

SUPREME COURT OF KENTUCKY

William Mark Bell v. Commonwealth of Kentucky

2005-SC-000963-MR (Ky. Mar. 13, 2008) (modified memorandum opinion) · No. 2005-SC-000963-MR ·
Decided February 21, 2008

SUMMARY

The Kentucky Supreme Court reversed William Mark Bell's convictions for five counts of first-degree sexual abuse and one count of first-degree sodomy. The court held that the trial court improperly coerced the jury through an unwarranted Allen charge and repeated inquiries during deliberations. It also addressed evidentiary and instructional issues likely to recur on retrial, including admission of marijuana-use evidence, undifferentiated jury instructions, and improper testimony vouching for the alleged victim's credibility.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	All sitting
JURISDICTION	Kentucky
DECIDED	February 21, 2008
DOCKET	2005-SC-000963-MR
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Bell appealed as a matter of right from a jury conviction in the Larue Circuit Court for five counts of first-degree sexual abuse and one count of first-degree sodomy.
STANDARD OF REVIEW	Unpreserved errors were reviewed for palpable error under RCr 10.26. Jury-coercion claims were evaluated under the totality of the circumstances. Evidentiary rulings were reviewed under applicable relevance, evidentiary, and admissibility principles.
PRECEDENTIAL VALUE	To be published; memorandum opinion
PARTIES	William Mark Bell v. Commonwealth of Kentucky

TOPICS

- jury instructions
- allen charge
- criminal procedure
- evidence
- appellate procedure

PRACTICE AREAS

criminal procedure

evidence

jury instructions

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court coerced the jury by delivering an Allen charge without a report of deadlock and by repeatedly communicating with the jury and isolating the foreperson during deliberations.
2. Whether testimony concerning Bell's marijuana use was irrelevant and inadmissible under KRE 402 and KRE 404(b).
3. Whether jury instructions on multiple counts failed to distinguish the alleged incidents sufficiently to assure a unanimous verdict and protect against double jeopardy.
4. Whether a social worker could testify that the alleged victim appeared spontaneous, unrehearsed, and consistent with sexual-abuse victims.
5. Whether a teacher's testimony that the alleged victim was very honest constituted improper vouching.

HOLDINGS

1. The trial court's conduct, including delivering an Allen charge without any report that the jury was unable to reach a verdict and questioning the foreperson alone during deliberations, coerced the jury and required reversal.
2. Testimony concerning Bell's marijuana use was irrelevant and improperly admitted because the Commonwealth presented no evidence connecting the marijuana use to the charged offenses; the testimony should be excluded on retrial.
3. When evidence supports multiple counts of the same offense, the jury instructions must distinguish each count by identifying the particular incident through some differentiating fact, such as location or time period. The instructions here improperly failed to distinguish the multiple alleged incidents.
4. A social worker may not vouch for another witness's credibility, express an opinion that a person has been sexually abused, or testify that a child's behavioral traits are indicative of sexual abuse. Testimony that K.T. was spontaneous, unrehearsed, or consistent with sexual-abuse victims was inadmissible.

KEY QUOTATIONS

“The trial court's behavior and actions during the jury's deliberations were improper and unduly coercive.”
(at 10)

“The trial court should never isolate one juror from the rest of the jurors for questioning on a matter which pertains to them all.” (at 10)

“When the province of the jury has been invaded, the validity of the verdict is completely undermined and such error cannot be deemed harmless.” (at 10)

FACTUAL BACKGROUND

K.T., the daughter of Bell's girlfriend, alleged that Bell sexually abused and sodomized her over approximately three years while they lived together. Bell denied the allegations, and the defense challenged K.T.'s credibility based on prior inconsistent abuse allegations and conflicting medical evidence. During deliberations, the trial court delivered an Allen charge without a report that the jury was deadlocked and separately questioned the foreperson in chambers; the jury returned its verdict shortly thereafter.

PROCEDURAL HISTORY

Following a jury trial, the Larue Circuit Court entered judgment on five first-degree sexual-abuse convictions and one first-degree-sodomy conviction and imposed the jury's recommended concurrent sentences. Bell argued that the trial court coerced the jury, improperly admitted evidence, and gave defective instructions. The Supreme Court of Kentucky reversed and remanded for a new trial, addressing additional likely-to-recur errors.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgment of the Larue Circuit Court was reversed and the case was remanded for retrial consistent with the opinion, including avoiding jury coercion, excluding the unconnected marijuana-use testimony, differentiating multiple-count instructions, and excluding improper social-worker and credibility-vouching testimony.

CASES CITED

- Cochran v. Commonwealth, 114 S.W.3d 837 (Ky. 2003)
- Abbott v. Commonwealth, 352 S.W.2d 552, 554 (Ky. 1961)
- Commonwealth v. Mitchell, 943 S.W.2d 625, 628 (Ky. 1997)
- Burnam v. Commonwealth, 283 Ky. 361, 141 S.W.2d 282, 284 (1940)
- Terry v. Commonwealth, 153 S.W.3d 794, 797 (Ky. 2005)
- Miller v. Commonwealth, 77 S.W.3d 566 (Ky. 2002)
- Cannon v. Commonwealth, 291 Ky. 50, 163 S.W.2d 15 (1942)
- Stringer v. Commonwealth, 956 S.W.2d 883, 888 (Ky. 1997)
- Hellstrom v. Commonwealth, 825 S.W.2d 612, 613-614 (Ky. 1992)
- Hall v. Commonwealth, 862 S.W.2d 321, 322-323 (Ky. 1993)
- Brown v. Commonwealth, 812 S.W.2d 502 (Ky. 1991)
- Hester v. Commonwealth, 734 S.W.2d 457 (Ky. 1987)
- Lantrip v. Commonwealth, 713 S.W.2d 816 (Ky. 1986)
- Busse v. Commonwealth, 697 S.W.2d 139 (Ky. 1985)

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