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U.S. SUPREME COURT RESTRICTS IMPOSITION OF DEATH PENALTY ON NON-TRIGGERMAN ACCOMPLICES IN FELONY MURDER CASES

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In Enmund v. Florida, 102 S. Ct. 3368 (1982), a case with direct impact on the application of the death penalty in North Carolina, the U.S. Supreme Court held (5-4) that the death penalty is an unconstitutionally disproportionate punishment for felony murder when the State does not prove that the defendant himself killed, attempted to kill, participated in the killing of, intended to kill, or contemplated the killing of the victim. This memorandum will analyze the Court's decision and suggest ways to implement it under North Carolina's death penalty procedures.

THE FACTS

The defendant, Earl Enmund, was convicted by a jury of two counts of first-degree murder and one count of robbery for his participation with others in the robbery of an elderly man, during which one or more of the robbers fatally shot the man and his wife. The Florida Supreme Court stated in Enmund v. State, 399 So.2d 1362 (1981), that the jury could have found that during the robbery and shootings, the defendant stood by a getaway car a few hundred feet from the scene of the crime, waiting to help his cohorts escape with the stolen money. No evidence showed that the defendant himself committed any part of the physical acts of robbing or shooting.

The Florida Supreme Court ruled that the evidence of the defendant's role as the getaway driver was sufficient to support a

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finding that he was a principal in the robbery, constructively present during the crime and aiding and abetting in the robbery. Accordingly, the court upheld Enmund's conviction of first-degree felony murder. It then ruled that driving the getaway car also sufficed to support the death sentence. It rejected the defendant's argument that under the Eighth Amendment of the United States Constitution, the absence of evidence that he either killed or intended to kill the victims precluded imposing the death penalty.

In explaining its reversal of the death sentence in Enmund, the U.S. Supreme Court used the two-step analytical framework it had used in other recent death penalty cases. First, it examined the historical development of the death penalty as a punishment for a non-triggerman convicted of felony murder, and it reviewed legislative judgments, international opinion, and American juries' sentencing decisions in regard to felony murder accomplices. On the basis of this survey, the Court concluded that society generally has rejected capital punishment for accomplices in felony murder cases.

Second, after its review of contemporary standards concerning capital punishment, the Court rendered its own judgment about the proportionality of the death penalty in Enmund. It decided that death would be a disproportionately severe punishment where, as in Enmund, the record contained no evidence that the defendant played an active role in the killing of, intended to kill, or even contemplated the killing of the victims in the course of his participation in the predicate felony. The Court based that decision on its consideration of two purposes of punishment: deterrence and retribution. It reasoned that the victim is so seldom killed during a robbery that the death penalty for accomplices who had no active role in the killing would have little deterrent effect. Then it determined that the retributive value of punishment, which hinges on a defendant's culpability and hence on his criminal intent and the nature of his role in the crime, does not justify the death penalty in the circumstances of Enmund.[1]

IMPACT ON NORTH CAROLINA LAW

The Trial Court's Role

The Enmund decision deals only with punishment in cases of accomplice liability for felony murder. It does not affect the elements of accomplice liability in the guilt-determination phase of such cases. In assessing the impact of Enmund on North Carolina law, it is important first to appreciate that the Supreme Court made its own decision about proportionality. That is, the

1. The Court previously had developed this approach of assessing proportionality in death penalty cases by focusing on a defendant's mens rea and the nature of his role in a crime in Lockett v. Ohio, 438 U.S. 586 (1978); Green v. Georgia, 442 U.S. 95 (1979); and Eddings v. Oklahoma, 102 S.Ct. 869 (1982).

Court iself decided that in the circumstances of Enmund, the factual issues of mens rea and the nature of a defendant's role in a crime, which normally are within the province of the sentencing jury to consider, barred imposition of the death penalty as a matter of law under the Eighth Amendment.[2] That decision implies that a trial court has a duty, independent of the jury's sentencing function, to determine as a matter of law whether the acts and mens rea of an accomplice convicted of felony murder preclude use of the death penalty. Thus, if a defendant who was one of two or more people involved in the underlying felony is convicted of first-degree felony murder but the record--viewed in the light most favorable to the State--contains no evidence that the defendant himself took an active part in killing, intended to kill, or contemplated the killing of the victim, then the trial court should impose a sentence of life imprisonment without even submitting the question of punishment to the jury.[3]

The Jury's Role

If a defendant is convicted of first-degree felony murder on a record indicating that he was one of two or more people involved in committing the predicate felony and if the record contains sufficient evidence to raise a factual question about his role and state of mind, then the trial court should submit that question to the jury. The jury should resolve that issue as a threshold matter at some point before it decides on a sentencing recommendation under G.S. 15A-2000.[4]

