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Recent Developments: *Ayers v. State*: Maryland's "Hate Crimes" Statute Held Not to Be Unconstitutional Because Petitioner Lacked Standing to Make a Facial Challenge of the Statute

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Ayers v. State:

**MARYLAND'S
"HATE CRIMES"
STATUTE
HELD NOT TO BE
UNCONSTITUTIONAL
BECAUSE
PETITIONER
LACKED STANDING
TO MAKE A FACIAL
CHALLENGE OF
THE STATUTE.**

In *Ayers v. State*, 335 Md. 602, 645 A.2d 22 (1994), the Court of Appeals of Maryland, in a 4-3 decision, held that Maryland's "hate crimes" statute, Maryland Annotated Code article 27, Section 470A(b)(3)(i), was not unconstitutional as applied to the facts of this case. The court did not reach the question of whether the statute is indefinite and has a chilling effect on the exercise of First Amendment liberties because the court held that Ayers lacked standing to make such a challenge of the statute. Nonetheless, by so holding, the Court of Appeals of Maryland sent a strong message to Maryland citizens that crimes motivated by racial prejudice will not be tolerated.

On the evening of March 2, 1992, Petitioner John Randolph Ayers and his friend, Sean Riley, discussed a racial incident that occurred at an area 7-Eleven store several nights earlier in which Ayers confronted a black male teenager, shouted racial epithets at him and knocked him to the ground. In addition, Ayers shouted racial epithets at a black female teenager and chased her. After discussing this earlier incident, Ayers and Riley saw two black women walking and began to chase them. Riley chased one woman, Myrtle Guillory, and Ayers chased the other, Johnnie Mae McCrae. Guillory managed to safely reach a friend's house and called the police; Ayers abducted McCrae, dragged her into the woods,

threatened to kill her, and attempted to set her on fire by spraying charcoal lighter fluid on her. Ayers was indicted in the Circuit Court for Montgomery County for assault, assault with intent to maim, kidnapping, conspiracy to commit a racially motivated crime, and committing a racially motivated crime in violation of the "Hate Crimes" statute, Section 470A(b)(3)(i).

At trial, Guillory and McCrae testified as to the incident. Riley, testifying as a State's witness, said that he and Ayers went out that evening to find black people to beat up because they were angry about the 7-Eleven incident that had occurred several nights before. In addition, Riley corroborated Guillory and McCrae's testimony as to the facts of the case. Ayers disputed all of this testimony, stating that the incident occurred because he and Riley were provoked by the black women. During cross-examination, Ayers admitted that the 7-Eleven confrontation was racial in nature and that he had chased some black people because he was upset.

The defense made several motions for mistrial based on the theories that the prosecution was trying to get Ayers to incriminate himself on the other charge and that the prosecution's use of Lisa Walker, one of the black teenagers from the 7-Eleven incident, was inadmissible testimony. The trial court ultimately overruled each motion for mistrial, holding that

Walker's testimony was proper because it tended to show motive which is an element of the offense of committing a racially motivated crime under Section 470A(b)(3)(i). However, the court did give the jury a cautionary instruction stating that certain acts that occurred during the 7-Eleven incident were not to be considered by the jury in determining their ultimate decision; they were merely to establish proof. Defense counsel stated that they were satisfied with this instruction.

Lastly, in its instruction to the jury, the court made the following statement: "[t]he defendant is also charged with the racially motivated crime. It is a crime to harass or commit a crime upon a person because of that person's race, color, religious beliefs, or national origin." In addition, the State used the term "harass" during its closing argument. Defense counsel did not object to the instruction or the closing argument. Ayers was subsequently found guilty on all counts and was sentenced to incarceration for a total of sixty years.

