

# SUPREME COURT OF THE UNITED STATES

No. 90-8466

DAVID RIGGINS, PETITIONER v. NEVADA  
ON WRIT OF CERTIORARI TO THE SUPREME COURT  
OF NEVADA  
[May 18, 1992]

JUSTICE THOMAS, with whom JUSTICE SCALIA joins except as to Part II-A, dissenting.

Petitioner David Edward Riggins killed Paul William Wade by stabbing him 32 times with a knife. He then took cash, drugs, and other items from Wade's home. A Nevada jury convicted Riggins of first-degree murder and robbery with a deadly weapon and sentenced him to death. The Nevada Supreme Court affirmed. 107 Nev. 178, 808 P. 2d 535 (1991). This Court reverses the conviction, holding that Nevada unconstitutionally deprived Riggins of his liberty interest in avoiding unwanted medication by compelling him to take an antipsychotic drug. I respectfully dissent.

The Court's opinion, in my view, conflates two distinct questions: whether Riggins had a full and fair criminal trial and whether Nevada improperly forced Riggins to take medication. In this criminal case, Riggins is asking, and may ask, only for the reversal of his conviction and sentence. He is not seeking, and may not seek, an injunction to terminate his medical treatment or damages for an infringement of his personal rights. I agree with the positions of the majority and concurring opinions in the Nevada Supreme Court: Even if the State truly forced Riggins to take medication, and even if this medication deprived Riggins of a protected liberty interest in a manner actionable in a different legal proceeding, Riggins nonethe-

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less had the fundamentally fair criminal trial required by the Constitution. I therefore would affirm his conviction.

Riggins contended in the Nevada Supreme Court that he did not have a "full and fair" trial for two reasons, the first relating to exclusion of evidence of his mental condition and the second concerning his ability to assist in his defense. Record 1018. To the extent that Riggins' arguments below involved federal constitutional issues, I believe that the Nevada Supreme Court correctly rejected them.

Riggins first argued that the trial court improperly prevented him from presenting relevant evidence of his demeanor. As the Court notes, Riggins suffers from a mental illness and raised insanity as a defense at trial. When Riggins killed Wade, he was not using any antipsychotic medication. During his trial, however, Riggins was taking large doses of the antipsychotic drug Mellaril. Riggins believed that this drug would make his appearance at trial different from his appearance when he attacked Wade and that this difference might cause the jury to misjudge his sanity. To show his mental condition as it existed at the time of the crime, Riggins requested permission to appear before the jury in an unmedicated state. App. 20-24, 42-47. The trial court denied the request and the Nevada Supreme Court affirmed.

This Court has no power to decide questions concerning the admissibility of evidence under Nevada law. *Estelle v. McGuire*, 502 U. S. —, — (1991). We therefore may conduct only a limited review of a Nevada court's decision to exclude a particular form of demeanor evidence. Except in cases involving a violation of a specific constitutional provision such as the Confrontation Clause, see, e.g.,

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*Ohio v. Roberts*, 448 U. S. 56 (1980), this Court may not reverse a state “trial judge's action in the admission of evidence” unless the evidentiary ruling “so infuse[s] the trial with unfairness as to deny due process of law.” *Lisenba v. California*, 314 U. S. 219, 228 (1941). See also *Marshall v. Lonberger*, 459 U. S. 422, 438, n. 6 (1983); *Burgett v. Texas*, 389 U. S. 109, 113-114 (1967). In this case, I see no basis for concluding that Riggins had less than a full and fair trial.

The Court declines to decide whether Mellaril actually affected Riggins' appearance. On the basis of some pretrial psychiatric testimony it speculates only that Riggins might have looked less uptight, drowsy, or confused if he had not taken the drug. *Ante*, at 9. Other evidence casts doubt on this possibility. At least one psychiatrist believed that a jury would not “be able to notice whether or not [Riggins] was on Mellaril as compared to the period of the time when he was not medicated by that drug.” Record 445. Yet, even if Mellaril noticeably affected Riggins' demeanor, the Court fails to explain why the medication's effects rendered Riggins' trial fundamentally unfair.

