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YATES v. AIKEN 108 S.Ct. 534 (1988)

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In an opinion for a unanimous Court written by Justice Stevens, the U.S. Supreme Court held: "1) the retroactive application of *Francis v. Franklin,* 471 U.S. 307, 105 S.Ct. 1965, 85 L.Ed.2d 344 (1985), to invalidate conviction due to improper burden-shifting instruction was appropriate, and 2) after considering merits of federal claim, the South Carolina Supreme Court could not refuse to apply the rule of federal constitutional law on the ground that it had authority to establish the scope of its own habeas corpus proceedings. **Reversed and Remanded.**

FACTS

Dale Robert Yates, petitioner, was tried and convicted in the General Sessions Court of Greenville County, South Carolina of murder, armed robbery, assault and battery with the intent to kill and conspiracy. Petitioner was subsequently sentenced to death.

Petitioner and an accomplice robbed a country store in 1981. After the robbery the petitioner left the store. Shortly thereafter a fight broke out, while the petitioner remained outside, in which his accomplice and the storekeeper's mother were both killed. Petitioner testified at trial that the decedent had not even entered the store before he left and that he had no intention to kill or harm anyone.

At trial the jury was instructed by the trial court that "malice is implied or presumed from the use of a deadly weapon."

CASE HISTORY

Petitioner appealed his conviction to the South Carolina Supreme Court where his conviction was affirmed. *State v. Yates,* 280 S.C. 29, 310 S.E.2d 805 (1982), cert. denied, 462 U.S. 1124, 103 S.Ct. 3098, 77 L.Ed.2d 1356 (1983). A few months after this affirmation, the South Carolina Supreme Court decided in *State v. Elmore,* 279 S.C. 417, 308 S.E.2d 781 (1983), that it was error to give such an instruction. Petitioner then sought a writ of habeas corpus from the South Carolina Supreme Court, arguing that the burden-shifting instruction given at his trial was unconstitutional under the decision held in *Elmore* and under the U.S. Supreme Court decision in *Sandstrom v. Montana,* 442 U.S. 510, 99 S.Ct. 2450, 61 L.Ed.2d 39 (1979). The due process clause of the Fourteenth Amendment prohibits jury instructions that have the effect of relieving the State of its burden of proof on the critical question of intent in a criminal prosecution. The State must prove every element of the crime beyond a reasonable doubt. While Yates' petition was pending, the U.S. Supreme Court decided another case involving a burden-shifting jury instruction, which petitioner called to the attention of the court. *Francis v. Franklin,* 471 U.S. 307, 105 S.Ct. 1965, 85 L.Ed.2d 344 (1985). The South Carolina Supreme Court however denied the writ without opinion.

Petitioner then sought certiorari to the U.S. Supreme Court. The High Court vacated the judgment of the South Carolina Supreme Court and remanded the case "for further consideration in light of *Francis v. Franklin.*" *Yates v. Aiken,* 474 U.S. 896, 106 S.Ct. 218, 88 L.Ed.2d 218 (1985).

On remand the South Carolina Supreme Court held that petitioner was not entitled to relief because *Elmore* (the state case) could not be applied retroactively. The court did not discuss the two recent U.S. Supreme Court cases, *Sandstrom* and *Francis.*

Again, petitioner sought relief from the U.S. Supreme Court. Certiorari was granted since the South Carolina Supreme Court had not fully complied with the Court's previous order. *Yates v. Aiken,* 480 U.S. ____ 107 S.Ct. 1601, 94 L.Ed.2d 788 (1987).

HOLDING

The Supreme Court has determined that "The Due Process Clause of the Fourteenth Amendment protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship,* 397 U.S. 358, 364, 90 S.Ct. 1068, 1072, 25 L.Ed.2d 368 (1970). The Court relied on this foundation in determining *Sandstrom* and *Francis* and further instructed the state court to do the same when reviewing the petitioner's case. Since the South Carolina Supreme Court refused to address the federal constitutional issues the U.S. Supreme Court was compelled to answer the question.

The South Carolina Attorney General argued that *Francis* should not apply to this case because petitioner's case was decided prior to the Court's decision. The Supreme Court rejected this argument stating that *Francis* was only a restatement of the law previously decided in the *Sandstrom* case, therefore it is not subject to attack by the State Attorney General. The Court reiterated that the burden is on the State to prove all the elements of the crime beyond a reasonable doubt.

The second issue before the Court was that South Carolina claimed authority to establish the scope of its own habeas corpus proceedings and to refuse to apply a new rule of federal constitutional law retroactively. The Court dismissed this claim on two grounds. First, the decision in *Francis* was not new law and second, the collateral attack was based on the federal constitution and the states have a duty to grant relief that federal law requires.

