University of Baltimore Law Forum

Volume 20
Number 1 *Fall, 1989*

Article 8

1989

Recent Developments: State v. Gorman: Court Upholds the Use of Peremptory Challenges to Strike Black Jurors When the Defendant Is White

Gregory J. Swain

Cheney v. Bell Nat'l Life: **WIDOW DENIED RECOVERY ON ACCIDENTAL DEATH POLICY WHEN HUSBAND DIED FROM AIDS CONTAMINATED TRANSFUSION.**

In *Cheney v. Bell Nat'l Life*, 315 Md. 761, 556 A.2d 1135 (1989), the Court of Appeals of Maryland barred an insured widow's recovery under an accidental death policy after her husband died of AIDS (Acquired Immune Deficiency Syndrome) which he accidentally contracted from a necessary blood transfusion. The court held that hemophilia was a "sickness or disease" within the meaning of a policy which excluded recovery for death by "sickness or disease." *Id.* at 770, 556 A.2d at 1140. Thus, the court deemed that accidentally contracting AIDS while under medical treatment for a sickness or disease such as hemophilia was not the type of "accident" contemplated in the insurance policy.

Petitioner is the surviving spouse of Anthony Cheney, who suffered from hemophilia. While undergoing a treatment for hemophilia, Mr. Cheney received a transfusion containing the AIDS virus. At the age of 24, he died of respiratory failure, a direct consequence of the AIDS virus.

When Mr. Cheney died, he and his wife jointly held an accidental death policy under which the insurance company agreed to pay a designated amount in the event of the accidental death of either party. Upon Mr. Cheney's death, however, the insurance company refused payment asserting that his death was not "accidental" as defined in the policy. *Cheney*, 70 Md. App. at 164-65, 520 A.2d at 403. The policy excluded "any loss . . . caused by or resulting from . . . sickness or disease or medical or surgical treatment therefore (sic) . . . ." *Cheney*, 315 Md. at 763, 556 A.2d at 1136.

Mrs. Cheney filed suit in the Circuit Court for Baltimore City claiming that her husband's death was accidental. Judge Elsbeth Bothe granted the insurance company's motion for summary judgment based on its assertions that Mr. Cheney's death resulted from sickness or disease, or from medical treatment. The court of special appeals affirmed, also suggesting that no "accident" had occurred within the meaning of the policy. *Id.* at 764, 556 A.2d at 1137.

The court of appeals began its analysis by rejecting the insurance company's contention that coverage was excluded because death resulted from a sickness or disease. *Id.* (relying on *General Accounting Co. v. Homely*, 109 Md. 93, 99, 71 A. 524 (1908)). In *General Accounting*, the court of appeals held that where death resulting from a disease is caused by an accident, the accident is the true and predominant cause of death. As a result, the disease is merely a link in the chain of causation. *Cheney*, 315 Md. at 764, 556 A.2d at 1137.

The court of appeals then considered whether the insured's death resulted from medical treatment for sickness or disease. The court first determined that the accidental injury occurred when the contaminated blood was injected into Mr. Cheney and found unpersuasive Mrs. Cheney's argument that the accident occurred when the blood was drawn from the infected donor. Mrs. Cheney reasoned that the accident causing death occurred prior to any medical treatment for hemophilia. She argued, therefore, that the exclusion in the policy did not apply. *Id.* at 766, 556 A.2d at 1138.

Concluding that death resulted from the transfusion, namely, from the medical treatment for hemophilia, the court was faced with the question of whether the insured's hemophilia was a "sickness or disease" within the meaning of the policy. *Id.* To determine the meaning of the policy, the court looked to the intention of the parties which is ascertained from the policy as a whole. Under this construction, words are accorded their usual, ordinary and accepted meaning, unless there is evidence to the contrary. *Id.* (relying on *Pacific Indem. v. Interstate Fire & Casualty*, 302 Md. 383, 388, 488 A.2d 486 (1985)).

The court found no ambiguity in the meaning of the word "disease." The court noted that there was no evidence of any contrary or specific meaning and focused on the ordinary meaning of the word "disease." The court concluded that hemophilia was a "disease" within its commonly accepted meaning, and within the meaning of the insurance policy under which Mr. Cheney was covered. *Id.* at 770, 556 A.2d at 1140. Because Mr. Cheney's death resulted from medical treatment for a disease, Mrs. Cheney was precluded from receiving payment under the policy's exclusionary language.