The trial court offered Riggins the opportunity to prove his mental condition as it existed at the time of the crime through testimony instead of his appearance in court in an unmedicated condition. Riggins took advantage of this offer by explaining to the jury the history of his mental health, his usage of Mellaril, and the possible effects of Mellaril on his demeanor. *Id.*, at 739-740. Riggins also called Dr. Jack A. Jurasky, a psychiatrist, who testified about Riggins' condition after his arrest and his likely mental state at the time of the crime. *Id.*, at 747-748. Dr. Jurasky also explained Riggins' use of Mellaril and how it might be affecting him. *Id.*, at 752-753, 760-761.

The Nevada Supreme Court concluded that this

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“testimony was sufficient to inform the jury of the effect of the Mellaril on Riggins' demeanor and testimony.” 107 Nev., at —, 808 P. 2d, at 538. Its analysis comports with that of other state courts that also have held that expert testimony may suffice to clarify the effects of an antipsychotic drug on a defendant's apparent demeanor. See *State v. Law*, 270 S.C. 664, 673, 244 S. E. 2d 302, 306 (1978); *State v. Jojola*, 89 N. M. 489, 493, 553 P. 2d 1296, 1300 (1976). Cf. *In re Pray*, 133 Vt. 253, 257-258, 336 A. 2d 174, 177 (1975) (reversing a conviction because no expert testimony explained how antipsychotic medicine affected the defendant's appearance). Having reviewed the record as a whole, I see no reason to disturb the conclusion of the Nevada Supreme Court. On the facts of this case, Riggins' inability to introduce evidence of his mental condition as he desired did not render his trial fundamentally unfair. See *Rock v. Arkansas*, 483 U. S. 44, 55, n. 11 (1987); *id.*, at 64-65 (REHNQUIST, C. J., dissenting).

Riggins also argued in the Nevada Supreme Court, although not in his briefs to this Court, that he did not have a “`full and fair' trial” because Mellaril had side effects that interfered with his ability to participate in his defense. Record 1018. He alleged, in particular, that the drug tended to limit his powers of perception. The Court accepts this contention, stating: “It is clearly *possible* that such side effects impacted . . . the content of his testimony on direct examination or cross-examination, his ability to follow the proceedings, or the substance of his communication with counsel.” *Ante*, at 9 (emphasis added). I disagree. We cannot conclude that Riggins had less than a full and fair trial merely because of the possibility that Mellaril had side effects.

All criminal defendants have a right to a full and fair

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trial and a violation of this right may occur if a State tries a defendant who lacks a certain ability to comprehend or participate in the proceedings. We have said that “the Due Process Clause guarantees the fundamental elements of fairness in a criminal trial,” *Spencer v. Texas*, 385 U. S. 554, 563-564 (1967), and have made clear that “conviction of an accused person while he is legally incompetent violates due process,” *Pate v. Robinson*, 383 U. S. 375, 378 (1966).

Riggins has no claim of legal incompetence in this case. The trial court specifically found him competent while he was taking Mellaril under a statute requiring him to have “sufficient mentality to be able to understand the nature of the criminal charges against him, and . . . to aid and assist his counsel in the defense interposed upon the trial.” Nev. Rev. Stat. §178.400(2) (1989). Riggins does not assert that due process imposes a higher standard.

The record does not reveal any other form of unfairness relating to the purported side effects of Mellaril. Riggins has failed to allege specific facts to support his claim that he could not participate effectively in his defense. He has not stated how he would have directed his counsel to examine or cross-examine witnesses differently. He has not identified any testimony or instructions that he did not understand. The record, moreover, does not even support his assertion that Mellaril made him worse off. As Justice Rose noted in his concurring opinion below: “Two psychiatrists who had prescribed Mellaril for Riggins, Dr. Quass and Dr. O’Gorman, testified that they believed it was helpful to him. Additional psychiatric testimony established that Mellaril may have increased Riggins’ cognitive ability . . . .” 107 Nev., at —, 808 P. 2d, at 540. See also *State v. Hayes*, 118 N. H. 458, 461, 389 A. 2d 1379, 1381 (1978) (holding a defendant’s perception adequate because “[a]ll the expert evidence support[ed] the

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conclusion that the medication ha[d] a beneficial effect on the defendant's ability to function").<sup>1</sup> Riggins' competence, moreover, tends to confirm that he had a fair trial. See *State v. Jojola, supra*, at 492, 553 P.2d, at 1299 (presuming, absent other evidence, that the side effects of an antipsychotic drug did not render a competent defendant unable to participate fully in his trial). I thus see no basis for reversing the Nevada Supreme Court.

