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Recent Developments: State v. Randall Book Corp

(1971),"the Supreme Court shifted the emphasis from the words themselves to the context in which they were uttered and thereby limited the doctrine as announced in *Chaplinsky*." *Diehl*, 294 Md. at 475, 451 A.2d at 120.

In *Cohen*, the Supreme Court refused to classify the expression "Fuck the Draft" lettered on the back of a jacket worn in a courthouse as "fighting words" because they were not directed to the person of the hearer nor intentionally provoked a given group to hostile action. The Court of Appeals of Maryland applied this narrowed application of the "fighting words" doctrine in *Downs v. State*, 278 Md. 610, 366 A.2d 41 (1976), *cert. denied*, 431 U.S. 974 (1977). The court in *Diehl* adopted the *Downs* holding stating that "even though the views expressed might be offensive to someone who overheard them, they were not directed to such persons and, as a result, were not under the rubric of fighting words." *Diehl*, 294 Md. at 476-77, 451 A.2d at 121. However, Diehl's words were directed toward someone, specifically, Officer Gavin. The court opted not to address the question whether a different and higher standard applies when the addressee is a police officer.

The court found direction from *Downs*, which "teaches us that the use of the word 'fuck' is not punishable in the absence of compelling reason." *Id.* at 477, 451 A.2d at 122. No such compelling reason was found in this case. The court held that Diehl had a right to verbally protest the unlawful exercise of police authority, and the utterance in question "though distasteful, forcefully conveyed the intensity of his objection." *Id.* at 478-79, 451 A.2d at 122. Diehl's words were held to be no more than an emotional and emphatic response to Gavin's order. "In such moments, one man's vulgarity may well be another's vernacular." *Id.* at 479, 451 A.2d at 122.

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State v. Randall Book Corp.

In *State v. Randall Book Corp.*, ___ Md. App. ___ ,452 A.2d 187 (1982), the Court of Special Appeals of Maryland reviewed the dismissal of charges against the Randall Book Corporation, where the trial court found Article 27, §416D of the Annotated Code of Maryland to be unconstitutionally vague and overbroad. Section 416D is basically an obscenity statute, although the Maryland Legislature deleted the word "obscene" (primarily due to the confusion in the law on obscenity handed down by the United States Supreme Court). Section 416D, in essence, states that "advertising the human body depicting sadomasochistic abuse, sexual conduct or sexual excitement" is a crime. *See Randall Book Corp.*, ___ Md. App. at ___ , 452 A.2d at 188.

The appellate court in *Randall Book Corp.* noted the recent court of appeals' opinion in *Blaine Wilson Smiley v. State*, ___ Md. ___ , 450 A.2d 909 (1982) and found that case to be determinative of the constitutional issue before them. In *Smiley*, the court held that Section 416D was enacted to broadly prohibit advertising which depicted obscenity, enabling the court to apply the standards enuciated in *Miller v. California*, 413 U.S. 15 (1973).The court in *Smiley* found that:

> [w]hen the *Miller* standards are embodied in section 416D, it becomes patent that the statute is not overbroad and vague. By requiring compliance with the *Miller* standards, "a person of ordinary intelligence [is given] fair notice that his contemplated conduct is forbidden by the statute," and the statute is not "so indefinite that 'it encourages arbitrary and erratic arrests and convictions.' "

Smiley, ___ Md. at ___ , 450 A.2d at 912, citing *Colautti v. Franklin*, 439 U.S. 379 (1979).

The primary issue—the constitutional question—raised in *Randall Book Corp.* was answered fully by the decision in *Smiley*, and the Maryland Court of Special Appeals reversed the trial court's decision and remanded the case against Randall for further proceedings.

Miller v. State

In *Miller v. State*, ___ Md. App. ___ , ___ A.2d ___ (1982), Miller was indicted on charges of robbery with a deadly weapon, kidnapping, rape and various other sex offenses. The charges arose out of an incident that occurred on October 28, 1980. On June 16, 1981 Miller's trial began and he was convicted by June 19, 1981. On appeal, the appellant raised issues based on lack of trial by impartial jury, lack of speedy trial and based on error in permitting a State witness to testify despite non-disclosure of the witness' name during the discovery process.

The appellate court addressed the speedy trial issue first, examining in detail the circumstances surrounding the appellant's arrest and trial in relation to Maryland Rule 746. Rule 746 provides in part that:

> a trial date shall be set which shall be not later than 180 days after the appearance or waiver of counsel or after the appearance of defendant before the court pursuant to Rule 723 (hereinafter referred to as the "180 day rule").

Counsel for the appellant first entered his appearance on December 11, 1980 and pre-trial motions were heard on June 9, 1981. The appellant contended that June 9, 1981 constituted the 181st day after appearance of counsel. The court corrected this miscalculation, citing Maryland Rule 8 which in essence requires that the day which triggers the time period is not to be included in the calculation.

Upon further examination of the speedy trial issue, the court found the case of *State v. Lattisaw*, 48 Md. App. 20, 425 A.2d 1051 (1981) to be controlling. As a result of this case, the court held the appellant had