The Burger Court Opinion Writing Database

Delaware v. Van Arsdall

475 U.S. 673 (1986)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

March 18, 1986

84-1279 - Delaware v. Van Arsdall

Dear Bill:

I join.

Regards,

WEB

Justice Rehnquist

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 19, 1986

Delaware v. Van Arsdall, No. 84-1279

Dear Bill:

Although I'm joining your excellent opinion in this case, I wonder if you would consider adopting the following change. The fifth sentence of the first full paragraph on page 8 now reads: "The harmless error doctrine recognizes the principle that the central purpose of a criminal trial ...." I propose that this sentence read: "The harmless error doctrine recognizes the principle that a central purpose of a criminal trial ...."

Sincerely,

Bill

Justice Rehnquist

Supreme Court of the United States, Washington, D. C. 20543
Chambers of Justice Wm. J. Brennan, Jr.
February 19, 1986
Delaware v. Van Arsdall, No. 84-1279
Dear Bill:
Although I'm joining your excellent opinion in this case, I wonder if you would consider adopting the following change. The fifth sentence of the first full paragraph on page 8 now reads: "The harmless error doctrine recognizes the principle that the central purpose of a criminal trial ...." I propose that this sentence read: "The harmless error doctrine recognizes the principle that a central purpose of a criminal trial ...."
Sincerely,
Bill
Justice Rehnquist

Reproduced from the Collections of the Manuscript Division, Library of Congress

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 19, 1986

No. 84-1279

Delaware v. Van Arsdall

Dear Bill,

Please join me.

Sincerely,

Bill

Justice Rehnquist

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

Circulated: FEB 22 1986

Recirculated: _____

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1279

DELAWARE, PETITIONER *v.* ROBERT E. VAN ARSDALL

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF DELAWARE

[February ——, 1986]

JUSTICE WHITE, concurring in the judgment.

The Sixth Amendment confers on defendants in criminal cases the right "to be confronted with the witnesses against" them. The Court has interpreted these words as meaning more than being allowed to confront the witnesses physically, more than the right to be tried by live testimony rather than affidavits. It includes the opportunity for effective cross-examination of the state's witnesses. I do not here dispute these interpretations of the Constitutional language; but they neither require nor advise the Court to hold, as it does today, that the Amendment is violated whenever a trial judge limits cross-examination of a particular witness and the jury might have received a significantly different impression of the witnesses' credibility had cross-examination not been curtailed, even if the limitation and its consequences could not possibly have had any result on the outcome of the trial.

It makes much more sense to hold that no violation of the Confrontation Clause has occurred unless there is some likelihood that the outcome of the trial was affected. I agree the Delaware Court erred and that we should remand for consideration of prejudice, but I would not now hold that a Constitutional violation occurred. If it is ultimately held that the outcome would have been the same whether or not cross-examination had been limited, no Sixth Amendment violation occurred in this case.

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

Circulated: _____

Recirculated: MAR 2 6 1986

p. 2

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1279

DELAWARE, PETITIONER *v.* ROBERT E. VAN ARSDALL

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF DELAWARE

[March ——, 1986]

JUSTICE WHITE, concurring in the judgment.

The Sixth Amendment confers on defendants in criminal cases the right "to be confronted with the witnesses against" them. The Court has interpreted these words as meaning more than being allowed to confront the witnesses physically, more than the right to be tried by live testimony rather than affidavits. It includes the opportunity for effective cross-examination of the state's witnesses. I do not here dispute these interpretations of the Constitutional language; but they neither require nor advise the Court to hold, as it does today, that the Amendment is violated whenever a trial judge limits cross-examination of a particular witness and the jury might have received a significantly different impression of the witnesses' credibility had cross-examination not been curtailed, even if the limitation and its consequences could not possibly have had any result on the outcome of the trial.

It makes much more sense to hold that no violation of the Confrontation Clause has occurred unless there is some likelihood that the outcome of the trial was affected. I agree the Delaware Court erred and that we should remand for consideration of prejudice, but I would not now hold that a Constitutional violation occurred. If it is ultimately held that the outcome would have been the same whether or not cross-examination had been limited, no Sixth Amendment violation occurred in this case.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Marshall**

Circulated: MAR 1 3 1986

Recirculated: _____

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1279

DELAWARE, PETITIONER *v.* ROBERT E. VAN ARSDALL

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF DELAWARE

[March ——, 1986]

JUSTICE MARSHALL, dissenting.