Riggins also argues for reversal on the basis of our holding in *Washington v. Harper*, 494 U. S. 210, 221 (1990), that the Due Process Clause protects a substantive "liberty interest" in avoiding unwanted medication. Riggins asserts that Nevada unconstitutionally deprived him of this liberty interest by forcing him to take Mellaril. The Court agrees, ruling that "the Nevada courts failed to make findings sufficient to support forced administration of the drug" in this case. *Ante*, at 1. I consider reversal on this basis improper.

Riggins may not complain about a deprivation of the liberty interest that we recognized in *Harper* because the record does not support his version of the facts. Shortly after his arrest, as the Court notes, Riggins told a psychiatrist at his jail that he was hearing voices and could not sleep. The psychiatrist prescribed Mellaril. When the prescription did not eliminate the problem, Riggins sought further

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<sup>1</sup>We previously have noted that "[p]sychotropic medication is widely accepted within the psychiatric community as an extraordinarily effective treatment for both acute and chronic psychoses, particularly schizophrenia." *Washington v. Harper*, 494 U. S. 210, 226, n. 9 (1990) (quoting Brief for American Psychiatric Association et al. as *Amici Curiae*, O.T. 1989, No. 88-599, pp. 10-11).

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treatment and the psychiatrist increased the dosage. Riggins thus began taking the drug voluntarily. *Ante*, at 1-2.

The Court concludes that the medication became involuntary when the trial court denied Riggins' motion for permission not to take the drug during the trial. *Ante*, at 5. I disagree. Although the court denied Riggins' motion, it did not order him to take any medication.<sup>2</sup> Moreover, even though Riggins *alleges* that the *state physicians* forced him to take the medication after the court's order, the record contains no finding of fact with respect to this allegation. The Court admits that it merely assumes that the physicians drugged him, and attempts to justify its assumption by observing that the Nevada Supreme Court also assumed that involuntary medication occurred. *Ibid*. The Nevada Supreme Court, however, may have made its assumption for the purpose of argument; the assumption, in its view, did not change the result of the case. The Court cannot make the same assumption if it requires reversal of Riggins' conviction.

Riggins also cannot complain about a violation of *Harper* because he did not argue below for reversal of his conviction on the ground that Nevada had

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<sup>2</sup>Riggins' counsel confirmed this interpretation of the order at oral argument:

“QUESTION: . . . [D]id the court ever go further than saying I will not order the State to stop administering the medication? . . . It simply said . . . I won't intervene and enjoin the administration of this medication[.]

“MR. YAMPOLSKY: Yes . . . .

“QUESTION: So if [Riggins] had then said, well, I'm not going to take it, he wouldn't be in violation of the court order? . . .

“Mr. YAMPOLSKY: Apparently not.” Tr. of Oral Arg.

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deprived him of a liberty interest. Riggins consistently maintained in the Nevada courts that he did not have a “full and fair trial” because the medication deprived him of the opportunity to present his demeanor to the jury and to participate in his defense. App. 20–24 (trial court motion); *Id.*, at 42–47 (trial court reply); Record 1018–1021 (appellate brief); *Id.*, at 1068–1071 (appellate reply brief). As counsel for Nevada put it at oral argument: “The way this issue was initially presented to the trial court was really a question of trial strategy. There was never an indication in this case that Mr. Riggins was a Harper-type defendant who did not want to be medicated.” Tr. of Oral Arg. 23.<sup>3</sup>

Because the claims that Riggins raised below have no merit, Riggins has altered his theory of the case. The Court, therefore, should not condemn the Nevada courts because they “did not acknowledge the defendant's liberty interest in freedom from unwanted antipsychotic drugs.” *Ante*, at 9. The Nevada courts had no reason to consider an argument that Riggins did not make. We have said quite recently that “[i]n reviewing the judgments of state courts under the jurisdictional grant of 28 U. S. C. §1257, the Court has, with very rare

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<sup>3</sup>Riggins noted in his reply brief before the Nevada Supreme Court that the courts in *United States v. Bryant*, 670 F. Supp. 840, 843 (Minn. 1987), and *Bee v. Greaves*, 744 F. 2d 1387 (CA10 1984), had recognized a personal liberty interest in avoiding unwanted medication. Record 1070–1071. Yet, Riggins never asked for reversal because of a deprivation of this interest. He argued for reversal in that brief only on grounds that the medication “violated [his] right to a ‘full and fair’ trial because it denied him the ability to assist in his defense, and prejudiced his demeanor, attitude, and appearance to the jury.” *Id.*, at 1068.



