U.S. Supreme Court Sends Message To Federal Courts That When In Doubt Deny A State Prisoner's Habeas Petition

In 2004 Steven Frank Jackson was convicted in Sacramento County, California of charges related to the sexual assault in 2002 of a 72-year-old woman who lived in his apartment complex. He was sentenced to 25 years to life in prison.

During jury selection, Jackson who is black, objected to the prosecutor's peremptory challenges to two of the three blacks in the jury pool. Jackson's lawyer argued there was no valid reason for their exclusion from his jury except for their skin color. In 1986 the US Supreme Court ruled it violates a defendant's right to equal protection of the law for a juror to be excluded based on their race. That case was *Batson v. Kentucky*, 476 U. S. 79 (1986) and when a defendant challenges the prosecution's exclusion of a juror based on race it is known as a "*Batson* challenge."

The prosecutor claimed the exclusion of the two jurors was for "race-neutral" reasons.

The prosecutor justified striking Juror J, a black woman with a master's degree in social work, "based on her educational background." Jackson's lawyer countered that several white prospective jurors with educational backgrounds were not challenged by the prosecutor. The prosecutor did not ask Juror J a single question while the white jurors were asked questions about their educational backgrounds.

The prosecutor justified striking Juror S, a black man, because he had been "frequently stopped by California police officers." Jackson's lawyer countered that several white prospective jurors who had "negative experiences with law enforcement" were not challenged by the prosecutor.

Jackson raised his *Batson* challenge as an issue in his direct appeal to the California Court of Appeal that affirmed his conviction, and the California Supreme Court denied his petition for review.

Jackson filed a federal petition for a writ of *habeas corpus* that included his *Batson* challenge to exclusion of the two black jurors. The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) governs the review of a state prisoner's federal habeas petition, and under it relief may not be granted unless the state court adjudication "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. §2254(d)(2). The U.S. District Court judge determined that the Court of Appeal's finding that the black jurors were not excluded because of their skin color was not unreasonable.

Jackson appealed that ruling to the Ninth Circuit Court of Appeals, which in July 2010 reversed the lower court's ruling. In their unpublished memorandum the three judge panel unanimously ruled:

> "The prosecutor's proffered race-neutral bases for peremptorily striking the two African-American jurors were not sufficient to counter the evidence of purposeful discrimination in light of the fact that two out of three prospective African-American jurors were stricken, and the record reflected different treatment of comparably situated jurors." *Jackson v. Felkner*, 389 Fed. Appx. 640, 641 (2010).

The U.S. Supreme Court agreed to review the Ninth Circuit's ruling. On March 21, 2011 the Court unanimously ruled in favor of granting the California Attorney General's writ of *certiorari*. The Court's opinion in *Felkner v. Jackson*, 562 U.S. ____ (2011) states in part:

> The *Batson* issue before us turns largely on an "evaluation of credibility." The trial court's determination is entitled to "great deference," ibid., and "must be sustained unless it is clearly erroneous," *Snyder v. Louisiana*, 552 U. S. 472, 477 (2008).
>
> That is the standard on direct review. On federal habeas review, AEDPA "imposes a highly deferential standard for evaluating state-court rulings" and "demands that state-court decisions be given the benefit of the doubt." *Renico v. Lett*, 559 U. S. ___, ___ (2010) Here the trial court credited the prosecutor's race-neutral explanations, and the California Court of Appeal carefully reviewed the record at some length in upholding the trial court's findings. The state appellate court's decision was plainly not unreasonable. There was simply no basis for the Ninth Circuit to reach the opposite conclusion, particularly in such a dismissive manner.

The U.S. Supreme Court reviewed the same evidence related to Jackson's jury selection and applied the same legal standard to analyzing that evidence as the Ninth Circuit, but the Supreme Court decided that more extreme deference should be given to upholding the state court's ruling. The decision in *Felkner v. Jackson* sent the strong message to all federal district and appeals courts that when in doubt to deny the *habeas corpus* petition of a state prisoner.

Duke Lacrosse Hoax Rape Case Accuser Charged With Murder

Crystal Gail Mangum is the woman who falsely accused three Duke University lacrosse players of raping her during a party in 2006 that she and another woman were hired to dance at while scantily clad.

The media firestorm about the case was initially focused on the angle that the accused white players were from wealthy families while the black Mangum was a struggling single mother who had to take demeaning jobs to make ends meet.

Based on Mangum's accusation Reade Seligmann, Collin Finnerty, and David Evans were charged in May 2006 with rape, sexual offense and kidnapping.

When details of the case became publicly known — including that Mangum gave six different accounts of the alleged incident, that she had a history of making made false sexual assault allegations, and that DNA tests of the sperm recovered from her didn't match either the three accused players or any of the other 43 men at the party — Durham County DA Mike Nifong dismissed the rape charges against the three men on December 22, 2006. However, Nifong refused to dismiss the sexual offense and kidnapping charges.

North Carolina's Attorney General took over the case in January 2007. After reviewing the case the AG dismissed the remaining charges against Seligmann, Finnerty and Evans in April 2007.

It was reported that at the time the charges were dismissed the families of the three young men had spent over $1 million in legal fees.

In September 2007 Seligmann, Finnerty and Evans filed a federal civil rights lawsuit that named a number of defendants, including Duke University, and the city of Durham and its police department.

Duke University settled with the three men

Mangum cont. on p. 20

Washington Cities Sued For Violating Defendants' Right To Counsel

A class-action lawsuit has been filed against two Washington cities for violating defendants' constitutional right to effective assistance of counsel. The lawsuit was filed in Skagit County Superior Court. The three plaintiffs are prisoners at the Skagit County Jail in Mount Vernon.

