CALIFORNIA v. BROWN

SUPREME COURT OF THE UNITED STATES

479 U.S. 538; Argued December 2, 1986, Decided January 27, 1987

OPINION: CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

The question presented for review in this case is whether an instruction informing jurors that they 'must not be swayed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling' during the penalty phase of a capital murder trial violates the Eighth and Fourteenth Amendments to the United States Constitution. We hold that it does not.

Respondent Albert Brown was found guilty by a jury of forcible rape and first-degree murder in the death of 15-year-old Susan J. At the penalty phase, the State presented evidence that respondent had raped another young girl some years prior to his attack on Susan J. Respondent presented the testimony of several family members, who recounted respondent's peaceful nature and expressed disbelief that respondent was capable of such a brutal crime. Respondent also presented the testimony of a psychiatrist, who stated that Brown killed his victim because of his shame and fear over sexual dysfunction. Brown himself testified, stating that he was ashamed of his prior criminal conduct and asking for mercy from the jury.

California Penal Code Ann. § 190.3 (West Supp. 1987) provides that capital defendants may introduce at the penalty phase any evidence 'as to any matter relevant to . . . mitigation . . . including, but not limited to, the nature and circumstances of the present offense, . . . and the defendant's character, background, history, mental condition and physical condition.' The trial court instructed the jury to consider the aggravating and mitigating circumstances and to weigh them in determining the appropriate penalty. But

the court cautioned the jury that it 'must not be swayed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling.' Respondent was sentenced to death.

On automatic appeal, the Supreme Court of California reversed the sentence of death. Over two dissents on this point, the majority opinion found that the instruction at issue here violates the Federal Constitution: 'federal constitutional law forbids an instruction which denies a capital defendant the right to have the jury consider any "sympathy factor" raised by the evidence when determining the appropriate penalty . . . We granted certiorari to resolve whether such an instruction violates the United States Constitution.

We think that the California Supreme Court improperly focused solely on the word 'sympathy' to determine that the instruction interferes with the jury's consideration of mitigating evidence. 'The question, however, is not what the State Supreme Court declares the meaning of the charge to be, but rather what a reasonable juror could have understood the charge as meaning.' Francis v. Franklin, 471 U.S. 307, 315-316 (1985); see Sandstrom v. Montana, 442 U.S. 510, 516-517 (1979)….

The jury was told not to be swayed by 'mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling.' Respondent does not contend, and the Supreme Court of California did not hold, that conjecture, passion, prejudice, public opinion, or public feeling should properly play any role in the jury's sentencing determination, even if such factors might weigh in the defendant's favor. Rather, respondent reads the instruction as if it solely cautioned the jury not to be swayed by 'sympathy.' Even if we were to agree that a rational juror could parse the instruction in such a hypertechnical manner, we would disagree with both respondent's interpretation

of the instruction and his conclusion that the instruction is unconstitutional.

By concentrating on the noun 'sympathy,' respondent ignores the crucial fact that the jury was instructed to avoid basing its decision on mere sympathy. Even a juror who insisted on focusing on this one phrase in the instruction would likely interpret the phrase as an admonition to ignore emotional responses that are not rooted in the aggravating and mitigating evidence introduced during the penalty phase. While strained in the abstract, respondent's interpretation is simply untenable when viewed in light of the surrounding circumstances. This instruction was given at the end of the penalty phase, only after respondent had produced 13 witnesses in his favor. Yet respondent's interpretation would have these two words transform three days of favorable testimony into a virtual charade. We think a reasonable juror would reject that interpretation, and instead understand the instruction not to rely on 'mere sympathy' as a directive to ignore only the sort of sympathy that would be totally divorced from the evidence adduced during the penalty phase.

We also think it highly unlikely that any reasonable juror would almost perversely single out the word 'sympathy' from the other nouns which accompany it in the instruction conjecture, passion, prejudice, public opinion, and public feeling. Reading the instruction as a whole, as we must, it is no more than a catalog of the kind of factors that could improperly influence a juror's decision to vote for or against the death penalty….

