

7-1993

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Recommended Citation

McLeod, Elizabeth A. (1993) "*Payne v. Tennessee*: Reexamining the Admissibility of Victim Impact Evidence," *Mercer Law Review*. Vol. 44 : No. 4 , Article 27.

Available at: https://digitalcommons.law.mercer.edu/jour_mlr/vol44/iss4/27

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Payne v. Tennessee: Reexamining the Admissibility of Victim Impact Evidence

I. INTRODUCTION

In *Payne v. Tennessee*,¹ the United States Supreme Court held that the Eighth Amendment was not a “per se bar” to the admissibility of victim impact evidence in the sentencing phase of a capital trial.² A jury convicted Pervis Tyrone Payne, petitioner, of two counts of first degree murder and one count of first degree assault with intent to murder, and sentenced Payne to death. Payne appealed the death sentence on grounds that allowing a capital sentencing jury to consider victim impact evidence violated the Eighth Amendment³ and the Supreme Court of Tennessee affirmed.⁴ The United States Supreme Court granted certiorari and affirmed.⁵

The Supreme Court also held that courts are not constrained to adhere blindly to the doctrine of stare decisis when decisions are unworkable and poorly reasoned.⁶ However, this Casenote will address only the issue of victim impact evidence by exploring the majority’s analysis and the concurring opinions. In addition, it will criticize the opinion from the perspective of Justice Stevens’ dissent.

II. LEGAL BACKGROUND

Prior to *Payne*, several capital defendants successfully challenged the admissibility of victim impact evidence under the Eighth Amendment. In *Booth v. Maryland*,⁷ the Supreme Court, interpreting the Eighth Amendment, invalidated that portion of a Maryland statute requiring the presentence report in all felony cases to include a victim impact statement (“VIS”) outlining the ramifications of the crime upon the victim and the victim’s family.⁸ The Eighth Amendment states that “[e]xcessive

1. 111 S. Ct. 2597 (1991).

2. *Id.* at 2609.

3. *Id.* at 2601.

4. *Id.* at 2603.

5. *Id.* at 2611.

6. *Id.* at 2609.

7. 482 U.S. 496 (1987), *overruled by Payne v. Tennessee*, 111 S. Ct. 2597 (1991).

8. 482 U.S. at 498.

bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."⁹ The VIS at issue not only depicted the characteristics of the victim and the repercussions of the crime on the family, but also described the family's personal characterization of defendant and the crime.¹⁰

In *South Carolina v. Gathers*,¹¹ decided two years later, the court expanded the scope of *Booth* to exclude from evidence a prosecutor's comments to the sentencing jury about the victim's personal qualities.¹² However, *Payne* overruled both of these decisions.

III. THE CASE

A. *The Facts and Procedural History*

Payne's victims, twenty-eight year old Charisse Christopher, her two year old daughter Lacie, and her three year old son Nicholas, lived in an apartment across the hall from Payne's girlfriend, Bobbie Thomas, in Tennessee. After spending part of the day drinking beer and injecting cocaine, Payne went to the apartment building in anticipation of Thomas' return from an out-of-state visit with her mother. After discovering that Thomas had not returned, Payne entered Charisse's apartment and made sexual advances toward her. Payne became violent when Charisse refused his advances and a neighbor who heard Charisse's screams phoned the police.¹³

Police officers encountered Payne covered with blood and running out of the building, but were unable to apprehend him. Inside the kitchen of the apartment, they found Charisse's body, with eighty-four knife wounds, and Lacie's body, also with numerous knife wounds. The murder weapon, a butcher knife, was at Lacie's feet and Payne's baseball cap was snapped around her arm. Despite stab wounds that penetrated Nicholas' entire body from front to back, he survived after extensive surgery. Police apprehended Payne later that day.¹⁴

Payne maintained his innocence at trial in spite of overwhelming evidence against him. Nevertheless, the jury found Payne guilty on all counts.¹⁵

During the sentencing phase of the trial, Payne presented the testimony of his parents and Thomas who stated, in general, that the crimes

9. U.S. CONST. amend. VIII.

10. 482 U.S. at 502.

