Ruling and Reasoning in Hall v. Brannan

The Supreme Court of Georgia reinstated Mr. Brannan's conviction and death sentence. The court found no instances of ineffective assistance of counsel and concluded as a matter of law that the absence of counsel's proposed deficiencies would not have led to a different verdict or sentence in Mr. Brannan's case.

The court also issued an independent, alternative holding in response to the merits of Mr. Brannan's argument that his death sentence was unconstitutional because it is unconstitutional to execute persons who have severe mental illness. The court cited *Roper v. Simmons*, 543 U.S. 551 (2005), which held the execution of juvenile offenders as unconstitutional and *Atkins v. Virginia*, 536 U.S. 304 (2002), which held the execution of mentally retarded offenders as unconstitutional, when it noted that unlike those cases, there was no consensus in the United States or Georgia that illustrates that evolving standards of decency necessitate any constitutional ban on executing all persons with mental illness. The court provided a caveat that recognized the unconstitutionality of executing those who are insane at the time of their execution, as per the holding in *Ford v. Wainright*, 477 U.S. 399 (1986).

Discussion

Both courts focused on the issue of a *per se* ban on the execution of any "mentally ill" capital defendant. Specifically, the courts concerned themselves with the issues of whether the execution of mentally ill inmates was unconstitutional or whether such executions violated an emerging national consensus. At present, neither of these lines of inquiry yields support for such a broad approach.

A broad ban on the execution of mentally ill capital defendants would be likely to result in a significant volume of evaluative work for forensic psychiatrists, but the administration of such a ban would be problematic and expensive. Given the high prevalence of at least some sort of mental illness among criminal defendants, the ban would be likely to result in the near abolition of capital punishment. Certainly an end to the death penalty would be celebrated in many quarters, but the fact remains that in some states the idea of the abolition of the death penalty is a "third rail" that politicians (and judges) are loath to approach.

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Knowing Moral and Legal Wrong in an Insanity Defense

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The Court Is Not Required to Give Jury Instruction Distinguishing Moral and Legal Wrong in an Insanity Defense Case Where They Are Coextensive

In *State v. Winder*, 979 A.2d 312 (N.J. 2009), the Supreme Court of New Jersey reversed a trial court's denial of a defense request for a modified jury charge for insanity in a murder case. Mr. Winder advanced the affirmative defense of insanity on the basis of schizophrenia with command delusions. The delusions did not deprive him of knowing his act was unlawful, although he believed he was doing what was right. The jury found him guilty of first-degree murder and he was sentenced to 55 years' imprisonment with 30 years' parole ineligibility. He appealed, claiming that the trial court had erred in denying his request for a variation of the jury instructions for insanity—namely, that an insane person may comprehend that an act is legally wrong without knowing it to be morally wrong.

Facts of the Case

On April 18, 2003, after being released from an involuntary commitment at a Philadelphia hospital, Lavar Winder went to Atlantic City where he shot and killed a cab driver in front of a police station. Afterward, he walked to a nearby police car, informing the officer inside, "Officer, I just shot someone in that cab over there." He was immediately arrested, and he then confessed that he had to kill the cab driver so that he could go to prison for the rest of his life, because that would be the only place he would be safe from his persecutors. Although he selected the victim randomly, he mentioned he would not have killed his parents or a child to accomplish his goal. Moreover, he apologized to the victim before killing him. The officers who interviewed Mr. Winder testified that he did not seem to be under the influence of drugs or alcohol but that he did admit to recent use

of phencyclidine and to having taken antipsychotic medications earlier that day.

At the 2006 trial, three mental health professionals testified. The first defense witness testified that Mr. Winder had schizophrenia, paranoid type. The witness also opined that his phencyclidine use merely exacerbated his underlying mental illness. This expert concluded that Mr. Winder did not know that his act was wrong when he shot the cab driver, because he believed that by killing someone he would be considered "a bad person," which was the only way he would be imprisoned and therefore save his own life. Thus, out of the necessity dictated by his delusion, he was doing what was right for him. The second mental health expert agreed that the defendant had schizophrenia, which led him to kill the cab driver. He testified that the patient's auditory hallucinations preceded his drug abuse, and thus his actions were a result of a mental disease. The second expert (co-author KJW) concluded that whereas Mr. Winder knew that shooting the cab driver "would give the impression that he needed to be locked up. . .he did not know it was wrong because it was his intent to be safe so that he would preserve his own life" (*Winder*, p 316). The prosecution expert witness disagreed, testifying that the defendant did not have schizophrenia and that his irrational thoughts were a result of phencyclidine use. He opined that the defendant knew that killing the cab driver was morally wrong, since he apologized to his victim before shooting him. He asserted that the defendant consciously chose an adult victim, stating during his confession that he would not kill a child "because that's wrong."

When the jury was about to be charged, defense counsel requested an insanity instruction that included the definition of legal and moral wrong, citing *State v. Worlock*, 569 A.2d 1314 (N.J. 1990). In that case, the defendant, who was not psychotic, expressed moral beliefs in relation to the victims while retaining knowledge of the legal implications of his actions. The court denied the request, stating that a *Worlock* tailoring of the model insanity charge was unnecessary, because in this case, legal and moral wrong were coextensive.