The Court today properly holds that a complete denial of cross-examination designed to explore the bias of a prosecution witness violates the Confrontation Clause, whether or not the denial influenced the outcome of the trial and whether or not the witness was important to the prosecution's case. Nevertheless, the Court remands in order to permit the state court to apply harmless error analysis to that violation. I must respectfully dissent from the latter part of the Court's holding. I believe that the importance of cross-examination to a criminal trial is so great that a complete denial of otherwise proper cross-examination concerning the potential bias of a prosecution witness should lead to no less than a reversal of the conviction.

In holding the Confrontation Clause applicable to the States, this Court referred to the right of cross-examination as "an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal." *Pointer* v. *Texas*, 380 U. S. 400, 404 (1965). If indeed the harmless error doctrine focuses on the fairness and accuracy of a criminal trial, see *ante*, at 8, it is odd that the majority so easily applies it to a type of error that calls both fairness and accuracy into question to an almost unique degree.

The centrality of cross-examination to the factfinding process makes it particularly unlikely that an appellate court can

STYLISTIC CHANGES THROUGHOUT

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Marshall**

Circulated: _____

Recirculated: MAR 25 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1279

DELAWARE, PETITIONER *v.* ROBERT E. VAN ARSDALL

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF DELAWARE

[March ——, 1986]

JUSTICE MARSHALL, dissenting.

The Court today properly holds that a complete denial of cross-examination designed to explore the bias of a prosecution witness violates the Confrontation Clause, whether or not the denial influenced the outcome of the trial and whether or not the witness was important to the prosecution's case. Nevertheless, the Court remands in order to permit the state court to apply harmless-error analysis to that violation. I must respectfully dissent from the latter part of the Court's holding. I believe that the importance of cross-examination to a criminal trial is so great that a complete denial of otherwise proper cross-examination concerning the potential bias of a prosecution witness should lead to no less than a reversal of the conviction.

In holding the Confrontation Clause applicable to the States, this Court referred to the right of cross-examination as "an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal." *Pointer* v. *Texas*, 380 U. S. 400, 405 (1965). If indeed the harmless-error doctrine focuses on the fairness and accuracy of a criminal trial, see *ante*, at 8, it is odd that the majority so easily applies it to a type of error that calls both fairness and accuracy into question to an almost unique degree.

The centrality of cross-examination to the factfinding process makes it particularly unlikely that an appellate court can

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 19, 1986

Re: No. 84-1279, Delaware v. Van Arsdall

Dear Bill:

Please join me.

Sincerely,

Harry

Justice Rehnquist

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 13, 1986

84-1279 Delaware v. Van Arsdall

Dear Bill:

Please join me.

Sincerely,

Lewis

Justice Rehnquist

lfp/ss

cc: The Conference

SP FEB 13 11:13

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: FEB 12 1986

Recirculated: _____

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1279

DELAWARE, PETITIONER *v.* ROBERT E. VAN ARSDALL

NO

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF DELAWARE

[February ——, 1986]

JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Robert Van Arsdall was convicted of murder in a Delaware trial court. The Supreme Court of Delaware reversed his conviction on the ground that the trial court, by improperly restricting defense counsel's cross examination designed to show bias on the part of a prosecution witness, had violated respondent's confrontation rights under the Sixth and Fourteenth Amendments to the United States Constitution, and that such violation required automatic reversal. 486 A. 2d 1 (1984). While we agree that the trial court's ruling was contrary to the mandate of the Confrontation Clause of the Sixth Amendment, we conclude that the Supreme Court of Delaware was wrong when it declined to consider whether that ruling was harmless in the context of the trial as a whole.

Shortly after midnight on January 1, 1982, Doris Epps was stabbed to death in an apartment in Smyrna, Delaware, after an all-day New Year's Eve party. Respondent and Daniel Pregent, who by respondent's testimony were the only two people in the apartment with Epps at the time she was killed, were arrested at the scene of the crime and charged with Epps' murder. At separate trials, respondent was convicted and Pregent was acquitted.