We hold that the instruction challenged in this case does not violate the provisions of the Eighth and Fourteenth Amendments to the United States Constitution. The judgment of the Supreme Court of California is therefore reversed, and the cause is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

DISSENT: JUSTICE BRENNAN

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment forbidden by the Eighth and Fourteenth Amendments, I dissent from the Court's opinion to the extent that it would result in the imposition of the death penalty upon respondent. Gregg v. Georgia, 428 U.S. 153, 227 (1976). However, even if I believed that the death penalty could be imposed constitutionally under certain circumstances, I would affirm the California Supreme Court, for that court has reasonably interpreted the jury instruction at issue to divert the jury from its constitutional duty to consider all mitigating evidence introduced by a defendant at the sentencing phase of trial….

The instruction at issue informed the jury: 'You must not be swayed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling.…' The State acknowledges that sympathy for the defendant is appropriate, but contends that the antisympathy instruction simply prevents the jury from relying on 'untethered sympathy' unrelated to the circumstances of the offense or the defendant. [T]he instruction gives no indication whatsoever that the jury is to distinguish between 'tethered' and 'untethered' sympathy. The Court nonetheless accepts the notion that a jury would interpret the instruction to require such a distinction. None of the reasons it offers for accepting this implausible construction are persuasive.

First, the Court finds it significant that the jury was instructed not simply to avoid sympathy, but to avoid 'mere' sympathy. This word, contends the Court, would likely lead a juror to interpret the instruction 'as an admonition to ignore emotional responses that are not rooted in the aggravating and mitigating evidence introduced during the

penalty phase.' The instruction, however, counsels the jury not to be swayed by 'mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling.' A juror could logically conclude that 'mere' modified only 'sentiment,' so it is by no means clear that the instruction would likely be construed to preclude reliance on 'mere sympathy.' In order for 'mere' to be regarded as modifying 'sympathy,' as the Court contends, 'mere' must be read to modify all the other terms in the instruction as well: conjecture, passion, prejudice, public opinion, or public feeling. By the Court's own logic, since 'mere' serves to distinguish 'tethered' from 'untethered' sympathy, it also serves to distinguish 'tethered' from 'untethered' versions of all the other emotions listed. Yet surely no one could maintain, for instance, that some 'tethered' form of prejudice relating to the case at hand could ever be appropriate in capital sentencing deliberations. Indeed, the Court describes the nouns accompanying 'sympathy' in the instructions as 'no more than a catalog of the kind of factors that could improperly influence a juror's decision to vote for or against the death penalty.' The single word 'mere' therefore cannot shoulder the burden of validating this antisympathy instruction.

Second, the Court argues that jurors must assume that the defendant would not introduce evidence of character and background if the jury could not consider such information. It is equally likely, however, that jurors instructed not to rely on sympathy would conclude that the defendant had simply gone too far in his presentation, and that, as in other trial contexts, the jury must look to the judge for guidance as to that portion of the evidence that appropriately could be considered. Instructions are commonly given at the end of trial which clarify the significance of evidence and of events at trial, since the jury is not at liberty to assume that everything that occurs at trial is automatically or equally relevant to its deliberations.

Finally, the Court says that, since 'sympathy' is accompanied in the instruction by a list of obviously impermissible factors, a juror would naturally assume that the instruction 'was meant to confine the jury's deliberations to considerations arising from the evidence presented, both aggravating and mitigating.' How a juror would be expected to make this leap is unclear. The inclusion of 'sympathy' in an expansive list of impermissible emotions would logically lead a juror to conclude that any response rooted in emotion was inappropriate. An average juror is likely to possess the common understanding that law and emotion are antithetical, and an instruction that a wide range of emotional factors are irrelevant to his or her deliberation reinforces that notion. It is simply unrealistic to assume that an instruction ruling out several emotions in unqualified language would be construed as a directive that certain forms of emotion are permissible while others are not. While we generally assume that jurors are rational, they are not telepathic.

The vast majority of jurors thus can be expected to interpret 'sympathy' to mean 'sympathy,' not to engage in the tortuous reasoning process necessary to construe it as 'untethered sympathy.' We would be far more likely in fact to call into question the fidelity to duty of a juror who did the latter. The assertion that the instruction in question serves the purpose of channeling the jury's sympathy in a legitimate direction is therefore completely unfounded.