The court of appeals concluded that the cause of Mr. Cheney's death was an accidental injury. However, because hemophilia was a disease within the meaning of the Cheney's insurance policy, the injury (receiving AIDS contaminated blood) was cause by medical treatment for a disease. Therefore, the accident was not covered by the accidental death policy. Consequently, the court of appeals has narrowly construed the meaning of "accidental" in death policies. As a result, the insurance industry's liability under such policies, specifically with regard to AIDS related death, has been limited.

—Eugenia Reed Oshrine

***State v. Gorman*: COURT UPHOLDS THE USE OF PEREMPTORY CHALLENGES TO STRIKE BLACK JURORS WHEN THE DEFENDANT IS WHITE**

In *State v. Gorman*, 315 Md. 402, 554 A.2d 1203 (1989), the Court of Appeals of Maryland held that the state's exercise of peremptory challenges to strike the only two black jurors from a jury panel was constitutionally permissible when the defendant in question was white.

Gorman, a male caucasian, was convicted by a jury in the Circuit Court for Harford County of robbery with a deadly weapon and related offenses. During voin dire, the prosecution exercised its peremptory challenges to strike the only two black veniremen from the panel. Gorman was sentenced to life imprisonment without parole, pursuant to Maryland's recidivist statute. *Id.* at 404, 554 A.2d at 1204.

On appeal, Gorman contended that the state's use of peremptory challenges to strike the black veniremen from the panel constituted a denial of equal protection in violation of the fourteenth amendment and a violation of the sixth amendment's guarantee of an impartial jury. The court of special appeals affirmed his conviction. After the court of appeals denied certiorari, the Supreme Court of the United States granted Gorman's petition for certiorari. The Supreme Court vacated the judgment of the intermediate appellate court and remanded the case to that court for reconsideration in light of the recent holding in *Griffith v. Kentucky*, 479 U.S. 314 (1987). On remand, the court of special appeals reversed, and remanded it for a new trial, relying on *Batson v. Kentucky*, 476 U.S. 79 (1986), *Griffith*, and *Chew v. State*, 71 Md. App. 681, 527 A.2d 332, *cert. granted*, 311 Md. 301, 534 A.2d 369 (1987), for its decision. After the court of special appeals denied the state's motion for reconsideration, the court of appeals granted both the state's petition and Gorman's cross petition for writs of certiorari. *Gorman*, 315 Md. at 404-405, 554 A.2d at 1204. On appeal, the parties stipulated that there were only three issues:

(1) Did the court of special appeals misapply *Batson v. Kentucky* to the circumstances of this case?

(2) Can Gorman assert a sixth amendment claim of fair cross-section deprivation in the composition of his jury?

(3) Did the court of special appeals err in mandating a new trial?

Id. at 413-14, 554 A.2d at 1208.

Regarding the first question, the court considered the applicability of *Batson* to the facts before it. *Batson*, which involved the state exercising its peremptory challenges to strike black jurors from the trial of a black man, created a three-part evidentiary standard that a defendant must meet in order to establish a prima facie case of purposeful discrimination in petit jury selection: 1) defendant must establish that he is a member of a cognizable racial group and that the prosecution has used peremptory challenges to strike members of the same race from venire; 2) the defendant may rely on the fact that peremptory challenges permit discrimination by those who desire to discriminate in their selection of a petit jury; and 3) defendant must show that these facts and any other circumstances surrounding the jury selection raise an inference that the state used their peremptory challenges to strike veniremen from the petit jury because of their race. *Id.* at 410, 554 A.2d at 1207 (relying on *Batson* 476 U.S. at 96).

The *Gorman* court held that the court of special appeals had misapplied the *Batson* standard as that holding did not include situations where the jurors struck were not the same race as the defendant. *Gorman*, 315 Md. at 414-16, 554 A.2d at 1208-10. Furthermore, the circumstances in *Gorman* failed to meet the first prong of the *Batson* evidentiary standard. Gorman was not a member of a cognizable racial group, nor were the jurors who were struck the same race as Gorman. *Id.* at 416, 554 A.2d at 1209-10.

Next, the court rejected Gorman's contention that the state's exercise of peremptory challenges violated his constitutional right to due process of law. Although Gorman relied on *Peters v. Kiff*, 407 U.S. 493 (1972) for support, the court noted that *Peters* involved due process because the jury had been illegally composed, not because of any misuse of peremptory challenges. Therefore, the court concluded that the state's use of peremptory challenges in Gorman's case did not rise to the level of a due process violation. *Gorman*, 315 Md. at 417, 554 A.2d at 1210.

