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DOES ANYONE HEAR A CHIPPING SOUND?

COKER V. GEORGIA

SUPREME COURT OF THE UNITED STATES
433 U.S. 584
June 29, 1977
[7 to 2]

OPINION: JUSTICE WHITE/STEWART/BLACKMUN/STEVENS...[The Georgia Code] provides that "[a] person convicted of rape shall be punished by death or by imprisonment for life, or by imprisonment for not less than one nor more than 20 years." Punishment is determined by a jury in a separate sentencing proceeding in which at least one of the statutory aggravating circumstances must be found before the death penalty may be imposed...Coker was convicted of rape and sentenced to death...[The Georgia Supreme Court affirmed.] Coker was granted a writ of certiorari, limited to the single claim...that the punishment of death for rape...[is cruel and unusual.]

While serving various sentences for murder, rape, kidnaping, and aggravated assault, **petitioner escaped** from the Ware Correctional Institution near Waycross, Ga...

> The liberal wing of the Court seems to have a knack for selecting the worst possible cases on which to establish their point. This guy commits murder and rape, then escapes only to rape again.

That night, Coker entered the house of Allen and Elnita Carver through an unlocked kitchen door...He tied up Mr. Carver in the bathroom, obtained a knife from the kitchen, and took Mr. Carver's money and the keys to the family car. Brandishing the knife and saying "you know what's going to happen to you if you try anything, don't you," Coker then raped Mrs. Carver. Soon thereafter, Coker drove away in the Carver car, taking Mrs. Carver with him. Mr. Carver, freeing

himself, notified the police; and not long thereafter petitioner was apprehended. **Mrs. Carver was unharmed.**

"Mrs. Carver was unharmed." I simply cannot forgive any Supreme Court Justice for being so cavalier (in this context) even if he meant she was not stabbed.

Coker was charged with escape, armed robbery, motor vehicle theft, kidnaping, and rape. Counsel was appointed to represent him. Having been found competent to stand trial, he was tried. The jury returned a verdict of guilty, rejecting his...plea of insanity. A sentencing hearing was then conducted in accordance with the procedures dealt with at length in *Gregg v. Georgia,* where this Court sustained the death penalty for murder when imposed pursuant to the statutory procedures. The jury was instructed that it could consider as aggravating circumstances whether the rape had been committed by a person with a prior record of conviction for a capital felony and whether the rape had been committed in the course of committing another capital felony, namely, the armed robbery of Allen Carver. The court also instructed, pursuant to statute, that even if aggravating circumstances were present, the death penalty need not be imposed if the jury found they were outweighed by mitigating circumstances, that is, circumstances not constituting justification or excuse for the offense in question, "but which, in fairness and mercy, may be considered as extenuating or reducing the degree" of moral culpability or punishment. The jury's verdict on the rape count was death by electrocution. Both aggravating circumstances on which the court instructed were found to be present by the jury...

It is now settled that the death penalty is not invariably cruel and unusual punishment within the meaning of the Eighth Amendment; it is not inherently barbaric or an unacceptable mode of punishment for crime; neither is it always disproportionate to the crime for which it is imposed. It is also established that imposing capital punishment, at least for murder, in accordance with the procedures provided under the Georgia statutes saves the sentence from the infirmities which led the Court to invalidate the prior Georgia capital punishment statute in *Furman*[1].

In sustaining the imposition of the death penalty in *Gregg*[2], however, the Court firmly embraced the holdings and dicta from prior cases...to the effect that the Eighth Amendment bars not only those punishments that are "barbaric" but also those that are "excessive" in relation to the crime committed. Under *Gregg,* a punishment is "excessive" and unconstitutional if it (1) makes no measurable contribution to acceptable goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering; or (2) is grossly out of proportion to the severity of the crime...Furthermore, **these Eighth Amendment judgments should not be, or appear to be, merely the subjective views of individual Justices; judgment should be informed by objective factors to the maximum possible extent**. To this end, attention must be given to the

[1]Case 8A-CUP-10 on this website.

