broadly worded certain aggravating circumstances that they fail to perform their function of objectively determining which murders are subject to the death penalty.

In Cartwright's case, the jury found that the murder was "especially heinous, atrocious, or cruel." The federal court of appeals determined that this "especially heinous" factor, which has been labeled the "standardless standard" by one critic, failed to provide the sentencing jury with objective guidance as to when to impose the death penalty. The court also observed that the Oklahoma courts had failed to provide a sufficiently narrowing construction of this phrase that might have tempered the statute's broad wording.

The Supreme Court's decision to review the adequacy of the "especially heinous" aggravating circumstance will affect not only the validity of the Oklahoma statute, but will also have an impact on about twenty other states that use similar statutory language. Such concern is evidenced by the *amicus* brief in support of the statute submitted by the attorneys general of fifteen states.

Many state authorities contend that the Constitution tolerates some subjectivity in sentencing and that lower federal courts have overstepped their bounds in regulating state criminal law. They also assert that the "especially heinous" language is sufficiently precise in that sentencers ought to be allowed to consider the attitude of the killer, the manner of the killing and the suffering of the victim when deciding whether to impose the death sentence. In particular, the Court has been asked to decide whether the "especially heinous" standard requires proof that the victim suffered physically before dying—or whether mental suffering may be sufficient to warrant the death penalty.

Another issue potentially before the Court is more technical. It poses the problem of the validity of a death sentence which is only partially based on an invalid aggravating circumstance. The Supreme Court has addressed this question under Georgia and Florida law and indicated that such a sentence might be valid under those statutory schemes. However, Oklahoma's capital sentencing procedure is different from those in Georgia and Florida, so those earlier cases might not control.

ARGUMENTS

For Gary D. Maynard, the State of Oklahoma (Counsel of Record, Robert H. Henry, 112 State Capitol Building, Okla-

boma City, OK 73105; telephone (405) 521-3921)

1. Since the evidence was sufficient to support findings by the jury and the Oklahoma Court of Criminal Appeals that the shotgun murder here was "especially heinous, atrocious, or cruel," the death sentence should not be set aside on the purported ground that the sentencer's discretion was not adequately channeled by this sentencing guideline.
 - A. The definition of "especially heinous, atrocious, or cruel" should not be limited to whether the victim has suffered physical or mental torture. It is appropriate for the sentencer to consider the manner of the killing and the attitude of the killer.
 - B. The requirement that the aggravating circumstance "especially heinous, atrocious, or cruel" be interpreted in a principled manner has no purpose since the Court in other cases has approved aggravating circumstances that are more vague and because the sentencer can also consider both nonstatutory aggravating circumstances and evidence of any mitigating circumstance.
2. The jury's finding of a second aggravating circumstance—that Maynard knowingly created a great risk of death to more than one person—genuinely narrowed the classes of those eligible for the death sentence so that imposing it was constitutional.

For William Thomas Cartwright (Counsel of Record, Mandy Welch, 1660 Cross Center Drive, Norman, OK 73019; telephone (405) 325-3128)

1. The Eighth Amendment requirement that the states narrow the class of those eligible for the death sentence by setting out clear and objective standards applies to Oklahoma's use of the "especially heinous, atrocious, or cruel" circumstance.
2. Oklahoma ignores the court of criminal appeals' subsequent admission that its construction of the "especially heinous" circumstance in *Cartwright* did not adequately narrow the class of cases in which the death penalty may be applied.
3. Oklahoma's complaints about the Tenth Circuit's opinion are no more than thinly veiled expressions of dissatisfaction with the narrowing requirements of the Eighth Amendment.

AMICUS ARGUMENTS

In Support of Gary D. Maynard

Alabama and fourteen other states (Arizona, Colorado, Idaho, Louisiana, Mississippi, Missouri, Nevada, New Hampshire, North Carolina, South Dakota, Tennessee, Utah, Virginia and Wyoming) jointly filed a brief arguing that subjectivity in sentencing is not unconstitutional and that the "especially heinous" standard adequately channeled the sentencer's discretion where the state appellate court set guidelines for reviewing the sufficiency of the evidence.