11. 490 U.S. 805 (1989), overruled by *Payne v. Tennessee*, 111 S. Ct. 2597 (1991).

12. 111 S. Ct. at 2604.

13. *Id.* at 2601.

14. *Id.* at 2601-02.

15. *Id.* at 2602.

he had been convicted of were inconsistent with his character. Moreover, Thomas testified that her children had grown very attached to Payne and would miss him. Payne also introduced the testimony of Dr. John T. Huston, a clinical psychologist, who testified that Payne's score on an IQ test indicated he was mentally handicapped. Dr. Huston stated that Payne was the most well-behaved prisoner he had ever met.¹⁶

The prosecution called Charisse's mother, Mary Zvolanek, to take the stand. Zvolanek described how much Nicholas missed his mother and sister, and, due to his inability to comprehend the concept of death, his continuing concern for his sister's well-being. During closing arguments in the sentencing phase, the State elaborated on the enduring effects of the murders upon the child.¹⁷ The jury returned a sentence of death on the murder counts and the Supreme Court of Tennessee affirmed.¹⁸ The United States Supreme Court granted certiorari.¹⁹

B. *The Supreme Court's Opinion*

Eighth Amendment Challenge. In addressing Payne's claim that admitting victim impact evidence in the sentencing phase of a capital trial violated the Eighth Amendment, the Supreme Court overruled its holdings in *Booth* and *Gathers*.²⁰ The court held that the Eighth Amendment did not act as a "per se bar," but that a case by case determination should be made to decide whether evidence about the victim and the emotional impact of the crime on the victim's family is relevant and within the bounds of the Fourteenth Amendment's Due Process Clause.²¹

Assessment of Harm. The court reasoned that a demonstration of the harm caused by the defendant is an indispensable focus of criminal law.²² A determination of resultant harm is necessary to establish the crime with which the state will charge defendant as well as the sentence it will impose.²³ The victim impact evidence is designed to reflect the harm caused by a defendant, and is, therefore, a relevant factor in establishing the blameworthiness of a defendant.²⁴ Thus, instead of producing an emotional, unreasoned imposition of the death penalty, victim impact evidence simply is another legitimate way in which to educate the jury about

16. *Id.* at 2602-03.

17. *Id.* at 2603.

18. *Id.*

19. *Id.* at 2604.

20. *Id.* at 2608-09.

21. *Id.* at 2609.

22. *Id.* at 2605.

23. *Id.*

24. *Id.*

the harm caused by a crime.²⁵ As Justice O'Connor noted in her concurring opinion, the brief comment Charisse Christopher's mother made in this case could not "inflamm[e] [the jury's] passions" any more than the facts of the crime did.²⁶

Range of Admissible Evidence. Regardless of the predominant sentencing philosophy at any given time, sentencing authorities always have been permitted to consider a broad range of relevant evidence.²⁷ In *Gregg v. Georgia*,²⁸ decided prior to *Booth*, the court refused to impose restrictions on evidence the State could offer at a presentence hearing in a capital case as long as the evidence did not prejudice defendant.²⁹ The court's reluctance was due, in part, to its desire to provide as much relevant information as possible to juries making sentencing decisions.³⁰ Although *Gregg* did not involve the production of victim impact evidence, the court relied on *Gregg* to illustrate the wide range of evidence traditionally permitted at presentence hearings in capital cases.

Misinterpretation of Precedent. Although courts are required to treat capital defendants as "uniquely individual human beings,"³¹ the Court held that *Booth* misread precedent by suggesting that a defendant is entitled to that consideration completely separate from the crime he or she committed.³² Rather, justice requires that the circumstances surrounding the crime be considered in conjunction with defendant's character and disposition.³³

Comparative Judgments. Just as the capital defendant may present evidence relating to his or her own personal circumstances, the state should be permitted to introduce evidence about the victim's life.³⁴ It would be innately unfair to allow the defense to introduce evidence about defendant's character and the effect a sentence would have on his or her family without permitting the prosecution to introduce corresponding evidence about the victim.³⁵

25. *Id.* at 2608.