[2]Case 8A-CUP-11 on this website.

public attitudes concerning a particular sentence - history and precedent, legislative attitudes, and the response of juries reflected in their sentencing decisions are to be consulted. In *Gregg,* after giving due regard to such sources, the Court's judgment was that the death penalty for deliberate **murder** was neither the purposeless imposition of severe punishment nor a punishment grossly disproportionate to the crime. But the Court reserved the question of the constitutionality of the death penalty when imposed for other crimes.

That question, with respect to rape of an adult woman, is now before us. We have concluded that a sentence of death is grossly disproportionate and excessive punishment for the crime of rape and is therefore forbidden by the Eighth Amendment as cruel and unusual punishment...

[After *Furman,*]...the States were faced with the choice of enacting modified capital punishment laws in an attempt to satisfy the requirements of *Furman* or of being satisfied with life imprisonment as the ultimate punishment for *any* offense. Thirty-five States immediately reinstituted the death penalty for at least limited kinds of crime...[This reaction] heavily influenced the Court to sustain the death penalty for murder in *Gregg v. Georgia*.

...**The public judgment with respect to rape...has been dramatically different.** In reviving death penalty laws to satisfy *Furman*'s mandate, none of the States that had not previously authorized death for rape chose to include rape among capital felonies. Of the 16 States in which rape had been a capital offense, only three provided the death penalty for rape of an adult woman in their revised statutes - Georgia, North Carolina, and Louisiana. In the latter two States, the death penalty was mandatory for those found guilty, and those laws were invalidated by *Woodson...*When Louisiana and North Carolina, responding to those decisions, again revised their capital punishment laws, they re-enacted the death penalty for murder but not for rape; none of the seven other legislatures that to our knowledge have amended or replaced their death penalty statutes since July 2, 1976, including four States (in addition to Louisiana and North Carolina) that had authorized the death sentence for rape prior to 1972 and had reacted to *Furman* with mandatory statutes, included rape among the crimes for which death was an authorized punishment...

If the ultimate goal is to force all States to follow a Federal mandate, why have States at all? Even in 2006, it may still be considered a far greater crime in Texas to tear down a fence than it is in New York. What happened to Federalism? What happened to the Constitution?

Georgia is the sole jurisdiction in the United States at the present time that authorizes a sentence of death when the rape victim is an adult woman, and only two other jurisdictions provide capital punishment when the victim is a child...[This reaction] weighs very heavily on the side of rejecting capital punishment as a suitable penalty for raping an adult woman...

These recent events evidencing the attitude of state legislatures and sentencing juries do not wholly determine this controversy, for the Constitution contemplates that in the end our own judgment will be brought to bear on the question of the acceptability of the death penalty under the Eighth

Amendment. Nevertheless, the legislative rejection of capital punishment for rape strongly confirms our own judgment, which is that death is indeed a disproportionate penalty for the crime of raping an adult woman...In terms of moral depravity and of the injury to the person and to the public, rape does not compare with murder...For the rape victim, life may not be nearly so happy as it was, but it is not over and normally is not beyond repair...

Apparently, the people of Georgia do not agree with the five of you! In Georgia, rape does compare with murder in terms of moral depravity and injury to the person and to the public. This is a policy decision in a democracy. It is not your call to make.

This does not end the matter; for under Georgia law, death may not be imposed for any capital offense, including rape, unless the jury or judge finds one of the statutory aggravating circumstances and then elects to impose that sentence. For the rapist to be executed in Georgia, it must therefore be found not only that he committed rape but also that one or more of the following aggravating circumstances were present: (1) that the rape was committed by a person with a prior record of conviction for a capital felony; (2) that the rape was committed while the offender was engaged in the commission of another capital felony, or aggravated battery; or (3) the rape "was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or aggravated battery to the victim." Here, the first two of these aggravating circumstances were alleged and found by the jury.

Neither of these circumstances, nor both of them together, change our conclusion that the death sentence imposed on Coker is a disproportionate punishment for rape. Coker had prior convictions for capital felonies - rape, murder, and kidnaping - but these prior convictions do not change the fact that the instant crime being punished is a rape not involving the taking of life...[Reversed.]

CONCURRENCE: JUSTICE BRENNAN...[Not Provided.]

