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Recent Developments: Holmes v. State: Trial Judge's Failure to Permit Pro Se Defendant to Present Closing Argument Is Not Harmless Error

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Holmes v. State:

**TRIAL JUDGE'S
FAILURE TO
PERMIT PRO SE
DEFENDANT TO
PRESENT CLOSING
ARGUMENT
IS NOT
HARMLESS ERROR.**

In *Holmes v. State*, 333 Md. 652, 637 A.2d 113 (1994), the Court of Appeals of Maryland ruled that a trial judge's failure to allow an unrepresented defendant to present closing argument at a bench trial was not harmless error. In so ruling, the court upheld a *pro se* defendant's constitutional right to present a closing argument before verdict.

Daniel C. Holmes ("Holmes") was charged with several drug related offenses including possession with the intent to distribute, possession of cocaine, drug trafficking with a firearm, and carrying a concealed handgun. He was also charged with auto theft and the unauthorized use of an automobile. At his bench trial in the Circuit Court for Baltimore County, he was unrepresented by counsel. When the State rested its case, the court asked the defendant if he wished to take the stand or to remain silent. After Holmes replied that he would like to say a few words on his behalf, the court informed him that while he did not have to take the stand, he would still have the opportunity to address the court. Holmes told the judge that he did not want to take the stand. The judge then informed the defendant that he found him guilty of possession of cocaine, intent to distribute, and the unauthorized use of an automobile. After reaching its verdict, the judge then allowed Holmes to address the court. At this time, Holmes denied handling the cocaine and having knowledge that the car was stolen. The court then announced the sentence.

Holmes appealed to the Court of Special Appeals of Maryland which affirmed the trial judge's verdict. On appeal to the Court of Appeals of Maryland, Holmes con-

tended that the trial court erred in denying him the right to present closing argument and his request for a postponement of the trial until he could obtain counsel.

The court of appeals began its analysis by rejecting the State's argument that Holmes waived his right to present closing argument. The court determined that although Holmes did not want to testify, the fact that he desired to "say a few things in [his] behalf" made it evident to the trial court that he wanted to argue his case and vocalize his innocence. *Holmes*, 333 Md. 652, 657, 637 A.2d 113, 116 (1994). In addition, the trial judge had assured Holmes of the opportunity to address the court. *Id.* As a result, the court stated that "[b]ecause Holmes made a specific request to argue, his failure expressly to object did not constitute a waiver of his right to argue nor did it serve to preclude the preservation of the issue for appellate review." *Holmes*, 333 Md. at 658, 637 A.2d at 116.

Next, the court of appeals held that the defendant had a constitutional right to present closing argument. Relying on *Herring v. New York*, 422 U.S. 853 (1975) for support, the court of appeals opined that the right to present closing argument was a fundamental constitutional right that applied equally to *pro se* defendants and those represented by counsel. The court also noted that the right was applicable even in cases where the evidence against the defendant was "overwhelming." *Holmes*, 333 Md. at 658, 637 A.2d at 116. In *Herring*, the Supreme Court noted that "[s]ome cases may appear to the trial judge to be simple -- open and shut-- at the close of the evidence But . . . there will be cases where closing argument may correct a

premature misjudgment and avoid an otherwise erroneous verdict." *Id.*, (quoting *Herring*, 422 U.S. at 863 (1975)). Additionally, the court of appeals relied on *Spence v. State*, in which it stated that:

[T]he opportunity for summation by defense counsel prior to verdict in a non-jury trial as well as in a jury trial is a basic constitutional right guaranteed by Article 21 of the Maryland Declaration of Rights and the Sixth Amendment to the United States Constitution as applied to the States by the Fourteenth Amendment. *Spence*, 296 Md. 416, 419, 463 A.2d 808, 809 (1983).

The court of appeals therefore held that Holmes had been denied his

constitutional right to present closing argument, noting that the remarks Holmes made at the trial "were certainly not simply allocution in mitigation of punishment" but were his best attempt to argue his case to the judge. *Holmes*, 333 Md. at 657-58, 637 A.2d at 116. Further, the court held that although the trial judge assured Holmes that he would have an opportunity to address the court, that opportunity was not afforded until after the rendering of the verdict. The court found the error was not harmless. *Holmes*, 333 Md. at 659, 637 A.2d at 117.

Because the case was reversed on this ground, it was unnecessary for the court to reach Holmes' second contention, that the trial court

erred in not granting a postponement to allow the defendant to obtain counsel. The court of appeals remanded the case to the trial court for a new trial.

The court's holding in *Holmes* reaffirms its position that *pro se* defendants have a constitutional right to present closing arguments and ensures that they will be granted this opportunity to express their views and make final arguments in their defense *prior* to verdict. Moreover, this case forces judges to honor all defendants their right of allocution that is guaranteed by the United States Constitution and the Maryland Declaration of Rights.

- Erika F. Daneman

Nobelman v. American Savings Bank:

DEBTOR WHO FILES FOR BANKRUPTCY UNDER CHAPTER 13 OF THE BANKRUPTCY CODE MAY NOT REDUCE AN UNDERSECURED HOMESTEAD MORTGAGE TO THE FAIR MARKET VALUE OF THE MORTGAGED RESIDENCE.

In *Nobelman v. American Savings Bank*, 113 S. Ct. 2106 (1993), the United States Supreme Court held that a debtor who files for bankruptcy under Chapter 13 of the Bankruptcy Code may not reduce an undersecured homestead mortgage to the fair market value of the mortgaged residence. Bifurcation of an undersecured homestead mortgagee's claim into secured and unsecured portions impermissibly modifies the rights of the mortgagee. In so holding, the Court resolved a conflict among the courts of appeals in interpreting sections 506(a) and 1322(b)(2).

In 1984, Petitioners Leonard and Harriet Nobelman obtained a loan of \$68,250 from Respondent American Savings Bank for the purchase of a condominium which was to be used as their principal residence. Petitioners executed an

adjustable rate note payable to the bank which was secured by a deed of trust on the residence. By 1990, Petitioners had fallen behind in their mortgage payments, and they sought relief under Chapter 13 of the Bankruptcy Code ("Code"). The bank filed a proof of claim with the Bankruptcy Court for \$71,335, which represented the principal, interest, and fees owed on the note. However, Petitioners' Chapter 13 plan valued the residence at only \$23,500, an amount not disputed by the parties, and proposed to make payments pursuant to the mortgage contract only up to that amount. Petitioners sought to treat the remainder of the claim as unsecured. Creditors with unsecured claims would receive nothing under the plan.

Respondents American Savings Bank and the Chapter 13