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exceptions, refused to consider petitioners' claims that were not raised or addressed below." *Yee v. Escondido*, 503 U. S. —, — (1992) (slip op., at 12). Although "we have expressed inconsistent views as to whether this rule is jurisdictional or prudential in cases arising from state courts," *ibid.*, the Court does not attempt to justify its departure here.

Finally, we did not grant certiorari to determine whether the Nevada courts had made the findings required by *Harper* to support forced administration of a drug. We took this case to decide "[w]hether forced medication during trial violates a defendant's constitutional right to a full and fair trial." Pet. for Cert. The Court declines to answer this question one way or the other, stating only that a violation of *Harper* "may well have impaired the constitutionally protected trial rights Riggins invokes." *Ante*, at 9. As we have stated, "we ordinarily do not consider questions outside those presented in the petition for certiorari." *Yee v. Escondido, supra*, at — (slip op., at 14). I believe that we should refuse to consider Riggins' *Harper* argument.

The *Harper* issue, in any event, does not warrant reversal of Riggins' conviction. The Court correctly states that Riggins, as a detainee awaiting trial, had at least the same liberty interest in avoiding unwanted medication that the inmate had in *Harper*. This case, however, differs from *Harper* in a very significant respect. When the inmate in *Harper* complained that physicians were drugging him against his will, he sought damages and an injunction against future medication in a civil action under 42 U. S. C. §1983. See 494 U. S., at 217. Although Riggins also complains of forced medication, he is seeking a reversal of his criminal conviction. I would not expand *Harper* to include this remedy.

We have held that plaintiffs may receive civil remedies for all manner of constitutional violations under §1983. See *Dennis v. Higgins*, 498 U. S. —, — (1991). This Court, however, has reversed criminal convictions only on the basis of two kinds of constitutional deprivations: those “which occu[r] during the presentation of the case” to the trier of fact, and those which cause a “structural defect affecting the framework” of the trial. *Arizona v. Fulminante*, 499 U. S. —, —, — (1991). The Court does not reveal why it considers a deprivation of a liberty interest in avoiding unwanted medication to fall into either category of reversible error. Even if Nevada failed to make the findings necessary to support forced administration of Mellaril, this failure, without more, would not constitute a trial error or a flaw in the trial mechanism. See 107 Nev., at —, 808 P.2d, at 540 (Rose, J., concurring). Although Riggins might be entitled to other remedies, he has no right to have his conviction reversed.<sup>4</sup>

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<sup>4</sup>A State, however, might violate a defendant's due process right to a fundamentally fair trial if its administration of medication were to *diminish*

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We applied a similar analysis in *Estelle v. Williams*, 425 U. S. 501 (1976). In that case, a prisoner challenged his conviction on grounds that the State had required him to wear prison garb before the jury. In reviewing the challenge, we did not ask whether the State had violated some personal right of the defendant to select his attire. Instead, we considered only whether the prison clothing had denied him a “fair trial” by making his appearance less favorable to the jury. *Id.*, at 503. Although we ultimately declined

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substantially the defendant's mental faculties during the trial, even if he were not thereby rendered incompetent. See 3 E. Coke, *Institutes* \*34 (1797) (“If felons come in judgement to answer, . . . they shall be out of irons, and all manner of bonds, so that their pain shall not take away any manner of reason, nor them constrain to answer, but at their free will”); Resolutions of the Judges upon the Case of the Regicides, Kelyng's Report of Divers Cases in Pleas of the Crown 10 (1708) (Old Bailey 1660) (“It was resolved that when Prisoners come to the Bar to be tryed, their Irons ought to be taken off, so that they be not in any Torture while they make their defense, be their Crime never so great”), reprinted in 5 How. St. Tr. 971, 979-980 (1816); Trial of Christopher Layer, 16 How. St. Tr. 94, 100 (1812) [K.B. 1722] (“[T]he authority is that [the defendant] is not to be `in vinculis' during his trial, but should be so far free, that he should have the use of his reason, and all advantages to clear his innocence”); see also *State v. Williams*, 18 Wash. 47, 49-51, 50 P. 580, 581 (1897) (“`the condition of the prisoner in shackles may, to some extent, deprive him of the free and calm use of all his faculties'”) (quoting *State v. Kring*, 64 Mo. 591 (1877)). Riggins has not made (much less proved) any such allegation in this Court; indeed, the record indicates that Riggins' mental capacity was *enhanced* by his administration of Mellaril.

