

SUPREME COURT OF CONNECTICUT

Lapointe v. Commissioner of Correction, 316 Conn. 225

112 A.3d 1 (2015) · Decided April 21, 2015

SUMMARY

This document is a second dissenting opinion in Lapointe v. Commissioner of Correction, concerning a habeas petition arising from a criminal conviction. Justice Espinosa criticizes the majority for resolving the appeal on an issue not raised by the parties, disregarding the habeas court's factual and credibility findings, and applying what the dissent characterizes as an improper de novo review of those findings in the context of a Brady claim.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	Espinosa, J.
JURISDICTION	Connecticut
DECIDED	April 21, 2015
DISPOSITION	affirmed
PROCEDURAL POSTURE	Dissent from the Connecticut Supreme Court's decision affirming the Appellate Court judgment granting the habeas petitioner a new trial in a proceeding involving an alleged Brady violation concerning the Ludlow note and ineffective assistance of prior habeas counsel.
STANDARD OF REVIEW	Under State v. Ortiz, a habeas court's determination of materiality under Brady presents a mixed question of law and fact subject to plenary review, while underlying historical facts are reviewed for clear error. Credibility findings, including findings concerning expert witnesses, are reviewed for clear error and may not be independently reassessed by the appellate court.
PRECEDENTIAL VALUE	Published dissenting opinion; nonbinding as to the dissent's reasoning.
PARTIES	Commissioner of Correction v. Richard Lapointe

TOPICS

state post-conviction relief appellate procedure standard of review due process ineffective assistance

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the appellate court may review a habeas court's factual and credibility findings concerning the materiality of alleged Brady evidence de novo rather than for clear error.
2. Whether an appellate court may resolve an appeal on a legal issue raised sua sponte without providing the parties an opportunity to brief that issue.
3. Whether the habeas court's findings concerning the uncertain burn time and Martin's lack of credibility compelled rejection of Lapointe's Brady materiality claim.

HOLDINGS

1. The dissent maintained that the appellate court is constitutionally prohibited from reviewing the habeas court's factual and expert-credibility findings de novo and must apply clear-error review.
2. The dissent maintained that the court could not decide the appeal on a new standard-of-review issue that neither party raised without giving the parties notice and an opportunity to submit supplemental briefs.

KEY QUOTATIONS

"Justice is not achieved by suspending the rules in order to benefit a single individual through a judicial decision." (at 225)

"It is for the fact finder to consider that testimony, using its " 'best judgment,' " and to determine whether to give any weight to the testimony, and, if so, how much weight to give to it." (at 225)

"The process of determining credibility is an exercise of human judgment that cannot be accomplished by reviewing a cold piece of paper, but that is the fiction upon which the majority's new standard is based." (at 225)

FACTUAL BACKGROUND

The habeas proceeding concerned a police note by Detective Michael Ludlow containing the notation "30–40 mins. [p]oss.," which Lapointe argued supported a timing-based alibi and was material Brady evidence. Lapointe presented new fire experts who testified about the time required for the fire to burn, along with testimony from his former wife, Karen Martin, who purportedly could place him at home. The habeas court found that the burn time could not be determined precisely, credited the respondent's expert, and found Martin's testimony insufficient to establish an alibi. The dissent also emphasized that Lapointe had confessed to the crime and that fire-investigation testimony had already been presented at his original trial.

PROCEDURAL HISTORY

Lapointe, a criminal defendant convicted of murder-related offenses, pursued habeas relief based on the state's alleged failure to disclose a police note concerning the possible duration of the fire and on ineffective assistance of his first habeas counsel. The habeas court found that the fire's burn time could not be determined with precision, credited the respondent's expert over the petitioner's experts, and found Lapointe's former wife, Karen

Martin, not credible as an alibi witness. The Appellate Court nevertheless concluded that Lapointe was entitled to a new trial, and the Connecticut Supreme Court granted certification. Espinosa's second dissent would have reversed the Appellate Court because the majority improperly revisited factual and credibility findings under a de novo standard that no party had advocated.

DISPOSITION

affirmed

CASES CITED

- Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- Brady v. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)
- State v. Ortiz, 280 Conn. 686, 720, 911 A.2d 1055 (2006)
- Anderson v. Commissioner of Correction, 313 Conn. 360, 375, 98 A.3d 23 (2014)
- Blumberg Associates Worldwide, Inc. v. Brown & Brown of Connecticut, Inc., 311 Conn. 123, 84 A.3d 840 (2014)
- State v. Lenarz, 301 Conn. 417, 532, 22 A.3d 536 (2011)
- Skakel v. State, 295 Conn. 447, 487 n.25, 991 A.2d 414 (2010)
- Sanchez v. Commissioner of Correction, 314 Conn. 585, 602 n.12, 611 & n.16, 103 A.3d 954 (2014)
- State v. Lawrence, 282 Conn. 141, 157, 920 A.2d 236 (2007)
- State v. Borrelli, 227 Conn. 153, 174, 629 A.2d 1105 (1993)
- Bunch v. State, 964 N.E.2d 274, 293 (Ind. App. 2012)
- State v. Behn, 375 N.J. Super. 409, 868 A.2d 329, cert. denied, 183 N.J. 591, 874 A.2d 1108 (2005)
- State v. Medrano, 308 Conn. 604, 648, 65 A.3d 503 (2013) (Norcott, J., concurring)
- State v. Lapointe, 237 Conn. 694, 699–700, 730–35, 678 A.2d 942, cert. denied, 519 U.S. 994, 117 S. Ct. 484, 136 L. Ed. 2d 378 (1996)
- State v. Arroyo, 284 Conn. 597, 609–10, 935 A.2d 975 (2007)
- State v. Henderson, 312 Conn. 585, 595–96, 94 A.3d 614 (2014)
- Mueller v. Tepler, 312 Conn. 631, 643–46, 95 A.3d 1011 (2014)
- Lane v. Commissioner of Environmental Protection, 314 Conn. 1, 15–16 n.16, 100 A.3d 384 (2014)

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