Similarly, the court rejected Gorman's sixth amendment claim of fair cross-section deprivation; first, because the *Batson* Court had ignored a similar claim; and second, because the later case of *Lockhart v. McCree*, 476 U.S. 162 (1986) expressly rejected the notion that the fair cross-section guarantee of the sixth amendment applied to peremptory challenges. *Gorman* at 417-19, 554 A.2d at 1210-11.

Regarding the issue of whether the lower court erred in mandating a new trial, the court stated that the question would only arise if in fact *Batson* applied to the facts of Gorman's case. Since the court previously determined that *Batson* did not apply, it was not necessary to consider the question. *Id.* at 420, 554 A.2d at 1211. Thus, the court of appeals reversed the decision of the court of special appeals, finding no constitutional violations from the state's exercise of its peremptory challenges.

In a lengthy dissent, Judge Eldridge opined that the actions of the state in this case did constitute a prima facie case of purposeful discrimination in violation of the equal protection clause, and therefore, required the prosecution to provide an explanation for its conduct. *Id.* at 420-23, 554 A.2d at 1212-13. He also believed that both Gorman's fourteenth amendment due process rights and his sixth amendment right to an impartial jury had been violated, that the "same class" rule (the first step of the *Batson* evidentiary test) was inconsistent with equal protection of the law (as it applies to race discrimination), and that Gorman had standing to challenge the racial discrimination in the selection of the petit jury in his case, based on the rationale of *Peters Id.* at 423-38, 554 A.2d at 1213-21. In the dissent's view, the state's use of peremptory challenges to strike persons from a petit jury solely because of their race should shift the evidentiary burden to the state to prove otherwise. *Id.* at 438, 554 A.2d at 1220-21.

The *Gorman* decision is significant as it illustrates Maryland's refusal to extend the holding of *Batson* beyond the specific factual scenario in *Batson*. The consequences are: 1) the unconditional nature of the peremptory challenge as it has historically existed is preserved; and 2) white criminal defendants in Maryland are now precluded from asserting discrimination when the state uses its peremptory challenges to strike black veniremen. Conversely, the state remains free to strike blacks from the jury panel in any criminal trial where the defendant is not black.

—Gregory J. Swain

***Nelson v. State*: TRIAL JUDGE'S REFUSAL TO ALLOW PRESENTENCE INVESTIGATION IN A SERIOUS NONCAPITAL CASE, IN THE ABSENCE OF SOUND REASON, IS ABUSE OF DISCRETION.**

In *Nelson v. State*, 315 Md. 62, 553 A.2d 667 (1989), the Court of Appeals of Maryland held that the trial court's refusal to order a presentence investigation report in a serious noncapital case, without giving a sound reason why the investigation should not be made, was an abuse of discretion.

The defendant, Michael B. Nelson, was convicted of first degree murder in the Circuit Court for Baltimore City. Following pronouncement of the verdict, Nelson requested that the court order a presentence investigation under Md. Ann. Code art. 41, §4-609 (1986 & Supp. 1988), before imposing sentence. Although the state had no objection to the investigation, the sentencing judge refused. The court's reasoning was that such investigations were costly and would not be ordered without a showing of particular need.

On the date of the disposition, Nelson again requested a presentence investigation, arguing that, because the court has the discretion to suspend any part of a life sentence, the court was obligated to learn as much as possible about the defendant in order to impose a fair sentence. The court again refused and imposed a life sentence and two consecutive one-year sentences. The Court of Special Appeals of Maryland subsequently affirmed the judgments and sentencing. The only issue before the court of appeals was whether the trial court erred in refusing to order a presentence investigation.

The court of appeals began its analysis by turning to Md. Ann. Code art. 41, §4-609(b) which requires agents of the Division of Parole and Probation to provide the court with presentence reports or other investigations in all cases when requested by any judge. Section 4-609 (c)(1) provides:

> Prior to the sentence by the circuit court of any county to the jurisdiction of the Division of Correction of a defendant convicted of a felony, or a misdemeanor which resulted in serious physical injury or death to the victim, or the referral of any defendant to the Patuxent Institution, a presentence investigation shall be completed by the Division of Parole and Probation and considered by the court, unless the court