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to reach the merits because the prisoner had waived the issue at trial, *id.*, at 512, we observed that lower courts had held that “a showing of actual prejudice must be made by a defendant seeking to have his conviction overturned on this ground.” *Id.*, at 504, n. 1. In my view, just as the validity of the conviction in *Estelle v. Williams* would depend on whether the prisoner had a fair trial, so does the validity of Riggins' conviction.

The need for requiring actual unfairness in this case (either in the form of a structural defect or an error in the presentation of evidence) becomes apparent when one considers how the Court might apply its decision to other cases. A State could violate *Harper* by forcibly administering *any* kind of medication to a criminal defendant. Yet, the Court surely would not reverse a criminal conviction for a *Harper* violation involving medications such as penicillin or aspirin. Perhaps Mellaril, in general, has a greater likelihood of affecting a person's appearance and powers of perceptions than these substances. As noted above, however, we have no indication in this case, considering the record as a whole, that Mellaril unfairly prejudiced Riggins.

I do not mean in any way to undervalue the importance of a person's liberty interest in avoiding forced medication or to suggest that States may drug detainees at their whim. Under *Harper*, detainees have an interest in avoiding unwanted medication that the States must respect. In appropriate instances, detainees may seek damages or injunctions against further medication in civil actions either under §1983, as in *Harper*, or under state law. Yet, when this Court reviews a state court criminal conviction of a defendant who has taken medication, it cannot undo any violation that already has occurred or punish those responsible. It may determine only whether the defendant received a proper trial, free of the kinds of reversible errors that we have

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recognized. Because Riggins had a full and fair trial in this case, I would affirm the Nevada Supreme Court.

For the foregoing reasons, I find it unnecessary to address the precise standards governing the forced administration of drugs to persons such as Riggins. Whether or not Nevada violated these standards, I would affirm Riggins' conviction. I note, however, that the Court's discussion of these standards poses troubling questions. Although the Court purports to rely on *Washington v. Harper*, the standards that it applies in this case differ in several respects.

The Court today, for instance, appears to adopt a standard of strict scrutiny. It specifically faults the trial court for failing to find either that the “continued administration of Mellaril was *required* to ensure that the defendant could be tried,” *ante*, at 8 (emphasis added), or that “other *compelling* concerns outweighed Riggins' interest in freedom from unwanted antipsychotic drugs,” *ibid.*, (emphasis added). We specifically rejected this high standard of review in *Harper*. In that case, the Washington Supreme Court had held that state physicians could not administer medication to a prisoner without showing that it “was both necessary and effective for furthering a compelling state interest.” 494 U. S., at 218. We reversed, holding that the state court “erred in refusing to apply the standard of reasonableness.” *Id.*, at 223.

The Court today also departs from *Harper* when it says that the Nevada Supreme Court erred by not “considering less intrusive alternatives.” *Ante*, at 7. The Court presumably believes that Nevada could have treated Riggins with smaller doses of Mellaril or with other kinds therapies. In *Harper*, however, we imposed no such requirement. In fact, we specifically ruled that “[t]he alternative means proffered by [the prisoner] for accommodating his interest in rejecting

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the forced administration of antipsychotic drugs do not demonstrate the invalidity of the State's policy.” 494 U. S., at 226.

This case differs from *Harper* because it involves a pretrial detainee and not a convicted prisoner. The standards for forcibly medicating inmates well may differ from those for persons awaiting trial. The Court, however, does not rely on this distinction in departing from *Harper*; instead, it purports to be applying *Harper* to detainees. *Ante*, at 6. Either the Court is seeking to change the *Harper* standards or it is adopting different standards for detainees without stating its reasons. I cannot accept either interpretation of the Court's opinion. For all of these reasons, I respectfully dissent.