CONCURRENCE: JUSTICE MARSHALL...[Not Provided.]

CONCURRENCE IN THE JUDGMENT/DISSENTING IN PART: JUSTICE POWELL...**It is... quite unnecessary for the plurality to write in terms so sweeping as to foreclose each of the 50 state legislatures from creating a narrowly defined substantive crime of aggravated rape punishable by death...**

Today,...the plurality draws a bright line between murder and all rapes - regardless of the degree of brutality of the rape or the effect upon the victim. I dissent because I am not persuaded that such a bright line is appropriate...There is extreme variation in the degree of culpability of rapists. The deliberate viciousness of the rapist may be greater than that of the murderer. Rape is never an act

committed accidentally. Rarely can it be said to be unpremeditated. There also is wide variation in the effect on the victim. The plurality opinion says that "life is over for the victim of the murderer; for the rape victim, life may not be nearly so happy as it was, but it is not over and normally is not beyond repair."...[For some victims, life *is* beyond repair.]

Thus, it may be that the death penalty is not disproportionate punishment for the crime of aggravated rape. Final resolution of the question must await careful inquiry into objective indicators of society's "evolving standards of decency," particularly legislative enactments and the responses of juries in capital cases. The plurality properly examines these indicia, which do support the conclusion that society finds the death penalty unacceptable for the crime of rape in the absence of excessive brutality or severe injury. But it has not been shown that society finds the penalty disproportionate for all rapes...

DISSENT: CHIEF JUSTICE BURGER/REHNQUIST...Our task is not to give effect to our individual views on capital punishment; rather, **we must determine what the Constitution permits a State to do** under its reserved powers...I accept that the Eighth Amendment's concept of disproportionality bars the death penalty for minor crimes. But **rape is not a minor crime**; hence **the Cruel and Unusual Punishments Clause does not give the Members of this Court license to engraft their conceptions of proper public policy onto the considered legislative judgments of the States**. Since I cannot agree that Georgia lacked the constitutional power to impose the penalty of death for rape, I dissent from the Court's judgment.

[In 1971,]...Coker raped and then stabbed to death a young woman. Less than eight months later [he] kidnaped a second young woman. After twice raping this 16-year-old victim, he stripped her, severely beat her with a club, and dragged her into a wooded area where he left her for dead. He was apprehended and pleaded guilty to offenses stemming from these incidents. He was sentenced by three separate courts to three life terms, two 20-year terms, and one 8-year term of imprisonment ...1 1/2 years later, on September 2, 1974, he escaped from the state prison where he was serving these sentences. He promptly raped another 16-year-old woman in the presence of her husband, abducted her from her home, and threatened her with death and serious bodily harm. It is this crime for which the sentence now under review was imposed.

Apparently, a 16 year old woman is an adult in Georgia — well, perhaps only if she is also married. It is also obvious that Coker avoided a death sentence in the 1971 stabbing. This is the kind of case that will turn an abolitionist into a hard core death penalty advocate. Coker has several life sentences and, therefore, no reason to fear any worse punishment for future escapes and rapes. And, what if that occurs? This is the type of case where retribution has real meaning. When the father of Coker's next 19 year old rape victim learns of Coker's past and that the "system" failed his daughter and that Coker will face no additional penalty because of raping his daughter, rage and vigilante justice may well take over.

The Court today holds that the State of Georgia may not impose the death penalty on Coker...**The**

Court's holding...bars Georgia from guaranteeing its citizens that they will suffer no further attacks by this habitual rapist. In fact, given the lengthy sentences Coker must serve for the crimes he has already committed, the Court's holding assures that petitioner - as well as others in his position - will henceforth feel no compunction whatsoever about committing further rapes as frequently as he may be able to escape from confinement and indeed even within the walls of the prison itself. To what extent we have left States "elbow-room" to protect innocent persons from depraved human beings like Coker remains in doubt...

