

COURT OF APPEALS OF MARYLAND

Evans v. State, 389 Md. 456

886 A.2d 562 (2005) · No. Nos. 18, September Term, 2004, and 3, September Term, 2005 · Decided November 10, 2005

SUMMARY

The Maryland Court of Appeals reviewed two appeals concerning motions to correct Vernon Evans's death sentences. The court rejected a challenge based on statistical evidence of racial and geographic disparities in Maryland's death-penalty system and addressed claims under Apprendi and Ring concerning indictment allegations, sentencing procedures, and the burden of proof for weighing aggravating and mitigating circumstances. The court held that the claims did not provide a basis for relief.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Wilner, J.; Bell, C.J.; Raker, J.; Harrell, J.; Battaglia, J.; Greene, J.; Lawrence F. Rodowsky, J. (Retired, Specially Assigned)
JURISDICTION	Maryland
DECIDED	November 10, 2005
DOCKET	Nos. 18, September Term, 2004, and 3, September Term, 2005
DISPOSITION	affirmed
PROCEDURAL POSTURE	Evans appealed orders of the Circuit Court for Baltimore County denying two motions to correct an illegal sentence: one based on the Paternoster Study's alleged evidence of racial and geographic discrimination in Maryland capital sentencing, and one based on Apprendi and Ring challenges to his indictment, sentencing evidentiary standards, and the burden of proof for weighing aggravating and mitigating circumstances.
STANDARD OF REVIEW	The court reviewed the legal sufficiency of the indictment and the constitutional validity of the sentencing procedures de novo. It also addressed whether the motion concerning the Apprendi/Ring issues remained pending and whether the appeal was timely.
PRECEDENTIAL VALUE	Published precedential opinion of the Court of Appeals of Maryland
PARTIES	Vernon Evans, Jr. v. State of Maryland

TOPICS

sentencing post-conviction relief criminal procedure due process appellate procedure

PRACTICE AREAS

criminal procedure capital punishment post-conviction relief appellate procedure constitutional law

QUESTIONS PRESENTED

1. Whether a Maryland indictment for first-degree murder was constitutionally deficient because it did not allege that Evans was a principal in the first degree or identify the aggravating circumstances supporting the death penalty.
2. Whether Maryland's relaxed evidentiary rules for capital sentencing violated constitutional protections after *Ring v. Arizona*.
3. Whether Maryland's use of a preponderance-of-the-evidence standard to determine whether aggravating circumstances outweighed mitigating circumstances violated the federal or Maryland constitutions.
4. Whether a motion to correct an illegal sentence was an appropriate vehicle for challenging the death sentence based on the Paternoster Study.
5. Whether the appeal concerning the Apprendi/Ring issues was timely and properly before the court.

HOLDINGS

1. A motion to correct an illegal sentence under Maryland Rule 4-345(a) was not an appropriate vehicle for Evans's claim based solely on the Paternoster Study because his sentence was lawful on its face and the study did not establish that racial or geographic discrimination affected his particular sentence.
2. The indictment was not constitutionally or statutorily deficient. In a Maryland state prosecution, principalship and aggravating circumstances supporting a death sentence did not have to be alleged in the indictment when the defendant received the required statutory notice of the State's intent to seek death and the aggravating factors.
3. The relaxed evidentiary rules applicable to Maryland capital sentencing did not violate the Constitution merely because the jury determined principalship and aggravating circumstances beyond a reasonable doubt.
4. Maryland's use of a preponderance-of-the-evidence standard to determine whether aggravating circumstances outweighed mitigating circumstances was constitutional under the precedent controlling the court.
5. The motion raising the Apprendi/Ring issues was not resolved by the Circuit Court's July 18, 2003 order; it remained pending until the March 29, 2005 order, making the appeal from that ruling properly before the Court of Appeals.