The State's case against respondent was based on circumstantial evidence, and proceeded on the theory that re-

STYLISTIC CHANGES THROUGHOUT

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: FEB 14 1986

Recirculated: _____

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1279

DELAWARE, PETITIONER *v.* ROBERT E. VAN ARSDALL

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF DELAWARE

[February ——, 1986]

JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Robert Van Arsdall was convicted of murder in a Delaware trial court. The Supreme Court of Delaware reversed his conviction on the ground that the trial court, by improperly restricting defense counsel's cross-examination designed to show bias on the part of a prosecution witness, had violated respondent's confrontation rights under the Sixth and Fourteenth Amendments to the United States Constitution, and that such violation required automatic reversal. 486 A. 2d 1 (1984). While we agree that the trial court's ruling was contrary to the mandate of the Confrontation Clause of the Sixth Amendment, we conclude that the Supreme Court of Delaware was wrong when it declined to consider whether that ruling was harmless in the context of the trial as a whole.

Shortly after midnight on January 1, 1982, Doris Epps was stabbed to death in an apartment in Smyrna, Delaware, after an all-day New Year's Eve party. Respondent and Daniel Pregent, who by respondent's testimony were the only two people in the apartment with Epps at the time she was killed, were arrested at the scene of the crime and charged with Epps' murder. At separate trials, respondent was convicted and Pregent was acquitted.

The State's case against respondent was based on circumstantial evidence, and proceeded on the theory that re-

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 20, 1986

Re: No. 84-1279 Delaware v. Van Arsdall

Dear Bill,

I think the way my circulating opinion now reads -- that "the central purpose of a criminal trial" is to establish guilt or innocence is correct. There may be other purposes and effects, but surely none as important and therefore "central" as the raison d'etre of the event. I therefore prefer to leave my circulating draft the way it is in this respect.

Sincerely,

Justice Brennan

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 14, 1986

MEMORANDUM TO THE CONFERENCE

Re: Cases held for No. 84-1279, Delaware v. Van Arsdall

(1) No. 85-875, Rhode Island v. Manocchio. Respondent was convicted after a jury trial on one count of conspiracy to commit murder and two counts of being an accessory before the fact. During a pretrial voir dire, the principal prosecution witness stated that he had been diagnosed as having "premature Alzheimer's disease." At trial, when defense counsel attempted to explore this issue on cross-examination, the trial judge sustained the prosecution's objections to questions concerning the witness' disease. The Rhode Island Supreme Court reversed respondent's conviction, observing that it had "established a per se error rule where the defendant has been fully precluded from effective cross-examination on a pertinent issue . . . [or] has been permitted to ask preliminary questions but has been otherwise functionally precluded from constitutionally adequate cross-examination." App. 7.

While the court went on to discuss the importance of the witness to the prosecution's case, it plainly did not apply Chapman harmless error analysis as mandated by Delaware v. Van Arsdall. And notwithstanding respondent's contrary claim, the decision below appears to rest on federal law. Accordingly, I will vote to GVR.

(2) No. 85-886, Bruno v. Connecticut. Petitioner was convicted of criminal eavesdropping, conspiracy to commit eavesdropping and criminal mischief. One of the witnesses against him was his former girlfriend, who had a history of psychiatric treatment, alcoholism and drug use. The trial court refused to conduct an in camera inspection of the witness' psychiatric records or to make the records available to defense counsel for purposes of cross-examination. Although his cross-examination of the witness was otherwise unrestricted, petitioner claimed that his rights under the Confrontation Clause were thereby violated. The Connecticut Appellate Court and the Connecticut Supreme

Court affirmed. The Supreme Court concluded that even absent the witness' testimony, "the remaining evidence against [petitioner] was so overwhelming as to render any error in not striking the complainant's testimony harmless beyond a reasonable doubt." App. 9-10. Petitioner contends that the court erred in applying a harmless error test to the alleged violation of his confrontation rights.

Because the decision below is fully consistent with Van Arsdall, I will vote to deny.

(3) No. 85-5873, Best v. United States. Following a jury trial in the Superior Court of the District of Columbia, petitioner was convicted of armed robbery. At trial, the defense claimed that the alleged victim had fabricated the robbery, and the trial judge refused to allow the defense to cross-examine the victim about his psychiatric health. The Court of Appeals affirmed, although it found that in light of the defense theory that the victim had fabricated the incidents, and "the policy of allowing broad cross-examination on matters relating to a witness' credibility," app. 9, "the trial judge should have allowed a few questions" about the victim's psychiatric health. Ibid. While this error violated the Confrontation Clause, the court concluded that petitioner was not entitled to reversal of his conviction because any error was harmless beyond a reasonable doubt. Petitioner contends that the Court of Appeals misapplied the Chapman standard, and incorrectly found that the error was harmless.

