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Recent Developments

PSYCHIATRIC EVALUATIONS AND THE SIXTH AMENDMENT

In *Thomas v. State*, 301 Md. 294, 483 A.2d 6 (1984), the Court of Appeals of Maryland held that a post-trial psychiatric evaluation for purposes of a sentencing determination is not violative of the sixth amendment's guarantee of assistance of counsel solely because the defendant's counsel had consented to the evaluation without knowledge of the fact that it was performed by an expert paid by the prosecution. Prior to this decision, it appeared that the doctrine promulgated in *Estelle v. Smith*, 451 U.S. 454 (1981), would have prohibited such an evaluation based on sixth amendment grounds.

In *Thomas*, the defendant, Donald Thomas, was found guilty of two counts of first degree murder, rape, two first degree sexual offenses and robbery in the Circuit Court for Baltimore County. On petition by the State, the court ordered a pre-sentence psychiatric examination to evaluate the defendant on issues concerning the imposition of the death penalty. A psychiatrist from the Clifton T. Perkins State Hospital was chosen to evaluate the defendant. This same psychiatrist had previously evaluated the defendant on two occasions. Although the defendant's counsel consented to the post-trial sentence evaluation, he claimed at the sentencing hearing that the defendant was denied the assistance of counsel under the sixth amendment at this evaluation because his consent was based on the belief that the psychiatrist was only a staff member of Clifton T. Perkins, as he had been in the previous evaluations, and not the prosecution's paid expert. The defendant's counsel further stated that if he had known of this fact he would not have allowed the examination. The circuit court denied

Right to counsel undermined.

defendant's objection and allowed the admission of the psychiatrist's report and testimony. The sentencing hearing resulted in the imposition of the death penalty for one of the counts of murder, a life sentence for the other count of murder, concurrent terms of life imprisonment for the rape and first degree sexual offenses, and a twenty year consecutive sentence for the armed robbery. In the present case, the Court of Appeals of Maryland upheld the lower court's ruling.

The court in *Thomas* began by discussing *Estelle v. Smith*, the governing case in this area. In *Estelle*, the trial judge, *sua sponte* and without consent of the defendant's counsel, ordered a pre-trial psychiatric examination of the defendant to determine his competency to stand trial. At the sentencing hearing, the psychiatrist testified, based on this examination, that the defendant would be dangerous in the future, an element necessary to impose the death penalty. The United States Supreme Court, overturning the lower court's ruling, concluded that the defendant "was denied the assistance of his attorneys in making the significant decision of whether to submit to the examination and to what end the psychiatrist's findings could be employed." *Estelle*, 451 U.S. at 471.

The *Thomas* court, however, reasoned that *Estelle* did not apply. First, Maryland does not bear the burden of proof in showing future dangerousness as did the Texas statute involved in *Estelle*. Second, the defendant was

informed by the psychiatrist in the first pre-trial evaluation that "any information which he revealed to the psychiatrist would not be held in confidence but could be used at a subsequent capital sentencing hearing." 301 Md. at 328, 483 A.2d at 24. Third, unlike in *Estelle*, the defendant's lawyer in *Thomas* "had prior notice of both examinations by ... [the psychiatrist] and had the opportunity to confer with ... [the defendant] before each examination." 301 Md. at 328, 483 A.2d at 24. Fourth, the defendant in *Thomas*, unlike in *Estelle*, was given *Miranda*-type warnings prior to his initial examination. Finally, the defendant's counsel was informed prior to the evaluation that "the post-trial examination by ... [the psychiatrist] was intended to develop material for presentation at the sentencing hearing." 301 Md. at 328, 483 A.2d at 24. The court reasoned that, in light of these circumstances, it was unimportant that the defendant's counsel "was honestly mistaken in the belief that ... [the psychiatrist] would evaluate the ... [defendant] in his capacity as a Perkins psychiatrist [because] that fact alone would not require reversal under the principles of *Estelle*." 301 Md. at 329, 483 A.2d at 24. Therefore, the court concluded that the defendant's sixth amendment right to assistance of counsel was not violated in this case.

Judge Eldridge dissented on the sixth amendment issue in *Thomas*, arguing that *Estelle* did apply because "the defendant Thomas was obviously denied the assistance of counsel in making the decision of whether to submit to ... [the psychiatrist's] examination in connection with the sentencing proceeding." 301 Md. at 350, 483 A.2d at 35 (Eldridge, J., concurring in part and dissenting in part). Although the defendant's counsel did consent to this post-trial evaluation, the consent, Judge Eldridge reasoned, was "induced by the prosecution's deception." 301 Md. at 350, 483 A.2d at 35 (Eldridge, J.,



concurring in part and dissenting in part). A consent that is "induced by misrepresentation is not consent." 301 Md. at 350, 483 A.2d at 35 (Eldridge, J., concurring in part and dissenting in part). The misrepresentation in *Thomas* was that the defendant's counsel believed that the psychiatrist that evaluated the defendant was a neutral expert from Clifton T. Perkins and not the prosecution's paid expert.