26. *Id.* at 2612 (O'Connor, J., concurring).

27. *Id.* at 2606.

28. 428 U.S. 153 (1976).

29. 111 S. Ct. at 2606.

30. *Id.*

31. *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976) (citation omitted).

32. 111 S. Ct. at 2607.

33. *Id.*

34. *Id.* at 2608.

35. *Id.*

Payne also challenged the admissibility of victim impact evidence by reiterating a concern articulated in *Booth*.³⁶ Payne argued that this type of evidence allows, and perhaps encourages, juries to levy heavier punishments against defendants whose victims contributed more to society than those whose victims were less of an asset.³⁷ The American criminal justice system does not allow such a distinction.³⁸

However, the Court asserted that rather than encouraging "comparative judgments," victim impact evidence reflects the victim's uniqueness as an individual.³⁹ To illustrate its point, the Court referred to *Gathers*, in which the victim was a mentally impaired, jobless, religious fanatic. Although arguably not a great asset to the community, he was still a victim of murder.⁴⁰ Justice O'Connor agreed with the majority that victim impact evidence serves "to remind the jury that the person whose life was taken was a unique human being."⁴¹ Justice O'Connor added that any remark by a prosecutor or a witness that renders the sentencing process unfair may be challenged by defendant under the Due Process Clause of the Fourteenth Amendment.⁴² Thus, while the Court recognized that a comparison of victims based on their perceived value to society would be improper, it concluded that victim impact evidence is not designed to effectuate that result.

Rejection of the *Booth* Analysis. The Court rejected the reasoning in *Booth* that victim impact evidence should be excluded since defendant likely cannot rebut it without diverting the emphasis of the sentencing hearing from defendant to the victim.⁴³ Not only was the Court in *Booth* concerned with the tactical problem inherent in attacking victim impact evidence in the presence of a jury, the Court was also concerned that it might have the effect of placing the victim on trial.⁴⁴

Without actually addressing these issues in *Payne*, the Court justified the admission of victim impact evidence partly on grounds that the prosecution often presents the evidence to the jury prior to sentencing in the trial's guilt phase.⁴⁵ Justice Souter elaborated on this point in his concurring opinion. A jury that hears evidence in the guilt phase of a trial will

36. *Id.* at 2607.

37. *Id.*

38. *Booth v. Maryland*, 482 U.S. 496, 506 n.8 (1987).

39. 111 S. Ct. at 2607.

40. *Id.*

41. *Id.* at 2611 (O'Connor, J., concurring).

42. *Id.* at 2612 (O'Connor, J., concurring).

43. *Id.* at 2607.

44. 482 U.S. at 506-07.

45. 111 S. Ct. at 2607.

remember it in the sentencing phase as well.⁴⁶ Changing the rules to comply with *Booth* and provide consistency throughout the entire trial might deprive jurors of information about the crime that is essential to a reasoned decision.⁴⁷

IV. ANALYSIS

The Supreme Court made an unexpected decision by overruling *Booth* only two years after broadening its scope in *Gathers*. The decision in *Payne* was especially surprising in light of the recent origin of victim impact evidence, which first appeared in the court's jurisprudence in *Booth*.⁴⁸ The dissenting opinions in *Payne* largely mirrored concerns expressed by the majority in *Booth* as reasons to exclude this type of evidence at the sentencing phase of a capital trial.