KEY QUOTATIONS

“Under Ring, principalship and aggravating factors are no longer regarded as mere sentencing factors, but as matters to be determined by a jury (unless a jury trial is properly waived) beyond a reasonable doubt, but

that does not, ipso facto, mean that they have to be alleged in an indictment.” (389 Md. at 476)

“That Notice, to be filed by the State's Attorney at least 30 days before trial, serves every purpose, to the same degree, as would an indictment containing those averments.” (389 Md. at 479)

“The relaxed standards were designed largely for the defendant's benefit, both to allow the defendant to offer evidence in support of mitigating factors or to defend against or ameliorate aggravating factors that might otherwise be inadmissible and, as noted in Lee, to allow the jury to have a more complete picture of the defendant.” (389 Md. at 482)

FACTUAL BACKGROUND

On April 28, 1983, Vernon Evans, Jr. entered the Warren House Motel with a machine pistol and fired nineteen bullets, killing David Piechowicz and Susan Kennedy. Evans was paid \$9,000 by Anthony Grandison, who wanted Piechowicz killed to prevent him from testifying in a federal drug case. Evans was convicted of two first-degree murders and twice sentenced to death; the second death sentence followed resentencing after the first was vacated in post-conviction proceedings.

PROCEDURAL HISTORY

Evans was convicted of two first-degree murders and twice sentenced to death; his first death sentence was vacated in post-conviction proceedings, and he received a second death sentence after resentencing. The Circuit Court denied his motions to correct an illegal sentence, including a motion based on the Paternoster Study and motions raising Apprendi/Ring and related constitutional issues. The Court of Appeals affirmed both orders.

DISPOSITION

affirmed

CASES CITED

- Evans v. State, 304 Md. 487, 499 A.2d 1261 (1985)
- Evans v. State, 382 Md. 248, 855 A.2d 291 (2004)
- Baker v. State, 389 Md. 127, 883 A.2d 916 (2005)
- Oken v. State, 378 Md. 179, 835 A.2d 1105 (2003)
- Evans v. State, 333 Md. 660, 637 A.2d 117 (1994)
- Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000)
- Jones v. United States, 526 U.S. 227, 119 S. Ct. 1215, 143 L. Ed. 2d 311 (1999)
- Ring v. Arizona, 536 U.S. 584, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002)
- Borchardt v. State, 367 Md. 91, 786 A.2d 631 (2001)
- Alexander v. Louisiana, 405 U.S. 625, 633 (1972)
- Hurtado v. California, 110 U.S. 516 (1884)
- Bowers v. State, 298 Md. 115, 468 A.2d 101 (1983)
- Collins v. State, 318 Md. 269, 568 A.2d 1 (1990)

- Heath v. State, 198 Md. 455, 85 A.2d 43 (1951)
- Campbell v. State, 325 Md. 488, 601 A.2d 667 (1992)
- Ayre v. State, 291 Md. 155, 433 A.2d 1150 (1981)
- Busch v. State, 289 Md. 669, 426 A.2d 954 (1981)
- State v. Mulkey, 316 Md. 475, 560 A.2d 24 (1989)
- State v. Lassotovitch, 162 Md. 147, 159 A. 362 (1932)
- McKaney v. Foreman, 209 Ariz. 268, 100 P.3d 18 (2004)
- State v. Fortin, 178 N.J. 540, 843 A.2d 974 (2004)
- Conyers v. State, 354 Md. 132, 729 A.2d 910 (1999)
- Bruce v. State, 328 Md. 594, 616 A.2d 392 (1992)
- Booth v. State, 327 Md. 142, 608 A.2d 162 (1992)
- Hunt v. State, 321 Md. 387, 583 A.2d 218 (1990)
- State v. Colvin, 314 Md. 1, 548 A.2d 506 (1988)
- United States v. Fell, 360 F.3d 135 (2d Cir. 2004)
- United States v. Lee, 374 F.3d 637 (8th Cir. 2004)
- Schriro v. Summerlin, 542 U.S. 348, 124 S. Ct. 2519, 159 L. Ed. 2d 442 (2004)