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2. A major point of disagreement between the majority and the dissent in Enmund concerned the majority's decision to rule on proportionality as a matter of law rather than let the jury deal with it. The dissent fully agreed with the majority's position that the defendant's state of mind and the nature of his role in the crime were critically important in sentencing. But it took the position that they were issues for the jury to resolve under Fla. Stat. § 921.141(6)(d). That section, a portion of Florida's capital punishment statute, sets forth as a mitigating circumstance that "[t]he defendant was an accomplice in the capital felony committed by another person and his participation was relatively minor." The trial court in Enmund had not instructed the jury to consider whether that factor applies. The dissent in Enmund felt that the case should be remanded for a new sentencing hearing in which the trial court would instruct the jury to consider that factor. Florida's provision is virtually identical to North Carolina's G.S. 15A-2000(f)(4), which lists as a mitigating circumstance that "[t]he defendant was an accomplice in or accessory to the capital felony committed by another person and his participation was relatively minor."

3. See, e.g., State v. Johnson, 298 N.C. 47, 79-80, 257 S.E.2d 597, 620 (1979), in which the Court stated that in a capital case, a trial court should impose a sentence of life imprisonment, rather than submit the question of punishment to a jury, if the record contains no evidence of aggravating circumstances and the prosecution announces in good faith that it knows of no aggravating factors.

4. The Supreme Court did not expressly rule in Enmund that the issue of a defendant's state of mind and role should be submitted to the jury. Rather, as explained above, it simply ruled as a matter of law that the death penalty was disproportionately severe in the circumstances of this case. It did not address the practical, procedural question of how trial courts should implement the Enmund holding.

Nevertheless, in light of the Court's stress on the importance of jury determinations guided by uniform legal principles in sentencing proceedings for capital cases [see generally, Woodson v. North Carolina, 428 U.S. 280 (1976); Gregg v. Georgia, 428 U.S. 153 (1976)], it would be prudent to submit this issue to a jury. In addition, such a procedure would avoid the danger of reversal and remand of a sentencing decision if the Supreme Court later held that the Enmund issue must go to the jury.

In such a case the trial court should submit the Enmund issue to the jury as a question to be answered by the jury as a specific written finding of fact. For example, assume that in Enmund the State had presented sufficient evidence about the defendant's role and mens rea to pass constitutional muster and to leave a genuine factual question about those matters. The trial court would then instruct the jury to make a specific finding of fact about the defendant's role and mens rea.[5] If the jury found that the defendant played no part in killing the victim and neither intended nor contemplated the killing, then the court would sentence him to life imprisonment. If, on the other hand, the jury decided that the defendant played an active role in the killing or intended or contemplated the killing, then it would proceed with a standard sentencing determination under G.S. 15A-2000.[6] Of course, if the evidence is clear that the defendant himself played an active role in, intended, or contemplated the killing of the victim, then no Enmund issue exists and no jury finding on that issue is necessary.

A trial court must decide when to submit the Enmund question to the jury--during the guilt-determination phase of the trial or during the sentencing hearing. It might appear more efficient at first glance to direct the jury to address the Enmund issue during the guilt-determination phase, since a finding that the defendant lacked the requisite involvement or mens rea to permit imposition of the death penalty would avoid the need to conduct a costly, difficult sentencing hearing. However, for three reasons it might be more efficient in the long run to direct the jury to address the Enmund issue during the sentencing hearing. First, any error in resolving that issue then would not infect the jury's guilty verdict and would require a remand of only the sentencing hearing. Second, the former procedure may confuse the jury, and even cause a hung jury as to guilt, by injecting sentencing considerations into the phase of the trial designed solely to deal with culpability. Third, the former procedure would put a defense attorney in the awkward position of arguing to the jury during the guilt-determination phase that his client is not guilty, but that if he is found guilty, then the evidence does not satisfy the Enmund criteria for imposition of capital punishment.

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5. The Committee on Pattern Jury Instructions of the North Carolina Conference of Superior Court Judges plans to issue soon a suggested jury instruction to implement Enmund in the near future.

6. Note that when a court submits the Enmund question to the jury for a separate finding of fact to determine whether the death penalty may lawfully be imposed, it should also instruct the jury to consider the defendant's role as a possible mitigating circumstance under G.S. 15A-2000(f)(4).

CONCLUSION

In Enmund the U.S. Supreme Court held that as a matter of law, the death penalty is a disproportionately severe punishment for a defendant convicted of felony murder if the record contains no evidence that he played an active role in the killing or intended or contemplated the killing. The decision places duties on both the trial court and the jury in sentencing a defendant convicted as a felony murder accomplice. The trial court must review the record to determine whether any evidence shows that the defendant took part in, intended, or contemplated the killing of the victim. If no such evidence exists, it must sentence him to life imprisonment. If at least some such evidence exists, it should instruct the jury to make a specific finding about the defendant's role and state of mind during its sentencing deliberations. If the record is clear that the defendant himself participated in, intended, or contemplated the killing of the victim, then no jury finding about the Enmund issue is necessary.