

COURT OF APPEALS OF MARYLAND

Smith v. State, 367 Md. 348

787 A.2d 152 (2001) · No. No. 64, Sept. Term, 2000 · Decided December 20, 2001

SUMMARY

The Maryland Court of Appeals held that the prosecutor’s closing argument directly commented on Robert Allen Smith’s exercise of his privilege against self-incrimination. The court concluded that the error was not harmless beyond a reasonable doubt and ordered a new trial. The case concerned convictions arising from burglary, theft, conspiracy to obstruct justice, and malicious destruction of property.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Raker; Bell, C.J.; Eldridge; Wilner; Cathell; Harrell; Battaglia
JURISDICTION	Maryland
DECIDED	December 20, 2001
DOCKET	No. 64, Sept. Term, 2000
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Criminal appeal following a jury conviction in the Circuit Court for Caroline County and affirmance by the Court of Special Appeals of Maryland. The Court of Appeals granted certiorari to determine whether the prosecutor impermissibly commented on Smith's failure to testify.
STANDARD OF REVIEW	The State bears the burden of proving beyond a reasonable doubt that an improper prosecutorial comment did not contribute to the verdict; the court reviewed whether the comment violated the privilege against self-incrimination and whether the error was harmless beyond a reasonable doubt.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Robert Allen Smith v. State of Maryland

TOPICS

- criminal procedure
- fifth amendment
- due process
- prosecutorial misconduct
- evidence

PRACTICE AREAS

criminal procedure

constitutional criminal procedure

appellate criminal law

evidence

QUESTIONS PRESENTED

1. Whether the prosecutor's closing argument that the jury should consider what explanation had been given by the defendant for possessing the stolen property was an impermissible comment on Smith's failure to testify in violation of the Fifth Amendment and Article 22 of the Maryland Declaration of Rights.
2. Whether the prosecutorial comment was harmless beyond a reasonable doubt.
3. Whether Maryland Rule 4-215(e) required the trial court to advise Smith of a right to proceed pro se before requiring him to proceed with unwanted counsel.

HOLDINGS

1. A prosecutor's remark is impermissible when it is susceptible of an inference by the jury that it should consider the defendant's silence as an indication of guilt. The prosecutor's statement asking what explanation had been given "by the defendant" directly commented on Smith's exercise of his privilege against self-incrimination.
2. The improper prosecutorial comment was not harmless beyond a reasonable doubt, and a new trial was required.
3. The court did not reach the Rule 4-215(e) issue because it resolved the constitutional-comment issue in Smith's favor.

KEY QUOTATIONS

"We agree and shall hold that the prosecutor's remarks were a direct comment on petitioner's exercise of his privilege against self-incrimination. The error was not harmless, and a new trial is therefore in order." (367 Md. 348; 787 A.2d 152)

"The prosecutor's comments were therefore susceptible of the inference by the jury that it was to consider the silence of the defendant as an indication of his guilt, and, as such, the comments clearly constituted error." (367 Md. 358; 787 A.2d 158)

"The prosecutor's comment went beyond any qualitative assessment of the evidence in that, when he asked the jury 'what explanation has been given to us by the defendant,' he effectively suggested that the defendant had an obligation to testify at trial." (367 Md. 359; 787 A.2d 159)

FACTUAL BACKGROUND

The Davis residence was burglarized, and police later learned that Smith had sold or possessed leather clothing identified as property stolen from the residence. Police also found a shoe print at the scene that closely matched Smith's shoes. Smith did not testify or present evidence at trial, and the prosecutor argued during closing that the jury should ask what explanation had been given by Smith for possessing the leather goods, answering, "Zero, none."

PROCEDURAL HISTORY

Smith was convicted by a jury of first-degree burglary, conspiracy to obstruct justice, malicious destruction of property, and four counts of theft. The Court of Special Appeals affirmed in an unreported opinion, concluding that the prosecutor commented on the absence of an explanation for Smith's possession of stolen property rather than on Smith's failure to testify. The Court of Appeals granted Smith's petition for a writ of certiorari, reversed, and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the judgment of the Court of Special Appeals, direct that court to reverse the judgment of the Circuit Court for Caroline County, and remand the case to the circuit court for a new trial.

CASES CITED

- Griffin v. California, 380 U.S. 609 (1965)
- Smith v. State, 169 Md. 474, 182 A. 287 (1936)
- Woodson v. State, 325 Md. 251, 600 A.2d 420 (1992)
- Wilhelm v. State, 272 Md. 404, 326 A.2d 707 (1974)
- Ware v. State, 360 Md. 650, 759 A.2d 764 (2000)
- Degren v. State, 352 Md. 400, 722 A.2d 887 (1999)
- Mitchell v. United States, 526 U.S. 314 (1999)
- Sullivan v. Louisiana, 508 U.S. 275 (1993)
- Dorsey v. State, 276 Md. 638, 350 A.2d 665 (1976)
- Grier v. State, 351 Md. 241, 718 A.2d 211 (1998)
- Grant v. State, 318 Md. 672, 569 A.2d 1237 (1990)
- Oken v. State, 343 Md. 256, 681 A.2d 30 (1996)
- United States v. Cotnam, 88 F.3d 487 (7th Cir. 1996)
- Commonwealth v. Smith, 387 Mass. 900, 444 N.E.2d 374 (1983)
- State v. Kinchen, 490 So. 2d 21 (Fla. 1985)

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