Unlike the plurality, I would narrow the inquiry in this case to the question actually presented: Does the Eighth Amendment's ban against cruel and unusual punishment prohibit the State of Georgia from executing a person who has, within the space of three years, raped three separate women, killing one and attempting to kill another, who is serving prison terms exceeding his probable lifetime and who has not hesitated to escape confinement at the first available opportunity? Whatever one's view may be as to the State's constitutional power to impose the death penalty upon a rapist who stands before a court convicted for the first time, this case reveals a chronic rapist whose continuing danger to the community is abundantly clear...

Chip, chip...

Since the Court now invalidates the death penalty as a sanction for all rapes of adults at all times under all circumstances, I reluctantly turn to what I see as the broader issues raised by this holding.

...A rapist not only violates a victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process...Rape is not a mere physical attack - it is destructive of the human personality. The remainder of the victim's life may be gravely affected, and this in turn may have a serious detrimental effect upon her husband and any children she may have. I therefore wholly agree with Mr. Justice White's conclusion as far as it goes - that "[s]hort of homicide, [rape] is the 'ultimate violation of self.'" Victims may recover from the physical damage of knife or bullet wounds, or a beating with fists or a club, but recovery from such a gross assault on the human personality is not healed by medicine or surgery. **To speak blandly, as the plurality does, of rape victims who are "unharmed," or to classify the human outrage of rape, as does Mr. Justice Powell, in terms of "excessively brutal" versus "moderately brutal," takes too little account of the profound suffering the crime imposes upon the victims and their loved ones...**

THE PROCESS BY WHICH THIS CONCLUSION IS REACHED IS AS STARTLING AS IT IS DISQUIETING. It represents a clear departure from precedent by making this Court "under the aegis of the Cruel and Unusual Punishments Clause, the ultimate arbiter of the standards of criminal responsibility in diverse areas of the criminal law, throughout the country." **This seriously strains and distorts our federal system, removing much of the flexibility from which it has drawn strength for two centuries...**

The plurality opinion bases its analysis, in part, on the fact that "Georgia is the sole jurisdiction in the United States at the present time that authorizes a sentence of death when the rape victim is an adult woman." Surely, however, this statistic cannot be deemed determinative, or even particularly relevant. As the opinion concedes, two other States - Louisiana and North Carolina - have enacted death penalty statutes for adult rape since this Court's 1972 decision in *Furman v. Georgia.* If the Court is to rely on some "public opinion" process, does this not suggest the beginning of a "**trend**"? ...Even if these figures could be read as indicating that no other States view the death penalty as an appropriate punishment for the rape of an adult woman, it would not necessarily follow that Georgia's imposition of such sanction violates the Eighth Amendment...

Three state legislatures have, in the past five years, determined that the taking of human life and the devastating consequences of rape will be minimized if rapists may, in a limited class of cases, be executed for their offenses. That these States are presently a minority does not, in my view, make their judgment less worthy of deference. Our concern for human life must not be confined to the guilty; a state legislature is not to be thought insensitive to human values because it acts firmly to protect the lives and related values of the innocent. In this area, the choices for legislatures are at best painful and difficult and deserve a high degree of deference...

The clear implication of today's holding appears to be that the death penalty may be properly imposed only as to crimes resulting in death of the victim. This casts serious doubt upon the constitutional validity of statutes imposing the death penalty for a variety of conduct which, though dangerous, may not necessarily result in any immediate death, *e.g.,* treason, airplane hijacking, and kidnaping. In that respect, today's holding does even more harm than is initially apparent. We cannot avoid taking judicial notice that crimes such as airplane hijacking, kidnaping, and mass terrorist activity constitute a serious and increasing danger to the safety of the public. It would be unfortunate indeed if the effect of today's holding were to inhibit States and the Federal Government from experimenting with various remedies - including possibly imposition of the penalty of death - to prevent and deter such crimes. **Some sound observations, made only a few years ago, deserve repetition: "Our task here...is to pass upon the constitutionality of legislation that has been enacted and that is challenged...We should not allow our personal preferences as to the wisdom of legislative and congressional action, or our distaste for such action, to guide our judicial decision in cases such as these. The temptations to cross that policy line are very great. In fact, as today's decision reveals, they are almost irresistible." *Furman* (Blackmun, J., dissenting)...I would leave to the States the task of legislating in this area of the law.**