Ayers appealed his conviction based on four arguments. First, Ayers argued that his conviction under Section 470A must be overturned because Section 470A on its face violates the First and Fourteenth Amendments in that the part of the statute prohibiting "harassment" of someone based on race is unconstitutionally vague, fails to provide fair notice as to what behavior constitutes "ha-

arrassment," and creates a danger of arbitrary enforcement. *Ayers*, 335 Md. at 619, 645 A.2d at 30. Ayers also contended that the statute is overbroad because "harass" was not defined, and that the statute is a content-based regulation of speech which cannot be justified. *Id.* Second, Ayers argued that the statute was unconstitutional as applied in this case because by allowing the 7-Eleven testimony into evidence, the court allowed prejudicial and irrelevant testimony which prevented him from receiving a fair trial. Furthermore, the trial judge erred by not weighing the probative value of the testimony against its prejudicial impact. *Id.* at 620, 645 A.2d at 30-31. Third, Ayers attacked the sufficiency of evidence presented to convict him under Section 470A, arguing that the only evidence that his acts were racially motivated came from his accomplice, Riley, and therefore his conviction violated the rule that a person may not be convicted on the uncorroborated testimony of an accomplice. *Id.* at 621, 645 A.2d at 31. Ayers' final argument was that the court abused its discretion in sentencing him to a sixty year prison term which constituted cruel and unusual punishment. *Id.* The Court of Appeals of Maryland granted certiorari prior to review by the court of special appeals.

In its analysis of Ayers' first argument, the court of appeals noted that Ayers was not charged under the harassment

portion of Section 470A. Ayers acknowledged this but argued that the jury may have convicted him of harassment based on the court's instruction and the State's closing argument which both mentioned the word "harass." *Id.* at 626, 645 A.2d at 33. The court pointed out that Ayers never raised any objection to the use of the term "harass" by the court and the State, and therefore Ayers was precluded from raising this issue on appeal. *Id.* at 627-28, 645 A.2d at 34. In addition, the court refused to believe that using the word "harass" in the jury instruction and the closing argument was sufficient to lead the jury to conclude that Ayers was charged with, and could be convicted for, mere harassment. *Id.* at 628, 645 A.2d at 34-35. Lastly, the court held that the record was devoid of evidence that, during the attack of the victims, Ayers was engaged in any semblance of constitutionally protected speech that was considered by the jury in determining his guilt. *Id.* at 627, 645 A.2d at 34. Therefore, the court concluded that "Ayers lack[ed] standing to challenge the statute facially on the basis that the harassment prong of Section 470A [was] vague and overbroad." *Id.* at 629, 645 A.2d at 35.

As to Ayers' second argument, the court of appeals carefully reiterated the general rule that "evidence of a defendant's prior criminal acts may not be introduced to prove guilt of the offense for which the

defendant is on trial” because of the danger that the defendant will not be able to receive a fair trial. *Id.* at 630-31, 645 A.2d at 35. The court, though, noted that several exceptions exist to this general rule, one being that evidence of other crimes is admissible if it tends to establish motive. *Id.* at 631, 645 A.2d at 36. In prior cases, the court held that evidence of another crime is admissible if the other crime tends to directly prove the guilt of the defendant in the case at hand, or if the other crime is so linked with the crime at hand that one cannot be proven without the other. *Id.* at 631-32, 645 A.2d at 36 (citing *Bryant v. State*, 207 Md. 565, 115 A.2d 502 (1955) and *Ross v. State*, 276 Md. 664, 350 A.2d 680 (1976)). The court outlined a three-step procedure to be followed by a trial court when determining whether to admit evidence of other crimes: 1) determine if the evidence is one of the longstanding exceptions to the general rule; 2) if the evidence is an exception, decide whether the defendant’s involvement in the other crimes is established by clear and convincing evidence; and 3) if the second requirement is met, weigh the probative value of the evidence against any prejudice toward the defendant that would result from allowing it into evidence. *Ayers* 335 Md. at 632, 645 A.2d at 36-37.

In analyzing these steps, the court determined that the trial court did not err in its determination that the evidence was

admissible because: 1) the evidence was admitted to show motive; 2) the prosecution established Ayers’ involvement in the 7-Eleven incident through the testimony of Riley and Walker; and 3) the trial judge concluded that the probative value of the evidence outweighed its prejudicial impact. *Id.* at 633-35, 645 A.2d at 37-38. The court ultimately found that the trial court did not err when it denied defense counsel’s several motions for mistrial and admitted into evidence testimony regarding the 7-Eleven incident.