Because the decision below is consistent with Van Arsdall, and petitioner's claim that the court misapplied Chapman is fact bound, I will vote to deny.

Sincerely,

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

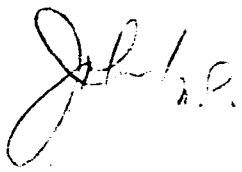
March 17, 1986

Re: 84-1279 - Delaware v. Van Arsdall

Dear Bill:

After further reflection, I have decided to write a postscript to my Michigan v. Long dissent. I should have it in your hands in a few days.

Respectfully,



Justice Rehnquist

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

Circulated: MAR 28 1986

Recirculated: _____

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1279

DELAWARE, PETITIONER *v.* ROBERT E. VAN ARSDALL

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF DELAWARE

[March ——, 1986]

JUSTICE STEVENS, dissenting.

The Court finds the way open to reverse the judgment in this case because "The opinion of the Delaware Supreme Court, which makes use of both federal and state cases in its analysis, lacks the requisite 'plain statement' that it rests on state grounds." *Ante*, at 5, n. 3.[1] In so holding, the Court continues down the path it marked in *Michigan* v. *Long*, 463 U. S. 1032, 1037–1044 (1983), when it announced that it would henceforth presume jurisdiction to review state court judgments absent a "plain statement" that such judgments rest on state grounds.[2]

[1] A determination that a state court judgment rests on a federal ground is a prerequisite to the exercise of our jurisdiction in such a case. See *Fox Film Corp.* v. *Muller*, 296 U. S. 207, 210 (1935) ("[W]here the judgment of a state court rests upon two grounds, one of which is federal and the other non-federal in character, our jurisdiction fails if the non-federal ground is independent of the federal ground and adequate to support the judgment."); *Murdock* v. *City of Memphis*, 20 Wall. 590, 626, 633, 641 (1875) (construing requirement as part of jurisdictional statute). See also Sandalow, *Henry* v. *Mississippi* and the Adequate State Ground: Proposals for a Revised Doctrine, 1965 Sup. Ct. Rev. 187, 188–189 and n. 6 (discussing possible constitutional basis for the adequate and independent state ground rule).

[2] The principal question in *Michigan* v. *Long* was whether a state court's determination that a search violated the state constitution was independent of its conclusion that it violated the federal Constitution. The Court

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1, 4, 5

Circulated: _____

Recirculated: APR 3 1986

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1279

DELAWARE, PETITIONER *v.* ROBERT E. VAN ARSDALL

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF DELAWARE

[April ——, 1986]

JUSTICE STEVENS, dissenting.

The Court finds the way open to reverse the judgment in this case because "The opinion of the Delaware Supreme Court, which makes use of both federal and state cases in its analysis, lacks the requisite 'plain statement' that it rests on state grounds." *Ante*, at 5, n. 3.[1] In so holding, the Court continues down the path it marked in *Michigan* v. *Long*, 463 U. S. 1032, 1037–1044 (1983), when it announced that it would henceforth presume jurisdiction to review state-court judgments absent a "plain statement" that such judgments rest on state grounds.[2]

---

[1] A determination that a state-court judgment rests on a federal ground is a prerequisite to the exercise of our jurisdiction in such a case. See *Fox Film Corp.* v. *Muller*, 296 U. S. 207, 210 (1935) ("[W]here the judgment of a state court rests upon two grounds, one of which is federal and the other non-federal in character, our jurisdiction fails if the non-federal ground is independent of the federal ground and adequate to support the judgment"); *Murdock* v. *City of Memphis*, 20 Wall. 590, 626, 633, 641 (1875) (construing requirement as part of jurisdictional statute). See also Sandalow, Henry v. Mississippi and the Adequate State Ground: Proposals for a Revised Doctrine, 1965 S. Ct. Rev. 187, 188–189, and n. 6 (discussing possible constitutional basis for the adequate and independent state ground rule).

[2] The principal question in *Michigan* v. *Long* was whether a state court's determination that a search violated the state constitution was independent of its conclusion that it violated the Federal Constitution. The Court surveyed the various approaches, decided that "none of [them] thus

(V)

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 18, 1986

No. 84-1279 Delaware v. Van Arsdall

Dear Bill,

Please join me.

Sincerely,

Sandra

Justice Rehnquist

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS