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Patterson v. State

Trial Judge Not Obligated to Deliver a Missing Evidence Instruction to the Jury

By D'Arcy Byrnes

In a case of first impression, the Court of Appeals of Maryland held that a criminal defendant is entitled to a missing evidence jury instruction in a case where the state failed to produce evidence relied upon by the defendant. *Patterson v. State*, 356 Md. 677, 741 A.2d 1119 (1999). The court's holding demonstrated that a missing evidence instruction is generally not needed, and a failure by the trial court to issue such an instruction is neither error nor an abuse of discretion. The court also held that a failure by the police to preserve evidence is not a denial of due process of law unless the defendant can prove that the police acted in bad faith.

The petitioner ("Patterson"), was detained after running a stop sign in Montgomery County. Officers Stone and Perry of the Montgomery County Police Department performed a records check, which revealed that Patterson's Maryland driver's license had been revoked. Patterson was arrested and placed in the passenger seat of the police cruiser with Officer Stone, while Officer Perry conducted an inventory search of the car. The search produced a jacket in the trunk of the car that contained what was suspected and later determined to be crack cocaine.

At trial in the Circuit Court for Montgomery County, Patterson

intended to prove his defense that the jacket did not belong to him, by trying the jacket on and showing the court that it did not fit. However, at trial, rather than presenting the jacket into evidence, the prosecution offered a photograph of the jacket while in the trunk of the car. Cross examination of the police officers revealed that the jacket was not the type of evidence typically retained for trial. Throughout the remainder of trial, no evidence was produced establishing any connection between the jacket and Patterson. At the close of trial, Patterson requested that the court issue a missing evidence jury instruction which would allow the jury to infer that because the State chose not to produce the jacket, the potential admission of the evidence would have been unfavorable to the State. The trial court refused to issue such an instruction. Patterson was convicted of possession of cocaine with the intent to distribute, along with various driving offenses. The Court of Special Appeals of Maryland affirmed the trial court's decision, and the Court of Appeals of Maryland granted certiorari to consider whether the trial court erred in refusing to give a missing evidence instruction.

The court of appeals began its analysis by addressing the general failure by the State to produce evidence. *Patterson*, 356 Md. at 682, 741 A.2d at 1121. In a case

where the State has failed to produce reasonably available evidence, or fails to justify the absence of such evidence, the defense is allowed to comment on the missing evidence during closing arguments made to the jury. *Id.* at 682, 741 A.2d at 1122 (citing *Eley v. State*, 288 Md. 548, 419 A.2d 384 (1980)). *Eley* made it clear that when relevant prosecutorial evidence is not produced, nor its absence explained, such failure to furnish can be used against the State, by creating a reasonable inference. *Id.* at 683, 741 A.2d at 1122 (citing *Henderson v. State*, 1 Md. App. 152, 441 A.2d 1114 (1982)).

In addressing the issue of whether the trial judge erred in denying the jury instruction, the court looked to Maryland Rule 4-325(c), which requires that jury instructions be given only in connection with the applicable law in the case. *Id.* at 684, 741 A.2d at 1122. Pursuant to this rule, the court is only required to give the requested instruction when: "(1) it is a correct statement of the law; (2) it is applicable under the facts of the case; and (3) the content of the requested instruction was not fairly covered elsewhere in the jury instruction actually given." *Id.* (quoting *Ware v. State*, 348 Md. 19, 702 A.2d 699 (1997)). The court of appeals made a clear distinction

between statements of the law and the facts of a case. *Id.* Instructions as to facts or inferences are not required. *Id.* While questions of law, including elements of a crime and affirmative defenses, are based on legal standards and therefore warrant an instruction, evidentiary issues are questions of fact that are based on individual facts. *Id.* at 685, 741 A.2d at 1122-23. While an inference can be made against a party who fails to introduce evidence during trial, such an inference does not mandate a jury instruction. *Id.* Moreover, the court noted, there is concern that a judicial instruction regarding a permissible inference may give undue emphasis to one particular inference over other permissible inferences. *Id.*

Because the nature of missing evidence instructions was an issue of first impression for the court of appeals, the court reviewed decisions from other jurisdictions, as well as the court of special appeals. The review revealed that while some jurisdictions leave the determination of the issuance of a missing evidence instruction to the discretion of the trial judge, the result is typically the same as the case at bar. *Id.* Many courts, while holding that the instruction is not mandatory, have tended to base their decisions on an abuse of discretion standard. *Id.* at 688, 741 A.2d at 1127.

Based on a thorough examination of both Maryland case law and law from other jurisdictions, the court refined the rule set forth by the court of special appeals, that while an instruction regarding applicable law may be mandated, generally, the trial court is not obligated to give

instructions on the presence or absence of evidentiary inferences. *Id.* at 694, 741 A.2d at 1127. When there is missing evidence due to an omission by a party, an inference that the missing evidence would have been unfavorable to the party is permissible, with nothing more being required. *Id.* at 688, 741 A.2d at 1124.

The court next addressed Patterson's claim that the rejection of a missing evidence instruction denied him due process of law. *Id.* at 694, 741 A.2d at 1128. To substantiate such a claim, the court held, a defendant must prove that the government acted in bad faith. *Id.* (citing *Arizona v. Youngblood*, 488 U.S. 51 (1988)). In order then, for a criminal defendant to prove a denial of due process, a showing of bad faith on the part of police is required. *Id.* at 695, 741 A.2d at 1128. The court added that a showing of negligence is not enough to meet the bad faith standard. *Id.* at 695, 741 A.2d at 1129.

In this case, despite the defendant's belief that the jacket was exculpatory evidence, the court relied on the fact that the police never considered the jacket to be pertinent in the case. *Id.* at 698, 741 A.2d at 1129. Because there was no evidence pointing to malicious destruction on the part of the police, there was no due process violation. *Id.* at 699, 741 A.2d at 1129.

The court has now made it clear that a trial judge in Maryland is required to give a jury instruction only when dealing with the applicable law in the case, and that the court is under no obligation to deliver instructions on

factual issues and inferences. Instructions to a jury regarding inferences may cause confusion, and, more importantly, may tend to overly influence a jury to consider just one out of many inferences that can be drawn based on the facts presented during trial. This holding helps to eliminate potentially damaging and prejudicial influences from the judge upon the jury.