A. A Propelling Force

Groups advocating victims' rights have been a strong impetus behind recent decisions like *Payne*.⁴⁹ These groups espouse victims' participation in court proceedings because of a belief that the criminal justice system unduly protects the accused at the expense of the accuser.⁵⁰ Indeed, Stevens' dissent in *Payne* criticizes the majority for bowing to such political pressures, forces that he argues have no place in reasoned judicial analysis.⁵¹

B. The Victim on Trial

Retribution and the deterrence of prospective offenders are two important goals of capital punishment in the American judicial system.⁵² The death penalty provides an outlet for expression of social outrage at certain crimes and simultaneously promotes stability within society.⁵³ Nonetheless, the sentencing determination must reflect the blameworthiness of defendant as a unique person.⁵⁴ Rather than accomplishing this goal, victim impact evidence shifts the focus from defendant to the victim. Since defendants must be allowed to rebut evidence presented by the state, the

46. *Id.* at 2617 (Souter, J., concurring).

47. *Id.*

48. *Id.* at 2626 (Stevens, J., dissenting).

49. Georgia Sargeant, *Victim Impact Evidence Allowed by Supreme Court in Death Penalty Hearings*, TRIAL, October 1991, at 11.

50. *Id.*

51. 111 S. Ct. at 2627 (Stevens, J., dissenting).

52. *Gregg v. Georgia*, 428 U.S. 153, 183 (1976).

53. *Id.*

54. 111 S. Ct. at 2605.

result is a "mini-trial" on the victim's character.⁵⁵ Ignoring for a moment the tactical problems in attacking the victim's character, the defendant is able to present evidence to impeach the victim's character, thus distracting the jury from its task of deciding whether capital punishment is appropriate for a particular defendant in the circumstances.⁵⁶

C. *Moral Culpability*

Courts have firmly established that a jury's sentencing decision must not be arbitrary, but must be based on defendant's personal culpability.⁵⁷ It logically follows that factors of which defendant was unaware and that played no part in the decision to kill are improper in making this determination.⁵⁸ In *Payne* the Court concluded that since victim impact evidence is designed to reflect the harm caused by a defendant, and since resulting harm is an important component of the sentencing process, victim impact evidence is relevant in establishing defendant's blameworthiness.⁵⁹ However, merely because such evidence was designed to measure harm does not necessarily mean that it is within the realm of evidence relevant to determining harm. Parading bereaved family members in front of the jury injects emotion into what should be a reasoned analysis of moral guilt.⁶⁰ Moreover, it is disturbing that uneven application of the law may result simply because some victims' families possess more "jury appeal" than others.⁶¹ These are not the type of distinctions upon which decisions to impose the death penalty should be based. In the words of Stevens' dissenting opinion in *Payne*, victim impact evidence "serves no purpose other than to encourage jurors to decide in favor of death rather than life on the basis of their emotions rather than their reason."⁶²

D. *Equal Protection*

The majority in *Payne* contends that victim impact evidence will not lead to comparison judgments in which defendants whose victims are considered assets to society disproportionately receive sentences of capital punishment.⁶³ However, when one considers the discrepancy between the sentence a defendant typically receives when a police officer is killed with

55. 482 U.S. at 507.

56. *Id.*

57. *Id.* at 502.

58. *Id.* at 504.

59. 111 S. Ct. at 2605.

60. *Id.* at 2625 (Stevens, J., dissenting).

61. Sargeant, *supra* note 49, at 14.

62. 111 S. Ct. at 2625 (Stevens, J., dissenting).

63. *Id.* at 2607.

the sentence a defendant typically receives when a drug dealer is killed, the effect of victim impact evidence cannot be denied. Imposing capital sentences based on victims' positions within the community, albeit inadvertent, poses clear equal protection problems.⁶⁴

V. CONCLUSION

The Supreme Court's decision in *Payne* has been applauded by victims' rights' activists nationwide. However, *Payne* has the potential of transforming defendants into victims themselves. Perhaps the Supreme Court will consider revisiting the issue of victim impact evidence one final time to eradicate the serious defects inherent in its decision.

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64. Abraham Abramovsky, *Victim Impact Statements Revisited*, N.Y.L.J., March 31, 1992, at 5.