The dissenter then dissected the majority's reasoning. He stated that the burden of proof differences between *Thomas* and *Estelle*, as well as the psychiatrist's warnings to the defendant that any information which he revealed could be used at a subsequent capital sentencing hearing, were "utterly irrelevant to the Sixth Amendment right to counsel issue." 301 Md. at 352, 483 A.2d at 36 (Eldridge, J., concurring in part and dissenting in part). Furthermore, Judge Eldridge argued that although the defendant's counsel consented to the psychiatrist's examination, as in *Estelle*, his consent was based on a misrepresentation by the prosecution concerning the neutrality of the psychiatrist. Therefore, citing *Estelle* as controlling, the dissenter concluded that "[b]ecause of the prosecution's misleading action in this case, the defendant Thomas was deprived of the assistance of counsel in deciding whether or not to submit to ... [the psychiatrist's] examination in connection with the capital sentencing hearing." 301 Md. at 352, 483 A.2d at 36 (Eldridge, J., concurring in part and dissenting in part).

The *Thomas* court appears to have restricted the defendant's right to assistance of counsel under the sixth amendment. By allowing the post-trial psychiatric examination of the defendant for a determination on the imposition of the death penalty without the knowledgeable consent of the defendant's counsel, it has gutted the sixth amendment's protections promulgated in *Estelle*. The court is opening the door for the prosecution's use of trickery and misrepresentation in order to gain a defendant's counsel's consent and to deny a defendant the assistance of counsel guaranteed him under the sixth amendment. Without such assistance of counsel, poorly educated and fearful defendants will be wittingly or unwittingly denied the full protection of the law by the prosecution. ⚖️

— by Sam Piazza



DOCKWORKER'S REMEDY

The issue of whether a dockworker's exclusive remedy for an occupational injury is under the Longshoremen's and Harbor Workers' Compensation Act ("Act" or "LHWCA"), 33 U.S.C. §901 et seq., where a portion of the injury preceded the Act's coverage, was subject to review by the Maryland Court of Appeals during its September, 1984 term. A decision in *Stanley v. Western Maryland Railway Company*, 301 Md. 204 482 A.2d 881 (1984), was reached on October 24, 1984 and is one which will have substantial impact in the area of workers' compensation benefits. In order to understand the ramifications of *Stanley*, however, one must first have a basic understanding of the principles underlying the system of workers' compensation.

Benefits for employees injured while on the job were first a product of state common law and statutes. Although the fifty states vary greatly as to the substantive legal principles which guide particular workers' compensation schemes, all systems share the same underlying principles: to compensate an employee as quickly and efficiently as possible for work-related injuries, regardless of an employee's contributory negligence, and to limit the ultimate liability of the employer for any such injuries.

Prior to 1927, there was not a uniform scheme of compensation law applied by the states to injuries sustained by maritime workers. Congress, therefore, saw the need for a uniform federal system and the LHWCA "was designed to ensure that a compensation remedy existed for all injuries sustained by employees on navigable waters and to avoid uncertainty as to the source, state or federal, of that remedy." *Calbeck v.*

Travelers Insurance Co., 370 U.S. 114, 124 (1962).

Apparently, this federal system of workers' compensation benefits for maritime employees provided sufficient benefits to injured workers for a number of years. However, a problem arose in that a maritime employee was only covered under the Act for certain activities (usually only those performed on navigable waters) and would not, in a majority of cases, receive any compensation benefits under LHWCA for injuries sustained on land. Congress amended the Act in 1972 "to extend coverage to additional workers in an attempt to avoid anomalies inherent in a system that drew lines at the water's edge by allowing compensation under the Act only to workers injured on the seaward side of a pier." *Northeast Marine Terminal Co., Inc. v. Caputo*, 432 U.S. 249 (1977).

In the instant case, James Stanley had been an employee of the Western Maryland Railway Company since 1942. In approximately 1955 or 1956 Stanley was assigned to operate a crane used to unload cargo from ships. The crane was extremely noisy and caused a gradual auditory impairment in Stanley's ears. He first became aware of his permanent hearing loss in 1977 and, in 1979, filed a negligence action against his employer under the Federal Employers' Liability Act ("FELA"), 45 U.S.C. §51 et seq.

The Federal Employers' Liability Act, enacted by Congress in 1908, permitted a claimant to sue the railroad company, his employer, for injuries resulting from the company's negligence. Stanley contended that the majority of his long term exposure occurred prior to 1972, at a time when he, as a dockworker, was not covered by the LHWCA. Stanley, therefore, sought to apportion his hearing loss claim between the two distinct Acts, FELA and LHWCA. In apportioning his disability between the two Acts, however, Stanley made a