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Recent Developments: Woodson v. State: Heightened Evidentiary Foundation Required to Admit Confessions Which Trigger Death Sentence Eligibility

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test, where it would strike down legislation “only if it [was] so unrelated to legitimate purpose that government actions were irrational.” *Id.* (quoting *Gregory v. Ashcroft*, 111 S. Ct. 2395, 2406 (1991)).

Secondly, the court identified “intermediate scrutiny,” or “heightened scrutiny.” For this classification to be sustained it “must serve important governmental objectives and must be substantially related to achievement of those objectives.” *Id.* at 110 (quoting *Craig v. Boren*, 429 U.S. 190, 197 (1976)).

The court then recognized the third category involving cases where a “suspect class” or a “fundamental right” was burdened. The court explained that the classification was subject to strict scrutiny and it would uphold such a law “under equal protection guarantee only if it [was] shown that ‘they are suitably tailored to serve a compelling state interest.’” *Id.* at 109 (quoting *Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985)).

The plaintiffs argued that the intermediate scrutiny test should apply because section 11-108 limits an “important personal right.” *Id.* at 111. The plaintiffs asserted that this personal right arose out of the common law right to be compensated for noneconomic damages. The court of appeals refused to apply the intermediate test on the basis that, in its view, the right to compensation under common law does not give rise to an “important personal right.” The court stated, “a legislative cap of \$350,000 upon the amount of noneconomic damages which can be awarded to a tort plaintiff does not implicate such an important ‘right’ as to trigger any enhanced scrutiny.” *Id.*

The court based its position on article 5 of the Maryland Declaration of Rights, which said the common law was subject “to the revision of and amendment or repeal by the legislature of this state.” *Id.* at 112. The court reasoned that just because a law was found in the common law does not

mean that the legislature could not change it. Further, the court emphasized that if the plaintiffs’ position was adopted, every common law would become a personal right and applying the intermediate standard of review would prevent the legislature from making many laws. *Id.*

The court pointed out that its decision followed the United States Supreme Court’s ruling in *Duke Power Co. v. Carolina Env. Study Group*, 438 U.S. 59 (1978), where the Court applied the rational basis test to a legislative cap on tort damages in nuclear power accidents. In that case, the Court stated that the law was “‘a classic example of an economic regulation’ needed to accommodate ‘the burdens and benefits of economic life,’” and further emphasized that “‘[a] person has no property, no vested interest, in any rule of the common law.’” *Id.* (quoting *Duke Power*, 438 U.S. at 88).

The court of appeals further stated that its holding does not limit a person’s access to the courts, as the Murphys argued. The court reasoned that modifying the substantive law does not restrict access to the courts. Even if section 11-108 was restrictive, the court explained, it would be reasonable based upon the legislative intent of increasing the availability of insurance in Maryland. *Id.* at 113-14.

Having decided that the rational basis test applied in this case, the court viewed the statute as constitutional. The court looked to the General Assembly’s reasoning for passing the legislation. The court noted the legislature’s concern about the availability and cost of liability insurance in Maryland, the excessive insurance premiums for doctors, and the declining services available for patients. The court noted that the stated purpose of the law was to “assure the availability of sufficient liability insurance, at a reasonable cost, in order to cover claims for personal injuries to members of the public.” *Id.* at 115. As such, it served a legitimate state purpose and applied to all personal injury claimants equally,

rather than singling out one category of claimants. Therefore, the court held that the noneconomic damages cap was neither irrational or arbitrary.

The plaintiffs’ second argument was that the cap violated their right to a jury trial as guaranteed by articles 5 and 23 of the Maryland Declaration of Rights. Their rights, the plaintiffs argued, were violated because the cap interfered with the jury’s ability to properly determine damages and also interfered “with the jury’s exclusive province in determining factual issues.” *Id.* at 116. The court rejected this argument, stating that, because it was decided that the legislature was allowed to cap noneconomic damages, there was nothing for the judge or the jury to decide. *Id.* The right to a jury trial arises in cases where the result or issue must be decided by either the judge or the jury. The court held, however, that the legislature had taken the issue of noneconomic damages out of the hands of both the judge and jury. *Id.*

The holding in *Murphy* settles a long argument in the legal, legislative and insurance communities. The Maryland Legislature enacted the noneconomic damages cap because it places as a high priority on the availability of insurance to Maryland citizens. The court of appeals has clearly decided this one issue of whether section 11-108 is constitutional. Yet, it is foreseeable that more litigation will follow as future litigants debate issues regarding whether certain damages are economic or noneconomic, as well as to which cases the noneconomic cap will apply.

- Elizabeth A. Lee

Woodson v. State: HEIGHTENED EVIDENTIARY FOUNDATION REQUIRED TO ADMIT CONFESSIONS WHICH TRIGGER DEATH SENTENCE ELIGIBILITY.

