Oklahoma State Bureau of Investigation

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Highlights

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SUPREME COURT OF THE UNITED STATES

Evidence rule that prohibits proof that a third party committed the crime is unconstitutional

Holmes v. South Carolina, No. 04-1327, Decided May 1, 2005

On the morning of New Years Eve, 1989, Mary Stewart, an elderly woman of 86 years old, was beaten, raped, and robbed in her home. She later died of complications from her injuries. Bobby Lee Holmes was originally convicted by a South Carolina jury of murder, first degree criminal sexual conduct, first degree burglary, and robbery. He was sentenced to death, but was granted a new trial upon a post-conviction review.

In his second trial, the prosecution presented extensive forensic

evidence of his guilt. This included, along with other evidence of his guilt: 1) his palm print found just above the door knob on the interior side of the front door of the victim's house; 2) fibers consistent with a sweatshirt he owned were found on the victim's bed; 3) matching blue fibers were found on the victim's nightgown and on his jeans and his underwear; 4) his underwear contained a mixture of DNA from two individuals, and 99.99% of the population other than him and the victim were excluded as contributors to that mixture and; 5) his tank top was found to contain a mixture of his and the victim's blood.

The defendant's primary defense was that the forensic evidence had been contaminated, that certain law enforcement officers were engaged in a plot to frame him, and that another man, Jimmy McCaw White, had committed the crime. In support of this last contention, the defendant sought to introduce testimony of several witnesses concerning White's alleged involvement in the attack. Several witnesses were prepared to testify that White had admitted committing the crime, and spoke of being asked to falsely testify by police officers who spoke of manufacturing evidence. The trial court denied the admission of that evidence. The South Carolina Supreme Court upheld that evidentiary ruling. Both held that where there is strong evidence of a person's guilt, especially where there is strong forensic evidence, the proffered evidence about a third party's alleged guilt does not raise a reasonable inference as to the accused's own innocence.

The United States Supreme Court disagreed, vacated the evidentiary ruling, and remanded the case for further proceedings. The U.S. Supreme Court held that the focus on the prosecution evidence was in error. The focus should be on the probative value of the defense evidence of third-party guilty. The critical inquiry must be on the relevance and probative value of the evidence of third party guilt which is to be measured against any undue or unfair risk of harassment, prejudice, or confusion of the issues it might cause. The Court held that just because the prosecution's evidence, if believed, would provide strong support for a guilty verdict, it did not necessarily follow that evidence of third-party guilt had only a weak logical connection to the central issues of the case. The Court noted that by evaluating the strength of only one party's evidence, no logical conclusion could be reached regarding the strength of contrary evidence offered by the other side to rebut or cast doubt on that evidence. Therefore, an evidentiary ruling based solely upon the strength of prosecution evidence was unconstitutional.

Objectively reasonable basis to believe that an occupant is seriously injured or imminently threatened with injury sufficient to enter premises without a warrant

Brigham City v. Stuart, No. 05-502, Decided May 22, 2005

At about 3 a.m. on July 23, 2000, four Brigham City, Utah police officers responded to a call regarding a loud party at a residence. When they arrived at the house they heard shouting from inside and proceeded down the driveway to investigate. There, they observed two juveniles drinking beer in the backyard. They entered the backyard, and saw an altercation taking place in the kitchen of the home through a back screen door. Four adults were attempting to restrain a juvenile. The juvenile broke free, swung a fist, and hit one of the adults in the face. One of the officers testified that he

observed the victim of the blow spitting blood in a nearby sink. The other adults continued to try and restrain the juvenile, pressing him up against the refrigerator with such force that it began moving across the floor. At this point, an officer opened the screen door and announced the officers' presence. Nobody noticed or responded. The officer then entered the kitchen and again cried out. The altercation eventually stopped.

The officers arrested the adults and charged them with contributing to the delinquency of a minor, disorderly conduct, and intoxication. At the trial court, the defendants filed a motion to suppress all evidence obtained after the officers entered the home, arguing that the warrantless entry violated the Fourth Amendment. The trial court granted the motion, and the Utah Court of Appeals affirmed.

The matter was appealed to the U.S. Supreme Court which reversed the decision. The U.S. Supreme Court agreed with the police officers that an exigent exception existed that made the warrantless entry reasonable and not in violation of the Fourth Amendment. The need to assist persons who are seriously injured or threatened with such injury is justification for what would otherwise be an illegal entry into the home.

The defendants made two arguments to support their position that an exigent circumstance didn't exist. They first argued that the officers were more interested in making arrests than quelling violence. The Supreme Court rejected this argument. The Court held that the action in question is reasonable under the Fourth Amendment, regardless of the individual officer's state of mind, as long as the circumstances, viewed objectively, justify a believe that there is a person who is seriously injured or threatened with such injury.

The defendants then argued that their conduct did not justify an objective belief that serious injury or risk of serious injury was present. They argued that their conduct was not serious enough to justify the officers' intrusion into their home. The Supreme Court held that the entry was plainly reasonable under the circumstances. Under the described circumstances, the officers had an objectively reasonable basis for believing both that the injured adult might need help, and that the violence in the kitchen was just beginning. The Supreme Court noted that nothing in the Fourth Amendment required officers to wait until someone was unconscious or semi-conscious or worse before entering. Nothing in Fourth Amendment law required an officer to act as a boxing or hockey referee, poised to stop a bout only when it becomes too one-sided. The officers job included preventing violence and restoring order, not simply rendering first aid to the victims of such violence. Thus the U.S. Supreme Court reversed the judgment of the trial court suppressing the evidence and remanded the case for further trial.

No First Amendment protection for public employee making statements pursuant to official duties

Ceballos v. Garcetti, No. 04-473, Decided May 30, 2005

Richard Ceballos, a supervising deputy district attorney, was asked by defense counsel to review a case. Defense counsel claimed that the affidavit used by the police to obtain a critical search warrant was inaccurate and asked Ceballos to take a look at the facts and review the case in question. This was a normal and typical part of his job as a supervising deputy district attorney.

After examining the affidavit and visiting the location it described, he determined the affidavit contained serious misrepresentations. Ceballos spoke to the warrant affiant, a deputy sheriff from the Los Angeles County Sheriff's Department, but did not receive a satisfactory explanation for the perceived misrepresentations. He relayed his findings to his supervisors, and followed up by preparing a memo of his findings. The memo explained his concerns and recommended dismissal of the case. After further discussion, and

review, his supervisors decided to proceed with prosecution of the case. In the trial court, the warrant in question was challenged. During that hearing, Ceballos was called by the defense and recounted his suspicions about the affidavit. The trial court rejected the challenge.

Ceballos claimed that after those events, he was subjected to a series of retaliatory employment actions including reassignment from his position to a less popular one, transfer to another courthouse, and denial of a promotion. He eventually filed a lawsuit alleging violation of his First Amendment rights to free speech in the form of retaliation for his speech. The trial court granted summary judgment to the supervisors, finding that the speech in question was not protected under the First Amendment. The Court of Appeals for the Ninth Circuit reversed, finding such protection existed. That decision was appealed to the U.S. Supreme Court.

Public employees do not give up all First Amendment protections as a result of working for the government. At the same time, though they maintain certain First Amendment rights, that protection is not so absolute as to empower them to constitutionalize every employee grievance or complaint. Pursuant to past decisions of the U.S. Supreme Court, two questions guide determination of the level of constitutional protection given public employee speech. The first question is whether the employee spoke as a citizen on a matter of public concern. If the answer is no, the employee has no First Amendment cause of action based upon the employer's reaction to the speech. If the answer is yes, the possibility of a First Amendment claim arises. At that point, the question becomes whether the government employer has adequate justification for treating the employee different from any other member of the general public.

The U.S. Supreme Court held that when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not provide them protection from employer discipline for their communications. The Court reasoned that restricting speech that owes its existence to a public employee's professional responsibilities does not infringe on any liberties the employee might have enjoyed as a private citizen. It simply reflects the exercise of employer control over what the employer itself has commissioned or created. The Supreme Court held that the place or manner of the speech was not the operative issue. It held that what was determinative was relevant is whether the statements were made in the course of performing their official duties. If so, they did not enjoy First Amendment protection. The Supreme Court held that public employees that make public statements outside the course of performing their official duties retain the possibility of First Amendment protection because that is the kind of activity engaged in by citizens that do not work for the government. When, however, a public employee speaks pursuant to employment responsibilities, there is no comparable protected speech by citizens who are not government employees.

OKLAHOMA COURT OF CRIMINAL APPEALS

Failure to provide separate aggravating circumstances forms for each murder count results in new re-sentencing trial

Jones v. State of Oklahoma, 2006 OK CR 17, Decided April 24, 2006

A few days before September 15, 2002, Wesley Jones was asked to kill Mohamed Rahaman, the owner of the Lucky Trip Convenience Store. On

September 15, Jones was driven to the store and identified Rahaman. He walked into the store, waited a few moments, then approached the counter and shot and killed Rahaman. When store customer Sterling Mullis, standing nearby, grabbed him, Jones also shot and killed him.

Jones was eventually captured and tried by a jury. He was convicted of Count I: First Degree Murder (Mohamed Rahaman) and Count II: First Degree Murder (Sterling Mullis). The jury found two aggravating circumstances: 1) that during the commission of the murder, Jones knowingly created a great risk of death to more than one person and, 2) that the murder was committed to prevent lawful arrest or prosecution. The judge sentenced Jones to death on both counts.

At trial, Jones requested a separate aggravating circumstance form for each of the counts of murder. Instead, one aggravating circumstance verdict form was provided for both counts and the court provided a supplemental jury instruction advising the jury that the murder to avoid arrest or prosecution aggravating circumstance could only apply to Count II. Jones objected to this presentation and use of a single aggravating circumstance form and appealed his conviction based upon the same.

The Oklahoma Court of Criminal Appeals agreed and reversed and remanded the death penalty for a new re-sentencing trial. The Court held that as a result of the single verdict form, they could not determine whether the other aggravating circumstance (great risk of death to more than one person) applied to Count I or Count II. The Court refused to speculate on the issue even though the jury recommended death for both counts (which means one of the aggravating circumstances had to apply to each count), which would have logically and necessarily meant that it applied to Count I because the other one could apply only to Count II. As a result of the error, the case was reversed and remanded for re-sentencing to allow a jury to sentence Jones with proper verdict forms.

10th CIRCUIT COURT OF APPEALS

Prisoner's choice to use monitored phone after warning is "consent" to be recorded under Federal Wiretap Act

United States v. Faulkner, 439 F.3d 1221, Decided March 6, 2006

Mario Faulkner, Antonyo Ladarrell Rodgers, and Maurice Anthony Peters were charged in a two count indictment with attempt (Count 1) and conspiracy (Count 2) to murder Shedrick Kimbrel to prevent him from testifying in the federal kidnapping trial of Demetrius R. Hargrove.

Before trial, the defendants moved to suppress recordings of five telephone conversations between Hargrove and others (including themselves) while he was detained pending trial at the Corrections Corporation of America facility at Leavenworth, Kansas. They argued that the recorded conversations should be excluded from evidence under the Federal Wiretap Act. The trial court held that the recordings were admissible under the "consent" exception to the act. The 10th Circuit Court of Appeals agreed and affirmed the decision.

Upon arrival at CCA, detainees receive an orientation manual which advises them that all telephones in the facility are subject to recording and monitoring. During initial orientation, the detainees are told that their phone calls "could be" recorded. They receive an inmate handbook which states that telephone conversations may be monitored and/or recorded for security reasons. Additionally, there are signs posted over each of the general-population phones that announce that the calls are subject to monitoring. Finally, when a call is placed from CCA, a recorded voice on the phone states, "This call is subject to monitoring and recording".

Despite all of these warnings, it is from these phones that Hargrove made calls and spoke with the defendants to conspire to murder Shedrick Kimbrel. They were monitored and recorded, and five of the calls were admitted as evidence at trial. Appellants sought to have the calls suppressed as violating the Federal Wiretap Act. The Federal Wiretap Act generally prohibits the intentional interception of wire communications such as telephone calls, when done without court-ordered approval. There are a number of exceptions. One such exception is when a party to the phone call consents to it being recorded or intercepted.

The 10th Circuit held that Hargrove impliedly consented to the monitoring and recording. The 10th Circuit cited multiple courts that have generally accepted that a prisoner who places a call from an institutional phone with knowledge that the call is subject to being recorded has impliedly consented to the recording. Harmon's co-conspirators complained that they had not consented to the recording, and had no notice of the possibility of them being monitored. The court pointed out that the Federal Wiretap Act requires consent from only one party. They determined such lack of notice therefore irrelevant.

Deliberate ignorance instruction appropriate where facts establish conscious avoidance of knowledge in order to have a defense at trial

United States v. Baz, 442 F.3d 1269, Decided April 6, 2006

Defendant told law enforcement officers that he was transporting computer servers for a friend from New Mexico to Connecticut. A search of the airplane that defendant had rented revealed approximately 476 pounds of marijuana in cardboard boxes. At trial, defendant denied having any knowledge that the boxes contained marijuana as a defense to his prosecution for knowingly possessing with intent to distribute 100 kilograms or more of marijuana .

At trial, the prosecution requested, and was granted a deliberate ignorance jury instruction. Such an instruction is appropriate when a defendant denies knowledge of an operant fact necessary for conviction, but the evidence, direct or circumstantial, shows that the defendant engaged in deliberate acts to avoid actual knowledge of that fact. Such an instruction alerts a jury that a conscious avoidance of knowledge in order to have a defense at trial suggests a sufficient guilty knowledge to satisfy the knowing element of the crime in question.

In affirming the trial court decision, the 10th Circuit Court of Appeals pointed to a number of factors supporting the granting of the deliberate ignorance jury instruction: 1) defendant testified he knew very little about the third party for whom he was transporting the cargo, mistated his first name multiple times, and did not even know his phone number, yet agreed to transport boxes for him cross country, 2) the boxes he transported were not labeled in any way to indicate they contained computer equipment, 3) he possessed no transportation or shipping documents referring to the third party or the cargo, 4) he never asked the third party why he did not ride in the plane with him to Connecticut (even though the passenger seat was empty) or take the boxes with him on the commercial airline flight he took to meet Baz in Connecticut, 5) he claimed to have never once inspected the contents of his cargo at any time, and 6) he appeared extremely nervous during the police search of the plane and gave conflicting statements.

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