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## **Victim Images Did Not Mar Trial, Justices Rule**

**By Robert Barnes, Washington Post Staff Writer**

The Supreme Court ruled yesterday that family members wearing buttons bearing the image of their slain loved one did not compromise his killer's right to a fair trial.

It was the first time that the justices had considered the issue of spectator conduct in ensuring the accused's right to an impartial trial. That was part of the problem for Mathew Musladin of California, who in 1994 shot and killed his estranged wife's boyfriend, Tom Studer. He had to show that the trial judge's decision to allow Studer's relatives to wear buttons showing a photo of Studer was contrary to clearly established federal law.

"We hold that it was not," Justice Clarence Thomas wrote for the six-member majority.

Three other justices said that was the right outcome for the case but wrote opinions expressing concern about whether courtroom visitors' conduct can impermissibly affect the outcome of a trial.

"One could not seriously deny that allowing spectators at a criminal trial to wear visible buttons with the victim's photo can raise a risk of improper considerations," wrote Justice David H. Souter. "The display is no part of the evidence going to guilt or innocence, and the buttons are at once an appeal for sympathy for the victim (and perhaps for those who wear the buttons) and a call for some response from those who see them."

Justice Anthony M. Kennedy said during oral arguments that even if justices thought the practice compromised Musladin's right to a fair trial, there was not much they could do about it because of the applicable federal law. In his concurring opinion, Kennedy said the courts should look into whether a rule prohibiting such displays should be established.

Members of Studer's family sat in the front row wearing the buttons throughout Musladin's two-week trial; his lawyers objected, but the judge refused to

intervene. Musladin, who admitted killing Studer but said it was in self-defense, was convicted and sentenced to 32 years in prison.

The California Court of Appeals upheld the conviction, saying the buttons had not “branded” Musladin because “the simple photograph of Tom Studer was unlikely to have been taken as a sign of anything other than the normal grief occasioned by the loss of a family member.”

In his federal appeal, however, a panel of the U.S. Court of Appeals for the 9<sup>th</sup> Circuit ruled 2 to 1 in Musladin’s favor. The Antiterrorism and Effective Death Penalty Act passed by Congress in 1996 said federal courts can get involved in such state court cases only if the decision “was contrary to, or involved an unreasonable application of clearly established federal law, as determined by the Supreme Court of the United States.”

But Thomas said the Supreme Court’s only established law about inherently prejudicial actions involves government-sponsored acts, such as requiring defendants to wear prison uniforms or stationing uniformed guards nearby. He said the “spectator conduct to which Musladin objects is an open question in our jurisprudence.”

And it is one still specifically unanswered in the narrowly written decision in the case, *Carey v. Musladin* 05-785.

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