US Supreme Court sloughs off right to fair trial in a murder case

Don Knowland
15 December 2006

The US Supreme Court, in a unanimous ruling December 11, struck another blow at democratic and due process rights. The justices overturned a federal appeals court ruling, which had granted a new trial to a murder defendant whose victim's relatives had sat in full view of the jury wearing buttons with the victim's face on them. Not a single member of the US Supreme Court would rule Monday that such conduct was inherently prejudicial and rendered the trial of Mathew Musladin unfair.

Musladin admitted to killing his estranged wife's fiancé, Tom Studer, in 1994, although he claimed self-defense. The victim was killed by a ricocheting bullet. Members of Studer's family sat in the front row of the public gallery wearing the buttons during some of the 14 days of the trial. Musladin's attorney objected to the display, but the trial judge refused to stop it. The jury rejected Musladin's defense, convicting him of first degree murder, for which he received a 32-year sentence.

The California appellate courts upheld the conviction. Musladin then sought a writ of habeas corpus in federal court. Under the 1996 Antiterrorism and Effective Death Penalty Act, a reactionary law signed by President Bill Clinton that narrowly circumscribed the great writ, federal judges may now grant habeas corpus petitions in state court cases only where the state court decision is contrary to or an unreasonable application of "clearly established" federal law, as determined by prior US Supreme Court cases.

The Supreme Court did clearly establish decades ago that fundamental due process requires that trials must be free from a coercive or intimidating atmosphere. It has also ruled that disruptive activity at trial by the press can render a trial unfair. As explained in such cases, the rule exists because under a government of laws and not of men, it is "of the utmost importance that the administration of justice be absolutely fair and orderly."

The test clearly established by the Supreme Court as to when such courtroom conduct makes a trial unfair is whether there is an "unacceptable risk...of impermissible factors coming into play in the jury's consideration of the case." The Court has also clearly established that the 1996 law does not require state and federal courts to wait for some nearly identical factual pattern before a legal rule must be applied.

The Ninth Circuit Court of Appeals granted the habeas corpus writ under these prior cases. The state then appealed. In a curt and dismissive opinion written by arch-reactionary Justice Clarence Thomas, joined in by six other justices, including liberals Ruth Bader Ginsburg and Stephen Breyer, the Supreme Court reversed the Ninth Circuit.

According to Thomas, it was an "open question" under prior Supreme Court cases whether spectator conduct, as opposed to conduct by state officials, could deprive a defendant of a fair trial. Thus, "Given the lack of holdings from this Court regarding the potentially prejudicial effect of spectators' courtroom conduct of the kind involved here, it cannot be said that the state court unreasonably applied clearly established Federal law."

In focusing the inquiry in such a fact-specific way, Thomas and the Court ignored its own prior clear rule that the issue under the 1996 statute involves application of more generalized legal principle. Thomas's opinion also cynically refuses to acknowledge the past Supreme Court cases where spectator conduct, like that of newspeople, did result in a finding of an unfair trial.

Three other justices in separate written opinions

recognized that the question was whether courtroom conduct unfairly affected jurors, not whether the conduct was committed by the state as opposed to spectators. Either way, the judge must control the courtroom free of improper influence. Yet none of the three found that the buttons display reached the level of an unacceptable risk of the jury being impermissibly influenced.

According to liberal Justices David Souter and John Paul Stevens, since lower courts in other cases around the country had split on the question of whether such buttons require reversal of a conviction, the justices would not assume that every trial and reviewing judge in those cases was unreasonable, such that it would be hard to say the state judges had been unreasonable in the Musladin case, especially given the lack of detail in the trial record about the nature of the buttons' display. Of course, Musladin then bears the burden of this uncertainty and remains in prison.

Justice Anthony Kennedy, often viewed as the "swing" justice between the court's reactionary and liberal justices, wrote that there was no indication in the trial record that the atmosphere at trial so pressured the jury as to require reversal. Kennedy conceded that the case did "present the issue whether as a preventative measure, or as a general rule to preserve the calm and dignity of a court, buttons proclaiming a message relevant to the case ought to be prohibited as a matter of course." But a rule phrased that way was not clearly established in prior Supreme Court cases.

Kennedy concludes by stating that in abstract fashion, "it seems to me the case as presented to us here does call for a new rule, perhaps justified as much as a preventative measure as by the urgent needs of the situation. That rule should be explored in the court system, and then established in this Court [presumably on a direct appeal in the distant future rather than by way of habeas corpus] before it can be grounds for relief in the procedural posture of this case." In other words, Musladin must be deprived of his right to a fair trial even though such a rule ought to be constitutionally required.

Decisions like Musladin show just how cavalierly the US Supreme Court is prepared to treat guarantees of fundamental due process rights in any given case. When all nine justices concur in denying the defendant what was obviously an unfair trial, adherence to basic democratic principles is revealed to be less than paper thin.