In *Woodson v. State*, 325 Md. 251, 600 A.2d 420 (1992), the Court of Appeals of Maryland nullified petitioner’s death sentence by revers-

ing his first degree murder conviction and remanding the case for a new trial on that charge. The court held, by a four to three majority, that the trial court committed reversible error by admitting into evidence testimony concerning petitioner's alleged jailhouse confession without an adequate evidentiary foundation.

Testimony at trial indicated that, during the early morning hours of October 10, 1989, petitioner, Shawn Woodson, was one of five men snorting heroin in the stairwell of a Baltimore City apartment building. Officer William J. Martin of the Baltimore City Police Department was the first officer on the scene in response to an anonymous complaint of drug use. As Officer Martin approached the building with his car's emergency lights on, the group scattered. Two of the men entered an apartment, another attempted to leave the building and was frisked and let go by Officer Martin as he entered the building. Petitioner and the fifth man, Taavon Hall, remained on the first floor landing of the stairwell.

Officer Brooks, another officer who had responded to the scene, testified at trial that as he entered the building through a rear basement door he heard gun shots. Brooks stated that he then saw Hall run out of the front door as petitioner ran down the stairs towards him and the rear door. When the petitioner encountered Brooks, a gun battle ensued during which petitioner was struck in the groin area. Officer Brooks was struck once in the hand and twice in the chest area, hitting his bulletproof vest. Petitioner was arrested as he attempted to flee out the rear door.

Officer Martin was found lying in a pool of blood on the first floor landing with his service revolver snapped closed inside its holster. He died from two gun shot wounds to the head. Tests revealed that the handgun recovered at the scene, near the rear door, was the gun that fired the bullets which killed Officer Martin as well as the bullets

recovered from Officer Brooks's vest. Swabs taken from petitioner's hands after his arrest indicated that he had recently fired a handgun.

Andre Spells testified as a state's witness at petitioner's trial. Spells testified over petitioner's objection that, while he was incarcerated in the Baltimore City jail on October 23, 1989, his cellmate, who identified himself as "Shawn Woodson," confessed that he had shot and killed Officer Martin. Petitioner objected prior to Spell's testimony relating to the confession on the basis that, absent a showing that petitioner was the same "Shawn Woodson" who made the confession, the statement was inadmissible hearsay. While laying the foundation for Spells' testimony about the confession, the prosecutor twice asked Spells if he presently saw in the courtroom the person who had identified himself as "Shawn Woodson" in the courtroom and Spells twice responded, "I don't see him." To a third inquiry, Spells responded, "I don't recognize him, no." Following a bench conference, the trial judge allowed Spells to continue to testify. Spells went on to testify that "Shawn Woodson's" nickname was "Buddy," that he had a mid-body injury, and that he had confessed to killing Officer Martin.

A jury sitting in the Circuit Court for Baltimore City found petitioner guilty of first degree murder, attempted second degree murder, two counts of use of a handgun in the commission of a crime of violence, and two counts of carrying a handgun. After waiving his right to be sentenced by the jury for the first degree murder of Officer Martin, the court sentenced petitioner to death. Petitioner appealed his conviction to the court of appeals pursuant to Md. Ann. Code art. 27, § 414 (1957, 1987 Repl. Vol.), and Md. R. P. 8-306(c).

On appeal, petitioner argued that Spells' testimony should not have been admitted in evidence because there was no evidence which linked him to either Spells or the alleged confession. *Woodson*, 325 Md. at 259, 600 A.2d at

424. Petitioner claimed that, given the fact that three state's witnesses had previously identified him at trial, the only reasonable inference to be drawn from Spells' repeated testimony that he did not see in the courtroom the cellmate who had identified himself as "Shawn Woodson," was that the cellmate was not the petitioner. *Id.* Petitioner further argued that corroborative details respecting Spells' correct reference to his nickname and injury were brought out after the trial judge indicated that the name "Shawn Woodson" alone was sufficient identification evidence to support admissibility of Spells' testimony. *Id.* Additionally, petitioner claimed that the state's failure to adduce any evidence, other than Spells' testimony, that he and Spells were ever cellmates required the exclusion of Spells' testimony. *Id.* at 260, 600 A.2d at 424.

The state maintained on appeal that Spells' inability to identify petitioner at trial was a matter solely relating to the weight of the evidence and not its admissibility. The state argued that Spells did not testify that petitioner was not the man who had confessed to him, rather, his testimony merely indicated an inability to recognize the declarant. *Id.*

The court began its analysis noting that before an admission of guilt may be received in evidence at trial, the state has the burden to make a prima facie showing that the statement was made by the defendant. Whether the state met its burden, the court said, is assessed by considering the circumstances, including Spells' failure at trial to identify the petitioner as the person who had confessed to him. *Id.* at 261, 600 A.2d at 424.

The court of appeals reasoned that if believed, Spells' testimony established that it was the petitioner and not Taavon Hall who had murdered Officer Martin. Such testimony implicated petitioner as a principal in the first degree for the murder of a police officer in performance of his duties and therefore made petitioner eligible for

the death penalty. *Id.* at 262, 600 A.2d at 425. The court emphasized that this was a capital prosecution, and therefore involved an enhanced punishment. It compared the case at bar to others involving enhanced sentencing for recidivists in which it had required more than identical names to support a presumption of identity of person. *Id.* at 264-5, 600 A.2d at 426.

The court cited as persuasive authority cases from other jurisdictions in which a witness at trial was unable to identify the defendant as the person who had previously confessed to him. *Id.* at 261, 600 A.2d at 424 (citing *York v. State*, 173 N.W.2d 693 (Wis. 1970); *Fisher v. State*, 361 S.W.2d 395 (Tex. Crim. App. 1962)). In those cases testimony concerning the confessions was admitted and the convictions were affirmed on appeal. The appellate courts relied on the fact that other witnesses, who were present but did not hear the confessions, were able to identify the defendants at trial and place them in the company of the witnesses who heard and testified to the confessions.

Thus, the court reasoned that while Spells was able to identify the person who had confessed to him by name, nickname, and the fact that he had a mid-body injury, his failure to identify the petitioner at trial, combined with the lack of any evidence that the two men were together in jail, resulted in an inadequate evidentiary foundation to admit the testimony. *Woodson*, 325 Md. at 263, 600 A.2d at 425. "To admit such evidence," the court stated, "would be, for example, to sanction the testimony of any witness who, without more, claims that a voice on the telephone, which he cannot recognize as the defendant's, identified himself using the name of the defendant, and confessed to the crime." *Id.*

The court acknowledged that there is some authority that "[i]dential names give rise to a presumption of identity of person." The court reasoned however, "[a]ssuming, arguendo, that the use of *Woodson's*

name alone would raise a rebuttable presumption of identity, the presumption was nullified when Spells testified that the person who confessed to him was not in the courtroom." *Id.* at 264, 600 A.2d at 426. The court held that in the circumstances of the case, Spells' conversation was inadmissible hearsay, and to admit it was reversible error requiring remand for a new trial. *Id.*

It appears from the ruling in *Woodson* that when considering the admissibility of confessions in the context enhanced sentence cases, the Court of Appeals of Maryland will construe the "circumstances of the case" broadly. Such breadth illustrates the court's distinction of the penalty as part and parcel of the circumstances surrounding the confession.

- Chris Marts

***Molzof v. United States*: SUPREME COURT CHOOSES TRADITIONAL DEFINITION FOR "PUNITIVE DAMAGES" UNDER FEDERAL TORTS CLAIMS ACT.**

In the wake of the intense controversy surrounding his appointment to the nation's highest court, Justice Clarence Thomas wrote his first United States Supreme Court opinion for the Court's unanimous decision to follow tradition when defining "punitive damages" under 28 U.S.C. §§ 2671-2680, the Federal Torts Claims Act (FTCA). In *Molzof v. United States*, 112 S. Ct. 711 (1992), the Court undertook an exercise in statutory interpretation by following deeply rooted common law principles requiring proof of a defendant's culpability before a plaintiff can recover punitive damages. As such, punitive damages under the FTCA are a specific category of damages, the recovery of which depends on proof of intentional or flagrant conduct and the purpose of which is to punish a defendant for such conduct.

The guardian *ad litem* of Mr. Robert Molzof brought an action against the U.S. Government after Mr. Molzof sustained irreversible brain damage

that left him comatose in a Veterans Administration hospital as a result of the employees' negligence. Mr. Molzof sought damages under the FTCA for supplemental medical care, future medical expenses, and loss of enjoyment of life.

The Government conceded to negligence, and at the conclusion of the bench trial concerning only damages, the Federal District Court ordered the hospital to continue the level of care it had already been providing Molzof in addition to paying for weekly doctor's visits and care beyond that which the hospital could offer. The court refused, however, to award damages reflecting the cost of care already available or damages for loss of enjoyment of life. Mr. Molzof died after final judgement from the district court, at which time Mrs. Shirley Molzof resumed the action as the personal representative of her husband's estate.

Mrs. Molzof took exception to the limitations the district court placed on recovery for Mr. Molzof's demise. The Court of Appeals for the Seventh Circuit nevertheless agreed with the lower court and maintained that any award exceeding compensation, including loss of enjoyment of life, was "punitive in effect" and beyond recovery under the Federal Torts Claim Act. 112 S. Ct. at 714. The United States Supreme Court granted certiorari in order to define "punitive damages" under the FTCA.

The Court began its analysis by examining the history behind the FTCA. Having tolerated a laborious legislative process for compensating those individuals injured by federal employees' negligence, Congress passed the FTCA. The legislation would allow such victims to sue the U.S. Government and recover through a limited waiver of the Government's sovereign immunity. The Court recognized that, although state law must be consulted in order to determine the extent to which the United States can be held liable under the FTCA, "punitive damages" would in no way recov-