Mount Vernon and Burlington are about 65 miles north of Seattle. The cities jointly contract all their public defender services to two private attorneys. In 2010 those two lawyers handled the defense of more than 2,100 people charged with criminal misdemeanors in the two cities. The cities pay the two lawyers a total of $180,000 yearly, and according to the cities the two lawyers spend no more than 1/3 of their time handling criminal cases for the cities. That would mean that in handling more than 2,100 cases yearly, the lawyers spend an average of less than 20 minutes on each case. However, the time spent on the average case is much less than 20 minutes because of the time the lawyers spend on trials — sometimes five a week — for defendants who refuse to plead guilty.

Morgan Witt
(www.legalwitt.com)

It was reported in the *Seattle Times* that the two contract lawyers — Richard M. Sybrandy and Morgan Witt — visited the Skagit County Jail a total of six times in 2010, during which they saw seven clients.

During an interview with *The Seattle Times* Sybrandy admitted that he rarely visits his clients in jail. He also said it has been at least two years since he hired an investigator to investigate a case.

There have been many complaints that clients are unable to communicate with Sybrandy and Witt, and even the Mount Vernon Police Department has reported that it "is not an isolated case" when they can't reach the public defenders to discuss a case.

The Washington State Bar Association recommends that public defenders handle no more than 400 cases a year, and the Washington Supreme Court is considering setting binding standards for public defense. Seattle is one of the few cities that cap case loads, limiting public defenders to 380 cases yearly. Based on the WSBA's recommendation Mount Vernon and Burlington need six public defenders instead of two.

In the lawsuit against Mount Vernon and Burlington "the plaintiffs allege that excessive caseloads and inadequate monitoring by the cities have resulted in a public defense system that deprives indigent persons of their constitutional rights. Among other things, plaintiffs claim the attorneys do not investigate the charges filed against indigent persons, do not respond to communications from indigent persons, do not meet with indigent persons in advance of court, and do not stand with or represent indigent persons during court hearings." Consequently defendants are being provided with a lawyer in name only.

In a press release Toby Marshall, one of the lead attorneys for the plaintiffs, says: "When you are arrested and charged with a crime, the right to counsel is the most fundamental and important right that you have. This is true regardless of your economic status." Matt Zuchetto, another attorney in the case, says: "We intend to present extensive evidence that will show the public defense system in Mount Vernon and Burlington is broken. At the end of the day, our clients are simply asking for one thing: to fix the system."

Richard Sybrandy
(www.sybrandy-law.org)

The Mount Vernon and Burlington city councils recently voted to extend their contract with Sybrandy and Witt for an additional two years.

In Washington cities and counties pay for public defender services, so there is a wide variance in the quality of representation. While someone accused of a crime in a wealthy city like Seattle can get first-class representation, a person charged with the same crime in a poor rural county may get representation no better or even worse than if a customer at a local coffee shop had been randomly picked to represent the person.

Deficient public defender representation in Grant County, Washington was national news several years ago. Among other things, PD Guillermo Romero was disbarred by the Washington Supreme Court in 2004 for soliciting money from indigent clients whose case he was assigned. Another Grant County PD, Thomas J. Earl, was also disbarred by the Washington Supreme Court in 2004. See the article, "The High Cost of Free Defense" in *Justice Denied* Issue 26.

In November 2005 Grant County settled a class-action lawsuit for its failure to provide adequate legal defense for people who couldn't afford their own attorney. The settlement required Grant County to pay the plaintiffs $500,000 for attorneys' fees and costs. The county also agreed to hire a full-time supervisor for its public defenders, to limit individual defenders' caseloads to 150 felony cases per year, to hire one full-time investigator for each four public defenders, and to provide an interpreter, when needed, for attorney-client meetings. See the article, "Rural Washington County Settles Shoddy Indigent Defense Lawsuit ," in *Justice Denied* Issue 30.

Sources:

Skagit County suit claims public defenders too busy to defend, *Seattle Times*, June 21, 2011.

Mount Vernon and Burlington Sued for Allegedly Violating the Constitutional Rights of Indigent Defendants, Press Release, Terrell Marshall Daudt & Willie PLLC (Seattle, WA), June 10, 2011.

Mangum cont. from p. 19

in late 2007, but the terms of the settlement weren't publicly disclosed. The lawsuit's claim against the city of Durham is still pending as of early 2012.

Although Magnum had several serious run-ins with the law after it was exposed her rape accusation against the Duke students was a hoax, none were as serious as her arrest on April 3, 2011 for stabbing her 46-year-old boyfriend, Reginald Daye, multiple times in his stomach. She was charged with assault with a deadly weapon with intent to kill inflicting serious injury. After Daye died from his injuries on April 13, Mangum was indicted for first-degree murder on April 18, 2011.

In November 2011 she was found competnet to stand trial. As of early 2012 her murder charge is pending.

Sources:

Duke lacrosse accuser Crystal Mangum charged in stabbing, *CBS News*, April 4, 2011.

Former Duke lacrosse accuser now faces murder charge, *Reuters*, April 19, 2011.

All Charges Dismissed Against The Duke Lacrosse Three, *Justice Denied*, Issue 35.

Darryl Hunt, The NAACP, And The Nature Of Evidence, *Justice Denied*, Issue 35.

Duke U. Hoax Rape Prosecutor Mike Nifong Convicted Of Contempt, *Justice Denied*, Issue 38.

Duke Hoax Rape Prosecutor Mike Nifong Bankrupt, *Justice Denied*, Issue 39.

Visit the Wrongly Convicted Bibliography

Database of hundreds of books, law review articles, movies and documentaries related to wrongful convictions.

http://forejustice.org/biblio/bibliography.htm