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## **Court of Appeals of New York, People v. Cahill**

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**Court of Appeals of New York, People v. Cahill**

**Cover Page Footnote**

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## COURT OF APPEALS OF NEW YORK

People v. Cahill<sup>1</sup>  
 (decided November 23, 2003)

James Cahill was convicted of two counts of first-degree murder, one count of first-degree assault, and other related charges.<sup>2</sup> A jury sentenced him to death on each count of murder, based on two of the statutory aggravating factors found in the New York Penal Law Section 125.27 — witness elimination murder and “intentional murder in the course of and in furtherance of second degree burglary.”<sup>3</sup> Appealing directly to the New York Court of Appeals,<sup>4</sup> Cahill claimed, *inter alia*, that the New York State Constitution’s express prohibition against the waiver of jury trials in capital cases<sup>5</sup> is unconstitutional.<sup>6</sup> The Court of Appeals rejected this claim, asserting that the state constitutional ban on

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<sup>1</sup> No. 123, 2003 N.Y. LEXIS 3978 (N.Y. Nov. 23, 2003).

<sup>2</sup> *Id.* at \*8.

<sup>3</sup> *Id.* at \*2.

<sup>4</sup> *Id.* at \*8.

<sup>5</sup> N.Y. CONST. art. I, § 1 provides in pertinent part: “No member of this state shall be disenfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by . . . the judgment of his peers. . . .” N.Y. CONST. art. I, § 2 provides in pertinent part: “A jury trial may be waived by the defendant in all criminal cases, except those in which the crime charged may be punishable by death. . . .”

<sup>6</sup> *Cahill*, 2003 N.Y. LEXIS 3978, at \*8. Cahill’s brief contained 38 points of error. *Id.* The Court of Appeals chose to focus on three issues: jury selection, the weight of the evidence used to support the first degree murder conviction, and the legal sufficiency of the first degree murder conviction on the burglary count. *Id.* at \*8-\*9.

bench trials was “longstanding and purposeful.”<sup>7</sup> A criminal defendant’s constitutional right to trial by jury does not necessarily translate into the right to waive a jury trial and request a bench trial instead.<sup>8</sup> While Cahill did not assert a claim regarding his federal constitutional right to waive a jury trial, the Court of Appeals specifically addressed it, concluding that he had no such federal constitutional right.<sup>9</sup> According to the court, Cahill had “neither a federal nor a state right to a bench trial in a capital case.”<sup>10</sup>

Cahill was convicted of the first-degree murder of his wife.<sup>11</sup> Early in the morning of April 21, 1998, Cahill beat his wife repeatedly over the head with a baseball bat.<sup>12</sup> Although she was severely injured as a result of the beating, it did not kill her.<sup>13</sup> However, her injuries were serious enough to require hospitalization for the next six months.<sup>14</sup> From April until October of 1998, Cahill and his counsel prepared for trial on the assault count,<sup>15</sup> and Cahill’s children were placed with his wife’s family.<sup>16</sup>

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<sup>7</sup> *Id.* at \*18.

<sup>8</sup> *Id.* at \*20 n.8 (citing *Faretta v. California*, 422 U.S. 806, 814 (1975)). While the Court of Appeals referred to Cahill’s federal constitutional rights, the reasoning used in the discussion of Cahill’s federal rights can be extended and applied to his state constitutional rights.

<sup>9</sup> *Id.* at \*20 (citing *Singer v. United States*, 380 U.S. 24, 36 (1965)).

<sup>10</sup> *Id.* at \*20 n.8. While most of the cases discussed deal with state death penalty statutes, there is a federal death penalty statute: 18 U.S.C. § 3591 (2003).

<sup>11</sup> *Cahill*, 2003 N.Y. LEXIS 3978, at \*8.

<sup>12</sup> *Id.* at \*2-\*3.

<sup>13</sup> *Id.* at \*3-\*4.

<sup>14</sup> *Id.* at \*4.

<sup>15</sup> *Id.*

<sup>16</sup> *Cahill*, 2003 N.Y. LEXIS 3978, at \*4.

He was also prohibited from seeing his children or entering the hospital where his wife was confined.<sup>17</sup>

On October 27, 1998, Cahill entered the hospital after visiting hours, disguised as a maintenance man.<sup>18</sup> Soon after, a nurse noticed a strong odor in the wife's room and saw that she was having difficulty breathing.<sup>19</sup> The next morning Cahill's wife died of potassium cyanide poisoning.<sup>20</sup> The police promptly arrested Cahill and succeeded in securing sufficient evidence against him to enable the state to try him on the murder charges.<sup>21</sup>

The case was highly publicized in the county before the trial.<sup>22</sup> Cahill based his constitutional appeal in part on this pre-trial publicity,<sup>23</sup> arguing that it was so prejudicial as to taint the jury pool, and thereby deny him his constitutional right to a fair trial.<sup>24</sup> Cahill argued that the only effectual remedy was to permit him to waive a jury trial and be tried by the court alone.<sup>25</sup>

In the instant case, the court flatly stated that Cahill had no such right under the federal constitution.<sup>26</sup> The court relied upon the United States Supreme Court case, *Singer v. United States*,<sup>27</sup> which examined the Article III, Section 2 and Sixth Amendment

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at \*5.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Cahill*, 2003 N.Y. LEXIS 3978, at \*6.

