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Thompson v. State:
Jury Instructions Cannot Substantially Deviate from the American Bar Association's Criminal Justice Standards of the Maryland Pattern Jury Instructions

By: Edward Goodman

The Court of Appeals of Maryland held jury instructions cannot substantially deviate from the American Bar Association's Criminal Justice Standards of the Maryland Pattern Jury Instructions. *Thompson v. State*, 371 Md. 473, 485, 810 A.2d 435, 442 (2002). The court found the trial judge erred in instructing the jury with an "attitude of jurors" instruction, rather than the "duty to deliberate" instruction, as required by the Maryland Pattern Jury Instruction 2:01. *Id.*

During a search of the defendant's residence, pursuant to a search warrant, officers recovered marijuana, cash, and drug paraphernalia. Thompson was arrested and while in custody admitted the marijuana was for personal use, although he sometimes sold it to his friends. Thompson was indicted for possession with intent to distribute a controlled dangerous substance, possession of controlled paraphernalia, and possession of a controlled and dangerous substance.

Thompson was convicted in the Circuit Court of Montgomery County on all charges. He appealed to the Court of Special Appeals of Maryland alleging the judge erred in

allowing a midtrial amendment to the indictment. In addition, Thompson claimed the judge improperly substituted the requisite "duty to deliberate" jury instruction with an improper "attitude of jury" instruction. The court of special appeals affirmed Thompson's conviction.

The Court of Appeals of Maryland granted certiorari to determine the legality of the midtrial amendment to the indictment and the significance of the trial judge altering the jury instructions with a personalized jury deliberation instruction.

First, the court addressed whether the trial judge violated Maryland Rule 4-325 by instructing the jury with what he called the "attitude of jury" instruction rather than the required "duty to deliberate" from the Maryland Pattern Jury Instructions. *Id.* at 478-79, 810 A.2d at 438-39. Thompson argued the segment of the jury instruction that read, "the 'final test' of the quality of your service will lie in the verdict which you return to the court, not in the opinions any of you may hold as you retire" did not reasonably adhere to the ABA standards approved by the court of appeals. *Id.* at 479, 810

A.2d at 439.

The court of appeals examined the appropriate language of the instructions given to a deliberating jury in *Kelly v. State*. *Id.* at 480, 810 A.2d at 440. The court adopted the American Bar Association's Criminal Justice Standard to measure the appropriateness of the "duty to deliberate" jury instructions. *Id.* at 480-81, 810 A.2d at 440 (citing *Kelly v. State*, 270 Md. 139, 310 A.2d 538 (1973)).

The *Kelly* court approved a specific instruction to be used by judges before a jury begins deliberations. *Thompson*, 371 Md. at 482, 810 A.2d at 441. The court referred to this instruction as an *Allen*-type jury charge because of its modified language and the recognition that judges may personalize jury instructions as long as they reasonably adhere to the ABA standards. *Id.* at 482, 810 A.2d at 441. An *Allen* charge encouraged deadlocked jurors to reach a verdict by stressing deference of the minority jurors to the views of the majority. *Id.* It was derived from an instruction approved by the United States Supreme Court. *Id.* (citing *Allen v. United States*, 164 U.S. 492,

17 S.Ct. 154 (1896)).

In Maryland, the court noted an *Allen* charge may not be used on a deadlocked jury because it does not adhere to ABA standards. *Id.* The court stated it was coercive and an impermissible interference with the function of the jury. *Id.* In addition, it encouraged minority jurors to acquiesce to the views of the majority. *Thompson*, 371 Md. at 482, 810 A.2d at 441 (citing *Burnette v. State*, 280 Md. 88, 371 A.2d 663 (1997)). Further, the court found *Allen* instructions given before jury deliberations are just as coercive as the instructions given to deadlocked jurors. *Id.* at 484, 810 A.2d at 442 (citing *Goodmuth v. State*, 302 Md. 613, 490 A.2d 682 (1985)).

In the instant case, the court held some portions of the judge's "attitude of jurors" instruction gave deference to the ABA standards, but there were substantial deviations. *Id.* at 485, 810 A.2d at 442. The trial court's "final test" jury instruction suggests to jurors that collective judgment is more important than adherence to individual principles and honest convictions. *Id.* at 486-87, 810 A.2d at 443. This concept was found to be coercive and an obstacle to a jury's function. *Id.* at 483, 810 A.2d at 441. It implies there is a standard of service to which a good juror should aspire, one that requires a verdict be reached rather than an adherence to his or her own personal beliefs and judgments. *Id.* at 486, 810 A.2d at 443.

Next, the court addressed the

issue of whether a midtrial amendment to the indictment had double jeopardy implications. *Thompson*, 371 Md. at 487, 810 A.2d at 444. The court found a mid-trial amendment is problematic when it changes the nature of the offense. *Id.* at 487-88, 810 A.2d at 444.

The purpose of an indictment is to provide notice to the accused of the charges and to guard against the possibility of unfair surprises at trial. *Id.* at 488, 810 A.2d at 444. Adequate notice is given when the charging document contains both a characterization of the crime and the particular act alleged to have been committed. *Id.* at 489, 810 A.2d at 445.

In the present case, the court noted, under Maryland Rule 4-202(a), a citation of authority error in an indictment is not grounds for dismissal or reversal of a conviction. *Id.* The statutory reference existed as a matter of convenience to the parties and possessed no substance of its own. *Id.* Accordingly, the body of the indictment determines the character of the offense and not the statutory reference. *Thompson*, 371 Md. at 489, 810 A.2d at 445. By changing the indictment from a violation of Md. Code Ann., [possession of controlled paraphernalia] § 287A (1957, 1996 Repl. Vol.) to Md. Code Ann., [possession of controlled paraphernalia with intent to distribute] § 287(d)(2) (1957, 1996 Repl. Vol.) the state did not change the character of the offense, and therefore, the midtrial amendment was not a double jeopardy violation.

Id. at 489, 810 A.2d at 445.

The court of appeal's holding in *Thompson* supports the right of a defendant to have his or her jury instructions adhere to ABA standards. The ABA standards, of the Maryland Pattern Jury Instructions, were adopted to provide guidance. The court clearly articulated judges may personalize jury instructions, especially prior to deliberations, as long as they adhere to these standards. This ruling is significant to Maryland attorneys because it shows there are limits to how far a judge can deviate from established jury instruction standards. It demonstrates that jurors should not surrender their honest convictions in order to return a verdict. Individual principles and honest opinions should always prevail over the primacy of collective judgment.