WISCONSIN SUPREME COURT
TUESDAY, JANUARY 4, 2011
10:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which affirmed a Milwaukee County Circuit Court decision, Judge Jeffrey A. Wagner, presiding.

2009AP806-CR State v. Beauchamp

In this case, the Supreme Court examines whether "dying declarations" made under the circumstances presented here constitute a permissible exception to the confrontation clause of the Sixth Amendment to the U.S. Constitution. The confrontation clause generally guarantees a criminal defendant's right to confront an accusing witness in court.

Some background: Marvin L. Beauchamp was convicted of shooting Bryon Somerville to death outside a Milwaukee apartment. Somerville made comments at the crime scene, on the way to the hospital and at the hospital that implicated Beauchamp. Sommerville died shortly after his arrival at the hospital.

There is really no dispute that the victim's statements were dying declarations. The question is whether those statements were properly admitted at trial. Other eyewitness testimony was inconsistent, so the dying statements were material evidence.

The trial court held that Somerville's assertions that Beauchamp shot him were admissible under Wis. Stat. Rule 908.045(3) as Somerville's dying declarations, and were not barred by Beauchamp's right to confront witnesses testifying against him.

Beauchamp appealed, and the Court of Appeals affirmed. Beauchamp claimed that the trial court erroneously admitted as dying declarations the victim's assertions that Beauchamp shot him, and that his due-process rights were violated because the trial court received as substantive evidence prior inconsistent statements by two of the state's witnesses.

Whether an assertion in a dying declaration is within an exception to the rule against hearsay is a matter within the trial court's discretion. Typically, out-of-court assertions may not be used for their truth at a trial by virtue of the rule against hearsay. Wis. Stat. §§ 908.01 & 908.02. The "dying declaration" is an exception to this rule and is explicitly codified at Wis. Stat. § 908.045(3).

The Court of Appeals first observed that the traditional rationale for receipt of the dying declaration as an exception to the hearsay rule was the assumption that no person will "leave life with a lie on the lips." See Idaho v. Wright, 497 U.S. 805, 820 (1990). Beauchamp argues that whatever validity that assumption might have had in the era when the dying-declaration rule was first adopted, it has lost much of its vitality today.

Beauchamp contends that the "rationale ignores other motivations that might be just as powerful, such as bias or the desire for revenge, and the organic changes attendant to traumatic injuries that can affect the brain and the victim's abilities to accurately perceive, recall, and recount what has occurred."

Beauchamp also presents an ineffective assistance of counsel claim because his attorney failed to challenge inconsistent statements made by two witnesses who said they

saw Beauchamp in a dispute with Somerville before the shooting. They both acknowledged that they had signed statements but later claimed they were pressured to do so by police. The witnesses' testimony at trial tended to favor Beauchamp.

A decision by the Supreme Court could clarify whether the confrontation clause bars the admission of testimonial dying declarations against a defendant, and whether a defendant's right to due process of law restricts the substantive use of prior inconsistent statements.