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NEW YORK COURT OF APPEALS CASE COMPILATIONS: PEOPLE v. HARRIS

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PEOPLE V. HARRIS[1]
(decided July 9, 2002)

I. SYNOPSIS

In *People v. Harris*,[2] the New York Court of Appeals vacated the first death sentence imposed pursuant to New York's death penalty statute since its enactment in 1995.[3] Writing for a six-member majority, Judge Wesley upheld defendant Harris' conviction, but remanded the case to the trial court for re-sentencing.[4] Judge Smith, who concurred in part and dissented in part, voted to reverse the trial court and order a new trial.

II. BACKGROUND

On December 7, 1996, defendant Darrel K. Harris entered a Brooklyn social club and committed a violent crime.[5] After a few minutes at the club, Harris pulled out a gun, instructed everybody to get on the floor, and give him their money.[6] He took money from one individual and then unexpectedly began to shoot three people and stab another. Three people died and one person seriously wounded. Harris was indicted on six counts of first-degree felony murder,[7] six counts of first-degree same-transaction murder[8] and several other related offenses. On May 23, 1997, the District Attorney of Kings County filed a notice of intent to seek the death penalty.[9] At trial, Harris acknowledged responsibility for the crimes, but argued that he committed the acts under extreme emo-

1. 98 N.Y.2d 452 (2002).
2. *Id.*
3. N.Y. CRIM. PROC. LAW § 470.30 (3)(b) (Consol. 2002).
4. *Harris*, 98 N.Y.2d at 471.
5. *Id.* at 471.
6. *Id.* at 471.
7. N.Y. PENAL LAW § 125.27 (1)(a)(vii) (McKinney 2002). When Harris demanded money from Eddie Brown at gunpoint, the crime became the aggravated offense of felony-murder under New York Penal Law, authorizing the prosecution to seek the death penalty. *Id.*
8. N.Y. PENAL LAW § 125.27 (1)(a)(viii) (McKinney 2002).
9. *See Harris*, 98 N.Y.2d 452.

tional disturbance,[10] which is an affirmative defense to first-degree murder in New York.[11] The jury returned a verdict of guilty on all six first-degree murder counts, attempted first-degree murder counts, and second-degree criminal possession of a weapon.[12] At the conclusion of the guilt phase of the trial, the jury returned a sentence of death.[13]

Harris appealed to the New York Court of Appeals pursuant to New York Criminal Procedure Law §450.30(1)and(2) which provides for the automatic appeal of all death sentences directly to the New York Court of Appeals.[14] In his appeal, Harris alleged that the New York death penalty statute was unconstitutional, and therefore, his sentence was unconstitutional under *Matter of Hynes v. Tomei.*[15]

III. DISCUSSION

Upon review, the New York Court of Appeals took into account several important issues including whether: (1) the jury's decision to impose the death sentence was against the weight of the evidence;[16] (2) the death sentence was impermissibly "imposed under the influence of passion, prejudice or any other arbitrary or legally

10. *Harris*, 98 N.Y.2d 452.

11. N.Y. PENAL LAW § 125.27 (2)(a) (McKinney 2002).

12. *People v.* Harris, 666 N.Y.S.2d 876, 877 (N.Y. Sup. Ct. 1997).

13. *Harris*, 98 N.Y.2d 452. Under New York law, following a conviction of a defendant for the offense of murder in the first degree, a trial court must promptly conduct a separate sentencing proceeding to determine whether the defendant shall be sentenced to life imprisonment without parole or death. *See* N.Y. PENAL LAW § 125.27 (McKinney 2002); N.Y. PENAL LAW § 70.00 (5) (McKinney 2002).

14. N.Y. CONST., art. VI, § 3(b); N.Y. CRIM. PROC. LAW § 450.70 (1) (Consol. 2002). The New York statute "confers a unique set of responsibilities" on the court of appeals. People v. Harris, 98 N.Y.2d 452 (2002). Aside from having powers of intermediate appellate review the court of appeals *must* also review the factual basis for both the conviction and the death sentence. *See* N.Y. CRIM. PROC. LAW §§ 470.30 (1) and (2) (Consol. 2002); N.Y. CONST., art. VI, § 3(a).

15. Matter of Hynes v. Tomei, 92 N.Y.2d 613 (1998), *cert. denied*, 527 U.S. 1015 (1999). (Invalidating the plea bargaining provisions of the New York capital punishment statute as a violation of the 5th and 6th Amendments of the U.S. Constitution because only defendants who chose to exercise their right to trial should be subject to the of possibility of the death sentence.)

16. N.Y. CRIM. PROC. LAW § 470. 30 (3)(c) (Consol. 2002).

impermissible factor;"[17] and (3) the death sentence was excessive or disproportionate to the penalties imposed in other similar cases.[18]

After announcing, "death is different"[19] the court of appeals began a "meticulous and thoughtful" analysis of defendant Harris' arguments.[20] The court analyzed the pre-trial motions, the selection of jurors, and the admissibility of trial testimony, the trial court jury instructions, and the general constitutional claims challenging the New York death penalty statute.

A. Pre-Trial Motions

Among the several pre-trial motions to dismiss the indictment, the court only examined the grand jury instructions and felony-murder classification.[21]

1. Grand Jury Instructions on Intoxication

Harris argued that he was intoxicated when he committed the charged crimes.[22] On appeal, he claimed that the prosecution's failure to instruct the grand jury on intoxication was grounds to dismiss the indictment.[23] While intoxication is not a recognized defense in New York, it can be offered by a defendant to negate an element of a crime charged.[24]

The court upheld the trial court's holding that an intoxication instruction was not required in this case.[25] The court concluded that intoxication is a mitigating defense, and the prosecution is only required to instruct grand juries on exculpatory defenses.[26] Since potential exculpatory defenses may avoid unwarranted prosecutions or result in a finding of no criminal liability, the court held

17. N.Y. CRIM. PROC. LAW § 470. 30 (3)(c) (Consol. 2002).
18. *Id.*
19. *See Harris*, 98 N.Y.2d at 474 (citing Furman v. Georgia, 408 U.S. 238, 306 (1972) (Stewart, J., concurring)).
20. *Id.* Due to the potentially far-reaching consequences of the court's decision(s), the state Attorney General intervened to defend the constitutionality of the capital punishment statute.
21. *Id.* at 474.
22. *Id.* at 474.
23. *Id.* at 474.
24. N.Y. PENAL LAW § 15.25 (McKinney 2002).
25. *See Harris*, 98 N.Y.2d 474.
26. *Id.*; People v. Valles, 62 N.Y.2d 36, 38 (1984).

that mitigating factors, such as intoxication, do not have the same result because they can only reduce the gravity of the offense committed.[27]

2. Challenge to the Felony-Murder Classification

Harris also maintained that the felony-murder provision[28] irrationally includes some felonies, rendering them death-eligible, while excluding others.[29] In relying on Supreme Court precedent[30] that requires states to narrow the class of death-eligible persons on a principled basis, the court found that the New York legislature rationally excluded certain felonies in the felony-murder statute. The legislature intended to include only those offenses that most seriously affect society and the community,[31] such as offenses deemed most violent and involve a substantial risk of physical injury.[32]

B. Jury Selection

While Harris did not challenge the composition of the jury, he contested the jury selection process on substantive and procedural grounds.[33] Harris argued that New York Penal Law §270.20 (1)(f) ("§270,20 (1)(f)") which excludes jurors whose views on the death penalty are such that they would be committed to vote either for or against a death sentence before trial, would disproportionately and unlawfully exclude certain groups from the jury pool.[34] This statutory selection process, known as the life/death qualification, ensures that prospective jurors are able to consider both the death penalty and a life sentence.[35]

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27. *Harris*, 98 N.Y.2d at 475; People v. Lancaster, 69 N.Y.2d 20, 29 (1986).

28. N.Y. PENAL LAW § 125.27 (1)(a)(vii) (McKinney 2002).

29. *Harris*, 98 N.Y.2d at 475.

30. Zant v. Stephens, 462 U.S. 862 (1983).

31. *Harris*, 98 N.Y.2d at 476 (citing Mem. of State Executive Department, 1995 McKinney's Session Laws of N.Y., at 1781).

32. *Id.* at 476-77.

33. *Id.* at 477.

34. *Id.* at 477-78.

35. *Id.* The standard for excluding ineligible jurors for cause in capital cases in New York is codified in N.Y. C.P.L. § 270.20(1)(f) (Consol. 2002).

Harris claimed that the death qualification process should not occur until after the guilt phase of the trial.[36] In denying his motion, the trial court held that the statute did not violate the Federal Constitution and subsequently, declined to determine if it violated the New York State Constitution.[37] The court of appeals upheld the pre-trial death qualification process concluding that it serves a legitimate state interest: obtaining a single jury that can impartially apply the law to the facts at the guilt and sentencing phases of a capital trial.[38]

Additionally, the court noted that in *Lockhart v. McCree,* the U.S. Supreme Court held that the death qualifying process does not deny a defendant his Sixth Amendment right to a fair trial.[39] According to *Lockhart,* a potential juror may not be excluded unless his views will prevent an impartial application of the law and facts.[40] Since the New York State Constitution[41] does not afford defendants greater protection than the Sixth Amendment, Judge Wesley concluded that Harris' challenge was without merit.[42]

Nevertheless, Harris argued that New York jurisprudence provides greater protection on state constitutional grounds than the U.S. Constitution.[43] Harris argued that § 270.20 (1)(f) only excludes jurors for cause when they entertain views for or against the death penalty that "preclude[s]" them from performing their duties, which is a higher standard for juror exclusions.[44] The court, however, concluded that the trial court applied the right standard and upheld all of the for-cause challenges.[45]

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36. *Harris,* 98 N.Y.2d at 478.

37. *Id.* at 478 (relying on Lockhart v. McCree, 476 U.S. 162 (1986)).

38. *Harris,* 98 N.Y.2d at 481-82.

39. *Id.* (citing Lockhart v. McCree, 476 U.S. 162 (1986)). The court further stated that in Adams v. Texas, the U.S. Supreme Court held that a juror could not be challenged for cause based on their views about capital punishment unless those views would prevent or substantially impair the performance of their duties as a juror. 448 U.S. 38, 45 (1980).

40. Witherspoon v. Illinois, 391 U.S. 510, 512 (1968).

41. N.Y. CONST., art. I, § 2.

42. *Harris,* 98 N.Y.2d at 480.

43. *Harris,* 98 N.Y.2d at 480 (relying on Matter of Hynes v. Tomei, 92 N.Y.2d 613, 626 (1998) and People v. Davis, 43 N.Y.2d 17, 30 (1977); *see* N.Y. CRIM. PROC. LAW § 270.20 (1)(f) (Consol. 2002).

44. *Harris,* 98 N.Y.2d at 480.

45. *Id.* at 480.

Harris also claimed that the trial court's instructions to the venire panels were erroneous and enabled potential jurors to manipulate the outcomes of their voir dires, thus tainting the jury selection process.[46] Specifically, Harris alleged that when the trial court explained the death qualification process to the venire panels during its preliminary instructions, the court highlighted the requirements for jury selection.[47] The court rejected this argument on the grounds that there was no shown prejudice.[48] Further, the court presumed that jurors follow their oaths and will answer the voir dire questions honestly.[49] The court did, however, advise trial courts to "exercise caution" when conducting death/life qualifications to encourage honesty without rewarding correct answers.[50]

Furthermore, Harris objected to group voir dire arguing that capital cases require individual voir dire.[51] In rejecting Harris' contention, the court examined the language of New York Criminal Procedure Law § 270.16 (1), which permits a court to grant motions to parties "to examine the prospective jurors individually and outside the presence of other prospective jurors regarding their qualifications to serve as jurors."[52] While the language of the statute permits individual juror questioning, the court concluded that it did not demand it.[53]

Finally, Harris argued that he was forced to use a peremptory challenge to dismiss one particular juror because the trial court erroneously denied his for-cause challenge.[54] Since the court concluded that all of the for-cause challenges were permissible, the court rejected defendant Harris' argument.[55]

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46. *Harris*, 98 N.Y.2d at 481.
47. *Harris*, 98 N.Y.2d at 481.
48. *Id.* at 481.
49. *Id.* at 481.
50. *Id.*
51. *Id.* at 481-82.
52. N.Y. CRIM. PROC. LAW § 270.16 (1) (McKinney 2002).
53. *See Harris*, 98 N.Y.2d 452.
54. *Id.* at 485.
55. *Id.* at 487.

C. *Trial Testimony*

1. Denial of Expert Witness Rebuttal Testimony

Harris argued that the trial court's preclusion of rebuttal testimony warranted a new trial.[56] Harris retained two mental health experts to provide expert testimony that he suffered from post-traumatic stress disorder.[57] The trial court limited the scope of one of the expert's testimony.[58] In New York, rebuttal evidence is limited to evidence in denial of an assertion of a new affirmative fact the opponent has tried to prove in reply to the case-in-chief.[59] The court concluded that the proposed rebuttal expert testimony was "both cumulative to, and duplicative of, evidence already presented on defendant's direct case," and therefore, excludable.[60]

2. Testimony of the Victims' Family Members

Before trial, Harris moved to limit the testimony of the victims' family members.[61] New York law prohibits admitting testimony about the victims' personal backgrounds which has no bearing on the defendant's guilt or innocence.[62] However, the trial court denied Harris' motion after the prosecution claimed that the family members' testimony would focus on the identification of the victims.[63] Upon review, the court of appeals concluded that the family members' testimony was immaterial to any critical issue at trial, and therefore, should have been excluded.[64] However, the court ultimately concluded that the error was harmless in light of the overwhelming evidence of Harris' guilt.[65]

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56. *See Harris*, 98 N.Y.2d at 487.

57. *Id.* Harris retained Dr. H. Wesley Clark, a psychiatrist and expert in post-traumatic stress disorder and Dr. Sanford Drob, a forensic psychologist, to examine him.

58. *Harris*, 98 N.Y.2d at 487.

59. *See* People v. Harris, 57 N.Y.2d 335, 345 (1982). In some cases, rebuttal evidence can be used for impeachment purposes, but at trial, Harris did not contend that the expert's testimony should be used to impeach the testimony of the prosecution's expert witness. *Harris*, 98 N.Y.2d 452.

60. *Id.* at 488.

61. *Id.* at 490.

62. *See e.g.*, People v. Miller 6 N.Y.2d 152 (1959); People v. Caruso, 246 N.Y. 437 (1927).

63. *See Harris*, 98 N.Y.2d at 491.

64. *Id.* at 490-91.

65. *Id.* at 491 (relying on People v. Crimmins, 36 N.Y.2d 230 (1975)).

D. *Trial Court Instructions*

The court of appeals also reviewed the trial court's instructions on the affirmative defense of extreme emotional disturbance.[66] New York law requires a unanimous finding by the jury to accept an affirmative defense.[67] Harris argued that when the trial court failed to poll the jurors individually, there was a possibility that one or more of the jurors found that he had established an extreme emotional disturbance defense.[68] When the jury read the verdict, each juror was individually asked whether the verdict was their verdict, and each juror answered affirmatively.[69] The trial court also offered supplemental jury instructions after the jury requested further clarification on the issue of extreme emotional disturbance.[70] The jury was again instructed that their determination had to be unanimous.[71] Therefore, the court concluded that the jury instructions, the supplemental jury instructions, and the individual polling of the jurors adequately showed that the jury "reasonably understood that its decision with respect to the defendant's affirmative defense required unanimity[72]."

E. *Constitutional Issues*

The court of appeals concluded its opinion with a discussion of whether New York's plea bargaining process during the trial was constitutional.[73] The court relied on *Matter of Hynes v. Tomei,* where it struck down "the post-death-notice plea bargaining provisions of the death penalty statute as unconstitutional."[74] In *Hynes,* the court cited the Supreme Court's reasoning in *U.S. v. Jackson,* which stated that the "inevitable effect of any statute that permits a defendant to escape the threat of capital punishment is to discourage the asser-

66. *See Harris,* 98 N.Y.2d at 492-93.

67. *See* N.Y. PENAL LAW § 25.00 (McKinney 2002). However, the court of appeals noted that the question remains open as to whether unanimity is required to reject an affirmative defense. *Harris,* 98 N.Y.2d 452, at fn. 20.

68. *Harris,* 98 N.Y.2d at 492-93.

69. *Id.* at 494.

70. *Id.* at 494.

71. *Id.* at 494.

72. *Id.* at 494.

73. *Id.*

74. 92 N.Y.2d 613 (1998).

tion of the Fifth Amendment right not to plead guilty and to deter the exercise of the Sixth Amendment right to a jury trial."[75]

In the instant case, the prosecution and the Attorney General urged the court of appeals to review their decision in *Hynes* and to restore the sections of the plea bargaining provisions.[76] The court declined to reexamine *Hynes* and agreed that Harris' death sentence could not stand, since the statute impermissibly discouraged him from asserting his constitutional rights.[77] Accordingly, the court unanimously voted to remit the case to the supreme court for re-sentencing.[78]

Nevertheless, Harris objected to the death penalty statute in its entirety pursuant to the state constitution's cruel and unusual punishment clause.[79] The prosecution argued that Harris was unable to demonstrate that he suffered any harm, and therefore, he was precluded from bringing a facial constitutional claim.[80] However, the court decided not to rule on the issue because the disposition of the constitutional issue was not presented on the appeal.[81]

IV. CONCLUSION

The New York Court of Appeals struck down Darrel K. Harris' death sentence on narrow constitutional grounds, leaving the greater question of the constitutionality of the death penalty to a future case.

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75. United States v. Jackson, 390 U.S. 570, 581 (1968).
76. *See Harris*, 98 N.Y.2d at 496 (2002).
77. *Harris*, 98 N.Y.2d at 496.
78. *Id.*
79. *Id.* at 496; N.Y. CONST., art. I, § 5.
80. *See Harris*, 98 N.Y.2d at 496.
81. *Id.* at 497.