

Defendant's Illness Can Be Used by the Prosecutor as an Aggravating Factor in Capital Sentencing

Defendant's Mental Condition Used as an Aggravating Condition in Capital Sentencing Phase

The Supreme Court of California affirmed the lower court's ruling that the prosecution could introduce evidence of a defendant's mental illness as an aggravating consideration in the capital sentencing phase if that mental condition related to the circumstances of the crime and was deemed more probative than prejudicial.

In *People v. Smith*, 107 P.3 229 (Cal. 2005), the Supreme Court of California considered the defendant's appeal of the death sentence imposed on him following his guilty plea in a first-degree murder case. His appeal in part was based on challenges to the admission of the testimony of a psychologist during the capital sentencing trial. The defendant argued that it was improper for testimony relating to his possible mental illness to have been admitted as an "aggravating circumstance" in his capital sentencing. He further argued that the psychologist's testimony was improper "profile evidence," in that it was insufficiently probative on the question of his mental illness. Central to the appeal was the fact that the state expert never examined the defendant nor offered a diagnosis. Rather he provided "syndrome evidence," maintaining that only people with a particular profile or diagnosis commit this type of crime, and since this defendant admitted to committing such a crime, he must be such an individual and have this diagnosis.

Facts of the Case

On October 9, 1991, defendant Gregory Scott Smith pled guilty to first-degree murder and to charged special circumstances: that the murder was committed during the commission of a kidnapping, a lewd act on a child, and an act of sodomy. After the penalty trial, the jury returned a verdict of death. The trial court denied the defendant's motions for a new trial and for modification of the verdict and sentenced him to death. The appeal was automatic.

Mr. Smith argued among other things, that the testimony of a clinical psychologist (Dr. Hatcher) was an improper attempt by the prosecution to use extreme mental illness as an aggravating factor, contrary to California law and precedent. In addition, the defense argued that the psychologist's "profile evidence" testimony implied that the defendant was "a sadistic pedophile," because the crime he committed, the psychologist said, was the sort committed by "sadistic pedophiles." As such, the defendant argued, it should have been excluded under Evidence Code § 352, which allows the exclusion of testimony that is more prejudicial than probative. Finally, Mr. Smith argued that Dr. Hatcher's "profile evidence" was improper, because it was not probative of his mental states or of the motivations of his admitted criminal acts.

Ruling and Reasoning

California has a statutory scheme that applies in capital sentencing cases. It indicates what evidence can be admitted as mitigating and what evidence can be admitted as aggravating for jury consideration in weighing the death sentence. According to two factors of Section 190.3 of the California Penal Code, evidence of mental illness can be admitted only for mitigating purposes. The defendant relied on these two factors of Section 190.3 ((d) "extreme mental or emotional disturbance" and (k) "any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime"), to object to the admission of the psychological testimony that allowed the jury to infer that he might be a "sadistic pedophile," an inference that was based solely on the nature and circumstances surrounding the crime to which he confessed.

At the sentencing trial, the court allowed the psychological testimony that permitted an inference to be made that the defendant had a serious mental illness. The court held that it was admissible, under Cal. Penal Code § 190.3, Factor (a). This section permits both the prosecution and the defense to introduce evidence of "[t]he circumstances of the crime of which the defendant was convicted in the present proceeding."

The California Supreme Court found itself weighing two opposing factors that affected the admissibility of the defendant's mental illness, one that specifically allowed it only for mitigation and one that expansively allowed in any testimony that assisted a jury in understanding the "circumstances of the crime." The court accepted the prosecution's argu-

ment that the implied mental illness of the defendant, “sadistic pedophilia,” served to assist the jury in understanding the nature of the crime and the motivations and means that attended the child’s murder. The sadistic pedophilia diagnosis also implied that the defendant must have carefully and deliberately planned and executed the crime—this adding to the aggravating circumstances of the crime.

The defendant also contended that Dr. Hatcher’s testimony should have been excluded under Evidence Code § 352, which permits the trial court, in its discretion, to exclude evidence that is more prejudicial than probative. The court rejected Smith’s argument on this point, finding that the psychologist’s testimony was admissible under California Evidence Code § 352, as it provided a basis from which the jurors could infer that he was a sadistic pedophile, who premeditated and committed the crime for the sexual pleasure of the act, an aggravating consideration. Further, the defendant challenged Dr. Hatcher’s testimony as an improper use of “profile evidence.”

Finally, the defense had challenged the admissibility of the state’s expert, Dr. Schaffer, who in his rebuttal testimony went beyond the scope of the defendant’s experts, in that he offered alternative diagnoses that were not mentioned in the direct testimony of the defendant’s expert. Rejecting this argument, the court noted that the defendant’s experts had opened the door to diagnoses not mentioned on direct.

Discussion

This case raises several questions regarding the evidentiary use of a defendant’s mental illness in the penalty phase of a trial. Specifically, it addressed the matter of testimony regarding a defendant’s mental illness as an aggravating consideration in capital sentencing, even when there is a clear statutory bar to such application. Faced with the collision of two competing provisions regarding the introduction and use of mental illness evidence, the court gave sway to the importance of the jury’s having access to all available information that may help them to understand better “the circumstances of the crime.”

The court chose to rely on the broad and more general language of California Penal Code § 190.3, Factor (a) as detailed earlier, to override the very specific provisions detailed in California Penal Code § 190.3, Factors (d) and (k) (also detailed earlier), which preclude the introduction of mental illness evidence as an aggravating factor. The court held that evidence of the defendant’s mental illness was crucial

information for the jury to have to understand fully the circumstances of the crime. The fact that the psychologist who provided this crucial testimonial evidence did not examine the defendant appeared to favor the prosecution’s ends, as they were then able to argue that introduction of such evidence did not implicate the principle that evidence of mental illness is only mitigating, as the psychologist simply testified that a murder such as this is usually committed by a sadistic pedophile, not that the defendant himself was a sadistic pedophile. The court also utilized the broad umbrella of Factor (a) of § 190.3 in their finding that use of the defendant’s mental illness did not violate California Evidence Code § 352, which precludes the introduction of evidence that is more prejudicial than probative. The court noted that the jurors could infer that the defendant was a sadistic pedophile and premeditated the crime for the sexual pleasure of the act, an aggravating condition. Hence, the court concluded that the information was “highly probative.”

In regard to the improper use of profile evidence, the court noted that such evidence was objectionable only when the information was substantively consistent with guilt or innocence. In this particular case, the court found that the defendant’s behavior surrounding the crime was atypical to a degree that it made the information highly probative.

Our review of the case raises the question of whether the court’s decision was result-driven. This question is raised because the court gave deference to a general statutory provision that allows relevant evidence to be admitted, thereby negating a specific statutory provision that bars the use of mental illness as an aggravating condition. The record does not speak to how the defendant’s possible mental retardation failed to be a bar to his execution, leaving open the question of an appeal based on *Atkins v. Virginia*, 536 U.S. 304 (2002).

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