APPLICATION TO VIRGINIA

Attorneys who are representing defendants on state and federal habeas corpus petitions should be aware that not all favorable decisions that come after the defendant's conviction are given retroactive effect. However, some of the decisions are retroactive and the defendant has in any event the right to the benefit of the law as it was at the time of his conviction (note, the Court said *Franklin* was not new law, only a restatement).

There is a lesson to be learned: Attorneys pursuing a habeas corpus petition must be aware of **all** subsequent federal law that could possibly apply in the case. Rights to argue those issues should be claimed if there is any reasonable possibility that the client is covered by the subsequently announced law.

Attorney's should carefully review the jury instructions they use at trial and to review the ones the Commonwealth offers. In Virginia there is a jury instruction very similar to the one in *Yates*:

Instruction No. 34.240
Inference of Malice — Use of Deadly Weapon

You may infer malice from the deliberate use of a deadly weapon unless, from all the evidence, you have a reasonable doubt as to whether malice existed.

A "deadly weapon" is any object or instrument that is likely to cause death or great bodily injury because of the manner, and under the circumstances, in which it is used.

This instruction would probably pass a constitutional test since the language allows the jury to consider all the evidence presented and then draw their own conclusions. The instruction does not require that the jury come to one conclusion unless defendant disproves malice.

There is another instruction used in Virginia that does come closer to being an unconstitutional burden-shifting jury instruction:

Instruction No. 2.600

Inference of Intention

You may infer that every person intends the natural and probable consequence of his acts.

The language of the instruction says the jury "may infer" though it does not instruct the jury to consider any of the evidence in making this inference. The U.S. Supreme Court is clear that the burden is on the State to prove **all** the elements of the crime beyond a reasonable doubt. A strong argument could be made that this instruction is unconstitutional as written, at least without the exploratory phrase "but need not" following the word "may." (Elizabeth P. Murtagh)

LOWENFIELD v. PHELPS

108 S.Ct. 546 (1988)

FACTS

A Louisiana trial court found Lowenfield guilty of two counts of manslaughter and three counts of first degree murder. An essential element in the definition of the first degree murder offense was identical to the sentencing phase aggravating factor of intention "to kill or inflict great bodily harm upon more than one person." La. Rev. Stat. Ann. § 14:30(A)(3) (West 1986). Before the jury began sentencing deliberations the trial judge gave the jury instructions. After the jury failed to reach a unanimous verdict, the judge twice polled the jury to assess the benefit of continued deliberation. The judge subsequently re-instructed the jury, the jury returned for further deliberation, and thereafter returned a death verdict. Defense counsel did not object to either the polling or supplemental charge. The Louisiana Supreme Court upheld Lowenfield's convinction. 495 So.2d 1245. The United States District Court for the Eastern District of Louisiana denied relief, and the United States Court of Appeals Fifth Circuit affirmed. 817 F.2d 285 (CA5 1987).

HOLDING

a) Supplemental charge by judge did not constitute coercion.

Lowenfield claimed that the jury was improperly coerced by the judge's supplemental charge. *Lowenfield v. Phelps,* 108 S.Ct. 546, 550. The Supreme Court majority, however, found that because the object of the jury system is to reach unanimity by weighing contrasting views, "the use of a supplemental charge has long been sanctioned." *Id.* The petitioner also urged that because unanimity was not required to reach a proper sentence, in that the Louisiana legislature provides that if a jury could not agree the court shall impose a life sentence, La. Code Crim. Proc. Ann. Art. 905.8 (West 1984), the second charge was impermissable under the Fourteenth and Eighth Amendments of the United States Constitution. *Lowenfield,* 108 S.Ct. at 551. The Court concluded that the state had a strong interest in having the jury express the will of the community as to petitioner's sentence, and not to use the legislature default mechanism. *Id.*

b) The polling of the jury did not exacerbate the coercion.

Lowenfield claimed that the polling of the jury exacerbated the coercive effect of the supplemental charge. *Id.* at 552. The Court's view was that since the judge's inquiry into the numerical division of the jury questioned how the jurors felt about further deliberation, and did not go to the merits of the case, the polling did not effect the constitutionality of the sentence. Although the jury handed down the final verdict soon after the supplemental instruction, defense counsel did not object to either the polling or supplemental instruction at the time. Although petitioner waived no rights by this inaction, the omission was said to indicate that the petitioner did not perceive, as readily apparent, the potential for coercion. *Id.*

c) Duplication of element of the offense and aggravating factor