

SUPREME COURT OF WASHINGTON

State v. Lord

165 P.3d 1251 (Wash. 2007) · No. No. 77472-2 · Decided August 30, 2007

SUMMARY

The Washington Supreme Court held that spectators wearing buttons depicting the murder victim did not inherently prejudice the defendant or deprive him of a fair trial. The court also held that the State satisfied its disclosure obligations regarding private dog-handler evidence and that exclusion of the handler's testimony was within the trial court's discretion because the evidence was not relevant. The court affirmed the conviction.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	J.M. Johnson, J.; Gerry L. Alexander, C.J.; Charles W. Johnson, J.; Susan Owens, J.; Mary E. Fairhurst, J.; Bobbe J. Bridge, J.; Barbara A. Madsen, J.; Richard P. Sanders, J.; Tom Chambers, J.
JURISDICTION	Washington
DECIDED	August 30, 2007
DOCKET	No. 77472-2
DISPOSITION	affirmed
PROCEDURAL POSTURE	Lord sought review in the Washington Supreme Court after the Washington Court of Appeals affirmed his conviction following a second trial in Kitsap County Superior Court. The Supreme Court granted review on whether spectator buttons depicting the victim deprived Lord of a fair trial and whether dog-handler evidence was improperly withheld or excluded.
STANDARD OF REVIEW	The court reviewed both the spectator-button ruling and exclusion of the dog-handler testimony for abuse of discretion, reviewing underlying questions of law de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	State of Washington v. Brian Keith Lord

TOPICS

criminal procedure

jury selection

evidence

due process

post-conviction relief

PRACTICE AREAS

criminal procedure

constitutional law

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QUESTIONS PRESENTED

1. Whether spectators' wearing buttons displaying the murder victim's photograph during the first three days of trial created inherent prejudice that denied Lord a fair trial by an impartial jury.
2. Whether the State violated Brady and due process by failing to disclose or further investigate information concerning a private dog handler's search for the victim.
3. Whether the trial court abused its discretion or violated Lord's constitutional right to present a defense by excluding the dog handler's testimony as irrelevant.

HOLDINGS

1. Silent spectator displays of affiliation, including buttons showing a victim's photograph without an express message advocating guilt or innocence, do not automatically create inherent prejudice or an unacceptable risk to the defendant's right to a fair trial. The trial court did not abuse its discretion in allowing the buttons for the first three days of trial.
2. The State did not violate Brady or due process by failing to provide additional details about the private dog handler's search or by failing to conduct a further investigation. The disclosed police report sufficiently informed the defense that a private handler had conducted a bloodhound search, and the additional information was only potentially exculpatory and was not shown to have been in the State's possession.
3. The trial court did not abuse its discretion by excluding the dog-handler testimony as irrelevant because the handler could not establish that the scent trail was made on the day Parker disappeared, and the testimony therefore did not make a material fact more or less probable. The majority further concluded that, even if exclusion were error, it was harmless in light of the overwhelming untainted evidence.

KEY QUOTATIONS

"A simple picture button, a sign of support or sympathy that does not expressly advocate guilt or innocence, does not alone impermissibly bias a jury." (1253)

"When courtroom conduct is challenged as inherently prejudicial to the defendant, we must determine whether "an unacceptable risk is presented of impermissible factors coming into play" to affect the jury." (1256-1257)

"Thus, this court has previously decided where picture buttons and ribbons fall along the spectrum of permissible courtroom behavior." (1259)

"The prosecution has a duty to disclose all evidence in its possession that might be favorable to the defense." (1260)

“A criminal defendant has no constitutional right to have irrelevant evidence admitted.” (1262)

“We affirm the trial and appellate courts and Mr. Lord's conviction.” (1263)

FACTUAL BACKGROUND

During the first three days of Lord's 31-day retrial for the murder of Tracy Parker, spectators wore approximately two-and-one-half-inch buttons displaying an in-life photograph of Parker without any words or message. The trial court initially allowed the buttons but excluded them beginning on the fourth day; Lord did not move for a mistrial or request a curative instruction. Before the retrial, the State disclosed a police report indicating that a private dog handler had searched for Parker, but the trial court excluded the handler's proposed testimony because the scent trail could not be dated more precisely than within a two-week period. The retrial included additional eyewitness and DNA evidence, and the jury convicted Lord.

PROCEDURAL HISTORY

Lord was convicted of aggravated first degree murder and sentenced to death in 1987; the Washington Supreme Court affirmed. On federal habeas review, the Ninth Circuit reversed because trial counsel had failed to present three potentially exculpatory eyewitnesses. After remand, Lord was retried, convicted, and sentenced to life without parole. The Washington Court of Appeals affirmed, and the Washington Supreme Court affirmed that decision and the conviction.

DISPOSITION

affirmed

CASES CITED

- State v. Lord, 117 Wash. 2d 829, 822 P.2d 177 (1991)
- Lord v. Wood, 184 F.3d 1083 (9th Cir. 1999)
- State v. Lord, 128 Wash. App. 216, 114 P.3d 1241 (2005)
- Mayer v. Sto Indus., Inc., 156 Wash. 2d 677, 684, 132 P.3d 115 (2006)
- Cox v. Louisiana, 379 U.S. 559, 562 (1965)
- Holbrook v. Flynn, 475 U.S. 560, 569-72 (1986)
- Estelle v. Williams, 425 U.S. 501, 503-05 (1976)
- In re Pers. Restraint of Woods, 154 Wash. 2d 400, 416-18, 114 P.3d 607 (2005)
- Carey v. Musladin, 549 U.S. 70, 127 S. Ct. 649, 166 L. Ed. 2d 482 (2006)
- Norris v. Risley, 918 F.2d 828, 830 (9th Cir. 1990)
- State v. Pirtle, 127 Wash. 2d 628, 651-53, 904 P.2d 245 (1995)
- State v. Furman, 122 Wash. 2d 440, 452, 858 P.2d 1092 (1993)
- State v. Rice, 110 Wash. 2d 577, 599-600, 757 P.2d 889 (1988)
- State v. Hoffman, 116 Wash. 2d 51, 93, 804 P.2d 577 (1991)
- State v. Hopson, 113 Wash. 2d 273, 284-85, 778 P.2d 1014 (1989)

- State v. Weber, 99 Wash. 2d 158, 165, 659 P.2d 1102 (1983)
- State v. Gilcrist, 91 Wash. 2d 603, 612, 590 P.2d 809 (1979)
- State v. Swenson, 62 Wash. 2d 259, 280, 382 P.2d 614 (1963)
- State v. Wittenbarger, 124 Wash. 2d 467, 475, 880 P.2d 517 (1994)
- Kyles v. Whitley, 514 U.S. 419, 434, 438 (1995)
- Arizona v. Youngblood, 488 U.S. 51, 57-58 (1988)
- In re Pers. Restraint of Benn, 134 Wash. 2d 868, 916-17, 952 P.2d 116 (1998)
- State v. Maupin, 128 Wash. 2d 918, 924, 913 P.2d 808 (1996)
- State v. Hudlow, 99 Wash. 2d 1, 15, 659 P.2d 514 (1983)
- State v. Picard, 90 Wash. App. 890, 899, 954 P.2d 336 (1998)
- State v. Stubsjoen, 48 Wash. App. 139, 147, 738 P.2d 306 (1987)
- State v. Smith, 148 Wash. 2d 122, 139, 59 P.3d 74 (2002)
- State v. Guloy, 104 Wash. 2d 412, 426, 705 P.2d 1182 (1985)
- State v. Bourgeois, 133 Wash. 2d 389, 403, 945 P.2d 1120 (1997)
- State v. Silvers, 70 Wash. 2d 430, 434, 423 P.2d 539 (1967)
- State v. Mode, 57 Wash. 2d 829, 833, 360 P.2d 159 (1961)