<sup>22</sup> *Id.* at \*14.

<sup>23</sup> *Id.* at \*17-\*18.

<sup>24</sup> *Id.* at \*9.

<sup>25</sup> *Id.* at \*17-\*18.

<sup>26</sup> *Cahill*, 2003 N.Y. LEXIS 3978, at \*20.

<sup>27</sup> 380 U.S. 24 (1965).

provisions for trial by jury.<sup>28</sup> In tracing the historical significance of this right in Anglo-American history, the Court noted that the Article III, Section 2 provision was “clearly intended to protect the accused from oppression by the Government. . . .”<sup>29</sup> The *Singer* Court concluded that to deny a capital defendant the right to waive a jury trial could in no way violate his constitutional rights, as “the result is simply . . . [to] subject [the defendant] to an impartial trial by jury — the very thing that the Constitution guarantees him.”<sup>30</sup> The *Singer* Court also asserted that “[t]he ability to waive a constitutional right does not ordinarily carry with it the right to insist upon the opposite of that right . . . although a defendant can, under some circumstances, waive his constitutional right to a public trial, he has no absolute right to compel a private trial.”<sup>31</sup>

The Court of Appeals quickly disposed of Cahill’s state constitutional claim. The court first emphasized that the state constitution expressly prohibits the waiver of jury trials in capital cases.<sup>32</sup> The court also accorded great deference to the historical role of the constitutional guarantee of a trial by jury as a measure of protection for criminal defendants in capital cases.<sup>33</sup> Borrowing the reasoning and some of the language of a prior New York Court

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<sup>28</sup> *Id.* at 25-26. U.S. CONST. art. III, § 2 provides in pertinent part: “The Trial of all Crimes . . . shall be by Jury.” U.S. CONST. amend. VI provides in pertinent part: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. . . .”

<sup>29</sup> *Singer*, 380 U.S. at 31.

<sup>30</sup> *Id.* at 36.

<sup>31</sup> *Id.* at 34-35 (citing *United States v. Kobli*, 172 F.2d 919, 924 (3d Cir. 1949)).

<sup>32</sup> *Cahill*, 2003 N.Y. LEXIS 3978, at \*18.

<sup>33</sup> *Id.* at \*18-19.

of Appeals case, *Rohrlich v. Follette*,<sup>34</sup> the court reiterated that “the history of our jurisprudence reveals that *the* fundamental right is the right to a *trial by jury*.”<sup>35</sup> In the sentence immediately following, the *Rohrlich* court concluded “it would [therefore] be incongruous to hold that a defendant, who has been forced to have his guilt determined by a jury, has been deprived of a fundamental right.”<sup>36</sup>

Rohrlich, a non-capital criminal defendant, collaterally challenged his conviction for first degree robbery six years after the fact.<sup>37</sup> He claimed that the trial court’s refusal to honor his request to waive a jury trial deprived him of his state constitutional right to do so.<sup>38</sup> The New York Court of Appeals agreed with Rohrlich and concluded that the trial court did not have the power “to refuse a requested waiver merely because . . . [it] desires to be exempted from the responsibility of passing on the facts.”<sup>39</sup> It also asserted that had this come up on direct appeal after the conviction, and not six years later, the lower court’s actions would have constituted grounds for reversal.<sup>40</sup> However, as the issue was not raised on direct appeal, the denial of Rohrlich’s request to waive a jury trial did not rise to the level of “affect[ing] the integrity of the

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<sup>34</sup> 229 N.E.2d 419 (N.Y. 1967).

<sup>35</sup> *Id.* at \*18 (quoting *Rohrlich*, 229 N.E.2d at 421).

<sup>36</sup> *Rohrlich*, 229 N.E.2d at 421.

<sup>37</sup> *Id.* at 420.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 421.

