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Dupree v. State:**The Prosecution May Not Impeach a Defendant with Evidence of the Defendant's Silence Following Advisement of Miranda Rights**

By Anne Bodnar

In a unanimous decision, the Court of Appeals of Maryland held that a trial court may not admit testimony that a defendant was advised of his Miranda rights and thereafter remained silent for purposes of impeachment. *Dupree v. State*, 352 Md. 314, 722 A.2d 52 (1998). In so holding, the court preserved the right of a defendant to remain silent without evidence of this fact being used against him.

This case arose from an incident on May 3, 1996, when Sean Dupree ("Dupree") shot and killed a man following a brief confrontation on the street. *Id.* at 316, 722 A.2d at 53. Dupree was arrested and charged in connection with the incident. *Id.* at 321, 722 A.2d at 55. Upon his arrest, Dupree chose to remain silent after he was advised of his Miranda rights. *Id.* at 322, 722 A.2d at 55.

In the Circuit Court for Baltimore City, Dupree was found guilty of second degree murder and use of a handgun in the commission of a crime of violence. At Dupree's trial, the court allowed the prosecution, for the purpose of impeachment, to introduce testimony that Dupree was advised of his Miranda rights. *Id.* at 321, 722 A.2d at 55. Dupree appealed the decision to the Court of Special Appeals of Maryland, which affirmed the conviction. *Id.* Dupree petitioned the

Court of Appeals of Maryland, which granted certiorari. *Id.* at 316, 722 A.2d at 53. Dupree contended that the prosecution's offered testimony violated both Maryland evidentiary rules and his constitutional rights, stressing that the testimony allowed the jury to infer impermissibly an admission of guilt. *Id.* at 322, 722 A.2d at 55.

In addressing the issue of whether the trial judge erred in admitting this evidence, the court first reviewed *State v. Raithel*, in which a similar issue was decided twenty years ago. *Id.* at 323, 722 A.2d at 56 (citing *State v. Raithel*, 285 Md. 478, 404 A.2d 264 (1979)). In *Raithel*, the court of special appeals held that the "privilege against self-incrimination prevents an accused's silence at a prior hearing from being considered in assessing his credibility," a ruling the court of appeals affirmed on appeal without having to reach the constitutional issue. *Id.* (citing *Raithel* at 478, 404 A.2d at 267).

The court observed that the initial consideration in admitting the evidence in the instant case was whether the evidence was proper under the applicable state law. *Id.* Under the Maryland Rules of Evidence 5-401 and 5-402, the trial court may not admit evidence of any fact that is not relevant to the determination of guilt or innocence in a criminal trial. *Id.* at

323-34, 722 A.2d at 56 (citing Md. R. EVID. 5-401 and 5-402). The court noted that, although the trial judge has the ultimate discretion under the rules to review and admit evidence, the judge may not abuse that discretion. *Id.* at 324, 722 A.2d at 56 (citing *Merzbacher v. State*, 346 Md. 391, 404, 697 A.2d 432, 439 (1997)). The court concluded that the judge in *Dupree* abused his/her discretion by admitting evidence that was not relevant to any issue in the case. *Id.* at 332, 722 A.2d at 61.

The court reasoned that, because Dupree's silence was not material to any fact at issue in the case, testimony that he was advised of his rights was inadmissible. *Id.* at 332, 722 A.2d at 61. Such testimony, the court speculated, allowed the prosecution to indirectly suggest to the jury that the defendant chose to remain silent because he had something to hide. *Id.* at 322, 722 A.2d at 55. In so surmising, the court determined that the resulting prejudice of admitting evidence of a defendant's advisement of Miranda rights at trial, when the defendant gave no subsequent statement, outweighed any probative value such testimony could offer. *Id.* at 330, 722 A.2d at 60. Notwithstanding this conclusion, the court found it helpful to address the constitutional question

in order to clarify the circumstances under which the trial court may admit testimony of a defendant's post-arrest silence for the purpose of impeachment. *Id.* at 324-30, 722 A.2d at 57-59.

The court considered the general rule that the State may not violate a defendant's right to due process by introducing evidence of a defendant's post-arrest silence for the purpose of impeachment, based on the inherent unfairness presented in penalizing an individual for invoking a guaranteed right. *Id.* at 324, 722 A.2d at 57 (citing *Doyle v. Ohio*, 426 U.S. 610 (1976)). The court reviewed past cases in which *Doyle* violations were found in order to assess the appropriate circumstances for allowing such testimony. *Id.* at 324-30, 722 A.2d at 57-59. In the instant case, Dupree posited that the prosecution's mere mention that the defendant was advised of his *Miranda* rights, where no subsequent statement was made, was a violation of the *Doyle* rule. *Id.* at 325, 722 A.2d at 57.

Courts in the past have held that testimony that the police read the *Miranda* rights to a defendant upon arrest may be admitted to establish the voluntariness of the defendant's statement given thereafter. *Id.* at 325-26, 722 A.2d at 57 (citing *United States v. De La Luz Gallegos*, 738 F.2d 378, 381-82 (10th Cir. 1984)). In cases where the defendant made no subsequent statement, however, the prosecution may not use testimony to that effect to impeach the defendant. *Id.* at 330, 722 A.2d at 60. Such testimony, according to the

court, allows the jury to improperly infer the defendant's guilt. *Id.* at 331, 722 A.2d at 60 (citing *Zemo v. State*, 101 Md. App. 303, 646 A.2d 1050 (1994)). This rule, in line with *Doyle*, serves to protect a defendant's right to remain silent without fear that the silence will be used against the defendant at trial. *Id.* at 330, 722 A.2d at 59.

Finally, the court addressed the issue of whether this error was harmful to the extent that a reversal was warranted. *Id.* at 332-33, 722 A.2d at 61-62. The standard of review employed by the court in determining whether the error was harmless was whether the evidence bore on the ultimate verdict beyond a reasonable doubt. *Id.* at 332, 722 A.2d at 61. The court found that, because Dupree was asserting a case of self-defense, the prosecution's use of his silence was a deliberate attempt to undermine his credibility. *Id.* at 333, 722 A.2d at 61. Because Dupree's credibility was critical to his defense, the court ruled that the error committed was clearly harmful. *Id.*

In *Dupree v. State*, the court ruled that the risk of prejudice that would result from the admission of such evidence posed an impermissible harm to a defendant's right to due process. By so holding, the court preserved the defendant's right to remain silent without fear that the prosecution could use this silence to circumvent their heavy burden of proof. This ruling effectively prevents the jury from basing their determination of guilt or innocence on extraneous inferences of guilt and shifts the proper focus to the merits of the case.

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