The jury was instructed with the model charge on insanity (*N.J. Stat. Ann.* § 2C:4-1), which explains:

> Our society and our law recognize that some people may be bad and some people may be sick. . . . It is society's moral judgment, recognized by our law, that a forbidden act should not be punished criminally unless done with a knowledge of wrongdoing. . . . If at the time of committing the act the defendant was laboring under such a defect of reason from disease of the mind as not to know the nature and quality of the act (he/she) was doing or if the defendant did know it, that (he/she) did not know what (he/she) was doing was wrong the defendant was then legally insane and, therefore, not criminally responsible for (his/her) conduct. . . . The question is not whether the defendant, when (he/she) engaged in the deed, in fact actually thought or considered whether the act was right or wrong, but whether defendant had sufficient mind and understanding to have enabled (him/her) to comprehend that it was wrong if defendant had used (his/her) faculties for that purpose.

Ruling and Reasoning

The New Jersey Superior Court, Appellate Division, affirmed the trial court's decision to refuse the defendant's request for a *Worlock* variation on the insanity charge. The high court agreed with the trial court that, in this case, legal and moral wrong were coextensive. In New Jersey, an early adopter of the *M'Naughten* standard in the 1846 case of *State v. Spencer*, 21 N.J.L. 196 (N.J. 1846), "wrong" is considered to encompass both legal and moral connotations, since the law is presumed to reflect the morals of society. Accordingly, most illegal acts are likely to be considered immoral, murder being an obvious example. A person knowing an act to be illegal would be likely to have the capacity to know it was also against the morals of society.

There are exceptional circumstances in which a defendant, knowing that the act is legally wrong, can be found not culpable if unable to recognize that the action is morally wrong. In New Jersey, this issue was raised in the case of *State v. Worlock*. After being convicted of two murders and possession of a weapon for unlawful purpose, Mr. Worlock appealed, claiming that the trial court had erred in failing to "charge expressly that 'wrong' as used in *N.J. Stat. Ann.* § 2C:4-1 included moral wrong." Since Mr. Worlock sought to justify the killings by using his personal moral code, the Supreme Court of New Jersey affirmed his conviction. The court speculated, however, that there could be instances in which a jury finds a defendant guilty, even if he knew that his act was unlawful but not morally wrong. The *Worlock* dicta allow for a distinction between legal and moral wrong in specific instances. "The deific exception," for example, might occur when a defendant knowingly kills to obey a command from God. Although this is generally the only recognized exception, the court acknowledged that other exceptional circum-

stances, such as an imagined Presidential order, could arise.

The *Worlock* court concluded that, unless acting under a command from God, moral and legal wrong are coextensive and the jury should be instructed that wrong includes both connotations. In *Winder* there was no "deific exception," since there was no indication that the defendant believed he was acting under a command from God. Mr. Winder, by contrast, had a personal motivation for his action that he knew was legally wrong, as evidenced by his committing the act in front of a police station and subsequently asking to be arrested. He clearly knew committing murder would result in imprisonment, which would, in his mind, guarantee his safety from whatever was persecuting him. In addition, the defendant acknowledged that his actions were contrary to societal morals, since he apologized to his victim and knew that killing his parents or a child would be wrong, versus killing another adult chosen at random.

Discussion

For many reasons, criminal defendants, even those with documented psychoses, historically have had difficulty effecting a defense of insanity. Early exceptions occurred in 19th century England. Hadfield, in 1800, was successful by asserting that his shooting at King George III was the product of a delusion. Building on *Hadfield*, Oxford (1840) and then M'Naughten (1843) were acquitted on the basis of compelling delusions that could not be resisted. M'Naughten's acquittal, brought about in part by American psychiatrist Isaac Ray's book on jurisprudence, represented the end of the delusion test. The English acquittals caused popular and official concern about the laxity of the standard—the genesis of the *M'Naughten* rule. The scenario was reenacted in the United States after President Reagan's would-be assassin was acquitted; the insanity defense in federal jurisdictions was narrowed within two years. Even the *M'Naughten* rule adopted by New Jersey and other states has seen constitutional support for further narrowing, as in *Clark v. Arizona*, 548 U.S. 735 (2006).

Mr. Winder, whose case is reminiscent of Hadfield's, represents a typical example of what is tantamount to strict liability for homicide unless selected criteria are met. His delusion of persecution did not relate directly to the specific criminal act. Instead, the homicide was instrumental in bringing about Mr. Winder's safety, he reasoned. If New Jersey had a version of the *Durham* Rule, that his act was a "product" of mental illness, then there could have been a *Hadfield*-type insanity acquittal. There was no alternate verdict (New Jersey is not a state that allows guilty but mentally ill) and no opportunity for the court to instruct per *Worlock*, since Mr. Winder's delusion was not deific.

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