<sup>40</sup> *Id.*

fact-finding process” and therefore did not violate the state constitution.<sup>41</sup>

Under the original New York State Constitution, a criminal defendant had no right to waive trial by jury at all.<sup>42</sup> As the Court of Appeals expressed in the 1858 case of *Cancemi v. People*,<sup>43</sup> “the trial must be . . . in the mode which the constitution and laws provide, without any essential change. The public officer prosecuting for the people has no authority to consent to such a change, nor has the defendant.”<sup>44</sup> In *Cancemi*, the defendant challenged his conviction on the ground that he “was tried by a tribunal unknown to the common law and the constitution, viz., by eleven jurors and not twelve.”<sup>45</sup> During *Cancemi*’s trial, one of his twelve jurors was excused, and *Cancemi* requested that the trial continue with eleven jurors. The trial court granted the request, and *Cancemi* was duly convicted.<sup>46</sup> The New York Court of Appeals held that the verdict rendered by eleven jurors could not be recognized at law, reasoning:

If a deficiency of one juror might be waived, there appears to be no good reason why a deficiency of eleven might not be; and it is difficult to say why, upon the principle, the entire panel might not be dispensed with, and the trial committed to the court

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<sup>41</sup> *Rohrlich*, 229 N.E.2d at 421-22 (citing *Linkletter v. Walker*, 381 U.S. 618, 639 (1965)).

<sup>42</sup> *Cahill*, 2003 N.Y. LEXIS 3978, at \*18.

<sup>43</sup> 18 N.Y. 128 (N.Y. 1858).

<sup>44</sup> *Id.* at 138.

<sup>45</sup> *Id.* at 131.

<sup>46</sup> *Id.* at 130-31.



alone. It would be a highly dangerous innovation . . . upon the ancient and invaluable institution of trial by jury . . . for the court to allow of any number short of a full panel of twelve jurors, and we think it ought not be tolerated.<sup>47</sup>

The 1912 case of *People v. Cosmo*<sup>48</sup> asserted a similar sentiment when discussing the right to jury trial under the common law: “the citizen is not only entitled to the trial by jury in all cases in which it has been heretofore used, but . . . in criminal cases in which it has been heretofore used it cannot be waived by either party.”<sup>49</sup> The defendant in *Cosmo* claimed that he was denied a constitutional trial by jury because one of the jurors did not technically qualify as a juror since he did not meet the statutorily mandated property requirement. The court disagreed with *Cosmo*, finding that the juror’s failure to meet the technical qualifications did not deprive the defendant of a constitutional trial by jury.<sup>50</sup>

In 1938, the New York State Constitution was amended to provide for the waiver of jury trial by criminal defendants in non-capital cases.<sup>51</sup> However, the amendment specifically retained the prohibition against the waiver of jury trial by capital defendants.<sup>52</sup> The underlying rationale given for this prohibition is that the “right

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<sup>47</sup> *Id.* at 138.

<sup>48</sup> 98 N.E. 408 (N.Y. 1912).

<sup>49</sup> *Id.* at 409.

<sup>50</sup> *Id.* at 408, 411-12.

<sup>51</sup> *People v. Page*, 665 N.E.2d 1041, 1043 (N.Y. 1996).

<sup>52</sup> *Id.*

to a trial by jury [is] so fundamental and so essential to the protection of the defendant's rights that it [cannot] be waived."<sup>53</sup>

The primary distinction between federal and state law is that while the New York State Constitution absolutely prohibits a waiver of jury trial by capital defendants, the federal constitution does not. Furthermore, federal case law provides for the waiver of a trial by jury by criminal defendants charged with serious federal crimes.<sup>54</sup> However, for such a waiver to be valid, the defendant must give his "express, intelligent consent," and both the government and the court must agree to the waiver.<sup>55</sup> Typically, a person may waive a constitutional right without having to secure governmental and/or judicial approval.<sup>56</sup> However, when the defendant seeks to waive a trial by jury, approval is required because of the historical significance of this right. Traditionally, the right to a trial by jury has been viewed as a necessary safeguard to protect defendants from "oppression by the Government."<sup>57</sup> Both the United States Supreme Court and the New York Court of Appeals refer to the importance of the right to a jury trial from English medieval times to present American jurisprudence.<sup>58</sup>

In conclusion, a criminal defendant in a capital case has no right under the New York State Constitution to waive a jury trial.<sup>59</sup>

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<sup>53</sup> *Rohrlich*, 229 N.E.2d at 420.

<sup>54</sup> *Singer*, 380 U.S. at 34.

<sup>55</sup> *Id.* (citing *Adams v. United States ex rel McCann*, 317 U.S. 269, 277-78 (1942)).

<sup>56</sup> *Id.* at 26.

<sup>57</sup> *Id.* at 31.

<sup>58</sup> *Id.* at 27-33; *Cosmo*, 98 N.E. at 409.

<sup>59</sup> *Cahill*, 2003 N.Y. LEXIS 3978, at \*18.

Although such a defendant may be able to waive this fundamental right when charged with a serious federal crime under federal case law, he may do so only with the permission of the state and the court.<sup>60</sup> Thus, the New York constitutional prohibition and the federal case law limitation on the defendant's right to waive a trial by jury, both separately and together, serve to underscore the significance and value our society has ascribed to the right to a jury trial.

*Annette Thompson*

## SEARCH AND SEIZURE

*United States Constitution Amendment IV:*

*The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause. . . .*

*New York Constitution Article I, Section 12:*

*The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause. . . .*