With regard to Ayers’ third argument, the court held that Riley’s testimony was indeed corroborated by the testimony of Walker and the various police officers. *Id.* at 638, 645 A.2d at 39-40. Though Walker and the other witnesses did not corroborate Riley’s testimony with regard to Ayers’ motive in the crimes, they did corroborate Riley’s testimony as to Ayers’ participation in the crime. The court noted that if the corroborative testimony shows the participation of the accused in the crime itself, “the trier of fact may credit the accomplice’s testimony even with respect to matters as to which no corroborative testimony was adduced.” *Id.* at 638, 645 A.2d at 39.

With regard to Ayers’ cruel and unusual punishment claim, the court reviewed prior cases where it held that “a sentence is unconstitutional only if it is ‘grossly disproportionate’ to the crime committed by the

defendant.” *Id.* at 639, 645 A.2d at 40 (quoting *Thomas v. State*, 333 Md. 84, 634 A.2d 1 (1993)). Because the sentences were within the permissible statutory and common law limits, the court held that the sentences were not unconstitutionally disproportionate. *Id.* at 640, 645 A.2d at 41. The court noted that a trial judge is vested with discretion in imposing sentences, and there was no evidence in the record to support the conclusion that an abuse of discretion occurred in this case. *Ayers* at 640-41, 645 A.2d at 41. Therefore, the Court of Appeals of Maryland affirmed the decision of the trial court, upholding Maryland’s “Hate Crimes” statute as applied to the facts of Ayers’ case. *Id.* at 642, 645 A.2d at 41.

In a dissenting opinion, Justice Bell, joined by Justices Chasanow and Raker, argued that the 7-Eleven incident should not have been admitted into evidence because this testimony did not prove Ayers’ motive in the case; it merely established Ayers as a bigot. *Id.* at 646-47, 645 A.2d at 42-43. Bell went to great lengths to clarify this distinction: evidence that Ayers was a bigot only proved that he was a bigot—it did not prove that the 7-Eleven incident was the precipice to the crime at hand, and therefore, this evidence did not prove Ayers’ motive. *Id.* at 651-52, 645 A.2d at 46-48. Therefore, Bell concluded that the testimony regarding the 7-Eleven incident should not have been admitted

into evidence, and Ayers' conviction based on Section 470A(b)(3)(i) should have been overturned. *Id.* at 660, 645 A.2d at 50-51.

By holding that Maryland's "Hate Crimes" statute is not unconstitutional as applied to the facts in *Ayers v. State*, the

Court of Appeals of Maryland sent a warning to all Maryland citizens that crimes motivated by racial prejudice will not be tolerated. In so holding, the core of this opinion was that racial prejudice, by itself, will not be condoned, and when it is coupled with the commission of

a crime, it will be separately punished. The court spoke with a moral conscience, and charged all Maryland citizens to uphold this moral code by respecting the differences of all human-kind.

- *Andrea S. Holz*

Blaine v. Blaine:

***INDEFINITE
ALIMONY MAY BE
AWARDED
PURSUANT TO
AN EXTENSION OF
REHABILITATIVE
ALIMONY.***

Indefinite alimony may be granted upon the termination of a fixed period of rehabilitative alimony, if it is determined that circumstances have arisen since the divorce which would render termination inequitable. In so holding, the Court of Appeals of Maryland in *Blaine v. Blaine*, 336 Md. 49, 646 A.2d 413 (1994), broadened a trial court's discretion in extending indefinitely an original award of rehabilitative alimony under sections 11-106 and 11-107 of the Family Law Article of the Annotated Code of Maryland. Additionally, the court concluded that an award of indefinite alimony would be supported if the divorced parties' respective standards of living were found to be unconscionably disparate, and the formerly dependent spouse had made as much progress toward becoming self-

supporting as could reasonably be expected.

In November 1985, Ms. Blaine was granted an absolute divorce in the Circuit Court for Montgomery County, and was awarded rehabilitative alimony in the amount of \$800.00 per month for a period of sixty months. The alimony award was based on evidence that Dr. Blaine, Ms. Blaine's husband, earned a salary in excess of \$62,000.00 a year compared to Ms. Blaine's income which totaled \$10,000.00 a year. In granting a fixed period of alimony, the circuit court took into consideration the fact that Ms. Blaine was working towards a master's degree in health promotion counseling, which she anticipated would lead to a position earning \$40,000.00 a year.

Approximately five years later, Ms. Blaine made a