

SUPREME COURT OF UTAH

State v. Met

2016 UT 51 (2016) · No. 20140522 · Decided November 21, 2016

SUMMARY

The Utah Supreme Court reviewed Esar Met’s convictions for aggravated murder and child kidnapping. The court rejected his constitutional, evidentiary, suppression, merger, and ineffective-assistance claims, but remanded for clarification or resentencing on the aggravated murder conviction because the district court had incorrectly treated life without parole as the presumptive sentence. The court affirmed the child kidnapping conviction and its life-without-parole sentence.

CASE DETAILS

COURT	Supreme Court of Utah
WRITING FOR THE COURT	Justice Pearce; Chief Justice Durrant; Justice Durham; Justice Himonas; Associate Chief Justice Lee
JURISDICTION	Utah
DECIDED	November 21, 2016
DOCKET	20140522
DISPOSITION	remanded
PROCEDURAL POSTURE	Direct appeal from convictions for aggravated murder and child kidnapping and from the resulting sentences.
STANDARD OF REVIEW	Constitutional and statutory sentencing issues were reviewed for correctness. The denial of suppression of the interrogation transcript was reviewed for correctness because the issue was more law-like than fact-like. Fourth Amendment suppression rulings were reviewed for clear error as to factual findings and correctness as to legal conclusions and application of law to facts. Admission of allegedly gruesome photographs was reviewed for abuse of discretion. Merger was reviewed for correctness. Ineffective-assistance claims raised for the first time on appeal were reviewed for correctness.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Esar Met v. State of Utah

TOPICS

sentencing

suppression of evidence

fourth amendment

evidence

appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

constitutional law

evidence

sentencing

appellate procedure

QUESTIONS PRESENTED

1. Whether Utah Code section 76-3-207.7, governing sentencing for noncapital aggravated murder, violates federal or state constitutional provisions concerning due process, equal protection, cruel and unusual punishment, jury trial, or legislative delegation.
2. Whether the district court improperly ruled that Met's police-interview transcript could be used for impeachment despite Miranda and voluntariness concerns.
3. Whether the warrantless search of Met's apartment violated the Fourth Amendment.
4. Whether the district court improperly admitted two allegedly gruesome photographs under Utah Rule of Evidence 403.
5. Whether Met's child-kidnapping conviction should merge with his aggravated-murder conviction.
6. Whether trial counsel rendered ineffective assistance by withdrawing a mistrial motion based on the State's failure to test and preserve a possible blood spot.
7. Whether the district court improperly sentenced Met based on the mistaken belief that life without parole was the presumptive sentence for noncapital aggravated murder.

HOLDINGS

1. Utah Code section 76-3-207.7 and Utah's dual-track aggravated-murder sentencing structure do not violate the constitutional provisions raised by Met. The statute does not unlawfully delegate legislative power, deny due process, violate equal protection, or require the capital-sentencing protections applicable to death-penalty cases.
2. A defendant need not testify under a categorical Luce rule to preserve a claim that statements were improperly authorized for impeachment, but a defendant who does not testify must otherwise create a record sufficient to permit meaningful appellate review. Because Met made no record showing that he would have testified, what his testimony would have been, or how impeachment would have affected the trial, the court declined to review the merits of the ruling.
3. The warrantless search did not violate the Fourth Amendment. Met's roommate had actual common authority to consent to a search of the basement's main room, and exigent circumstances justified the agents' entry into the basement bathroom after they observed apparent blood while searching for a missing child who might still be alive.
4. The district court properly admitted the two photographs under Utah Rule of Evidence 403. The court abandoned the prior Utah judicial gloss requiring a threshold gruesomeness determination and a heightened balancing test for such photographs.

5. The child-kidnapping conviction did not merge with the aggravated-murder conviction because the detention and movement of the victim were more than slight or incidental, were not inherent in murder, and had independent significance by making the crime easier to commit or less likely to be detected.
6. Even assuming trial counsel performed deficiently by withdrawing the mistrial motion, Met failed to establish prejudice under Strickland because the untested spot was remote from the other evidence and he did not show how testing or preservation would probably have changed the trial's outcome.
7. The district court erred by treating life without parole as the presumptive sentence for noncapital aggravated murder. Section 76-3-207.7 gives the sentencing court discretion to impose either life without parole or an indeterminate prison term of at least twenty years that may be for life.

KEY QUOTATIONS

"We do not impose Luce's bright-line rule requiring a defendant to testify in order to preserve a claim that a district court improperly ruled that testimony was procured in violation of a defendant's Fifth Amendment rights." (¶ 62)

"The blood would have suggested to a reasonable officer that someone, possibly Victim—who at that point had been missing for fewer than thirty-six hours and had disappeared from the apartment complex the officers were searching—had been seriously injured and, if still alive, was likely in need of emergency assistance." (¶ 80)

"All relevant photographs, regardless of their alleged 'gruesomeness,' are subject to the balancing test set out in rule 403." (¶ 89)

"The statute's plain language does not contain the presumption the district court described." (¶ 118)

"Section 76-3-207.7 does not in fact provide for a presumptive life sentence without parole but rather grants the sentencing court reasonable discretion to impose either an indeterminate term of year sentence not less than twenty years or a life sentence without parole." (¶ 122)

FACTUAL BACKGROUND

Seven-year-old Hser Ner Moo disappeared from her Salt Lake City apartment complex and was found dead in the basement bathroom of an apartment shared by Met and several roommates. A warrantless FBI search, consented to by one roommate in the apartment's common areas, revealed blood and the victim's body; additional evidence connected Met to the killing, including the victim's blood on his jacket and injuries consistent with scratching. Met was interrogated without an adequate Miranda warning through an unqualified interpreter and confessed to killing the victim, although he claimed the killing was accidental and denied sexual assault. At trial, the State disclosed that investigators had failed to preserve and further test a possible blood spot upstairs in the apartment.

PROCEDURAL HISTORY

Met was convicted in the Third District Court of Utah of aggravated murder and child kidnapping and was sentenced to concurrent terms of life imprisonment without parole. The district court denied motions concerning sentencing, suppression of apartment-search evidence, use of an interrogation transcript for impeachment,

admission of photographs, merger of convictions, and a mistrial based on untested evidence. The Utah Supreme Court affirmed the convictions and the child-kidnapping sentence but remanded the aggravated-murder sentence for reconsideration because the district court incorrectly treated life without parole as the presumptive sentence.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The district court must permit the original sentencing judge to determine whether the mistaken belief that life without parole was presumptive affected the aggravated-murder sentence. If the error materially affected the decision, the court must vacate that sentence and resentence Met on aggravated murder under Utah Code section 76-3-207.7. If the original judge is unavailable or unable to decide the issue, the newly sitting judge must vacate and resentence on the aggravated-murder conviction. The child-kidnapping conviction and its life-without-parole sentence remain affirmed.

CASES CITED

- State v. Reece, 2015 UT 45, 349 P.3d 712
- State v. Perea, 2013 UT 68, 322 P.3d 624
- State v. Houston, 2015 UT 40, 353 P.3d 55
- Harmelin v. Michigan, 501 U.S. 957 (1991)
- Luce v. United States, 469 U.S. 38 (1984)
- State v. Gentry, 747 P.2d 1032 (Utah 1987)
- Harris v. New York, 401 U.S. 222 (1971)
- Brigham City v. Stuart, 547 U.S. 398 (2006)
- State v. Harding, 2011 UT 78, 282 P.3d 31
- United States v. Matlock, 415 U.S. 164 (1974)
- State v. Lafferty, 749 P.2d 1239 (Utah 1988)
- State v. Bluff, 2002 UT 66, 52 P.3d 1210
- State v. Gulbransen, 2005 UT 7, 106 P.3d 734
- State v. Finlayson, 2000 UT 10, 994 P.2d 1243
- State v. Lee, 2006 UT 5, 128 P.3d 1179
- Strickland v. Washington, 466 U.S. 668 (1984)
- McMann v. Richardson, 397 U.S. 759 (1970)