

SUPREME COURT OF WISCONSIN

State v. Kleser, 2010 WI 88

786 N.W.2d 144 (Wis. 2010) · No. 2007AP2827-CRAC · Decided July 16, 2010

SUMMARY

The Supreme Court of Wisconsin reviewed the reverse-waiver procedure for a juvenile charged in adult criminal court. It held that the juvenile may present admissible contextual evidence at the reverse-waiver hearing but may not use that hearing to contradict the charged offense, and it identified evidentiary and procedural errors in the circuit court's decision to transfer jurisdiction. The court affirmed reversal of the transfer order, reversed the remand for a new reverse-waiver hearing, and remanded the case to adult criminal court for trial.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	David T. Prosser, J.; Ann Walsh Bradley, J.; Shirley S. Abrahamson, C.J.
JURISDICTION	Wisconsin
DECIDED	July 16, 2010
DOCKET	2007AP2827-CRAC
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Wisconsin Supreme Court reviewed a published court of appeals decision that reversed a Milwaukee County Circuit Court order transferring Kleser's case from adult criminal court to juvenile court and remanded for a new reverse-waiver hearing.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo. A reverse-waiver decision and evidentiary rulings are reviewed for an erroneous exercise of discretion, although whether the circuit court applied the correct legal standard is reviewed independently. A discretionary decision is sustained when the circuit court examined the relevant facts, applied the proper legal standard, and reached a rational conclusion a reasonable judge could reach.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	State of Wisconsin v. Corey Kleser

TOPICS

criminal procedure evidence hearsay statutory interpretation appellate procedure

PRACTICE AREAS

criminal law juvenile justice criminal procedure evidence appellate procedure

QUESTIONS PRESENTED

1. What evidence may be introduced at a reverse-waiver hearing under Wis. Stat. § 970.032(2), and may the juvenile introduce evidence supplementing the probable-cause facts?
2. Whether the circuit court erroneously exercised its discretion by substantively relying on Dr. Beyer's inadmissible hearsay testimony.
3. Whether Dr. Beyer's testimony improperly vouched for the truthfulness of Kleser's out-of-court account.
4. Whether the circuit court improperly prevented the State's psychologist from interviewing Kleser about the facts of the offense after the defense presented those facts through its expert.
5. Whether remand for a new reverse-waiver hearing was appropriate.

HOLDINGS

1. A juvenile at a reverse-waiver hearing must be given reasonable latitude to present admissible evidence relevant to the three statutory elements in Wis. Stat. § 970.032(2), including evidence supplementing the probable-cause facts to place the charged offense in context. The juvenile may not use the reverse-waiver hearing to contradict the offense charged; that challenge belongs at the preliminary examination.
2. The Wisconsin Rules of Evidence, including the general prohibition on hearsay, apply at a reverse-waiver hearing unless the statute or context expressly provides otherwise. An expert may not serve as a conduit for inadmissible hearsay by presenting the defendant's account of the offense as substantive fact.
3. The principles prohibiting expert testimony that vouches for a witness's truthfulness apply when an expert implicitly vouches for the truthfulness of an out-of-court declarant who did not testify. Dr. Beyer's testimony improperly vouched for Kleser's account.
4. A juvenile waives the privilege against self-incrimination by placing the juvenile's account of the offense in issue through an expert acting as a surrogate. Principles of fair play then entitle the State to have its expert interview the juvenile about the same facts so that the State can rebut the defense presentation.
5. A new reverse-waiver hearing was not appropriate because Kleser had received a full opportunity to present evidence, the record was adequate for decision, and the errors prejudiced the State rather than Kleser. The case therefore remained in adult criminal court for trial.

KEY QUOTATIONS

“The juvenile must be given reasonable latitude to offer admissible evidence for the purpose of meeting his burden to prove the three elements for reverse waiver under Wis. Stat. § 970.032(2).” (786 N.W.2d at 158-60)

“The rules of evidence, including the general prohibition on hearsay, apply to reverse waiver hearings.” (786 N.W.2d at 162-63)

“The essence of the rule prohibiting vouching testimony is that such testimony invades the province of the fact-finder as the sole determiner of credibility.” (786 N.W.2d at 167)

“Remanding for a new reverse waiver hearing would serve only to give Kleser another opportunity to meet a burden of proof that he failed to meet when given a full, fair opportunity to do so.” (786 N.W.2d at 171)

FACTUAL BACKGROUND

Kleser was fifteen when he was charged in adult court with first-degree intentional homicide after Ronald Adams was found dead from numerous blows and stab wounds. Surveillance showed Adams entering his apartment with Kleser, and Kleser later admitted to police that he struck Adams with a hammer and stabbed him with scissors. Kleser also faced substantial-battery and battery-by-a-prisoner charges arising from an assault while detained. At the reverse-waiver hearing, defense psychologist Dr. Marty Beyer testified about Kleser's account of the homicide and characterized it as a reaction to fear and rage, while the circuit court restricted the State's psychologist from interviewing Kleser about the offense.

PROCEDURAL HISTORY

Kleser, who was fifteen when charged with first-degree intentional homicide, waived his preliminary examination. After a five-day reverse-waiver hearing under Wis. Stat. § 970.032(2), the circuit court transferred jurisdiction to juvenile court. The court of appeals reversed and remanded for a new hearing. The Wisconsin Supreme Court affirmed the reversal of the transfer order, reversed the remand for a new hearing, and remanded the case to adult criminal court for trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The court of appeals decision was affirmed insofar as it reversed the circuit court's order transferring jurisdiction to juvenile court, reversed insofar as it ordered a new reverse-waiver hearing, and the case was remanded to the circuit court for trial in adult criminal court.

CASES CITED

- State v. Kleser, 2009 WI App 43, 316 Wis. 2d 825, 768 N.W.2d 230
- State v. Johnson, 2009 WI 57, 318 Wis. 2d 21, 767 N.W.2d 207
- State v. Verhagen, 198 Wis. 2d 177, 542 N.W.2d 189 (Ct. App. 1995)
- Loy v. Bunderson, 107 Wis. 2d 400, 320 N.W.2d 175 (1982)
- State v. Walters, 2004 WI 18, 269 Wis. 2d 142, 675 N.W.2d 778
- State v. Pharr, 115 Wis. 2d 334, 340 N.W.2d 498 (1983)

- *City of Madison v. DWD*, 2003 WI 76, 262 Wis. 2d 652, 664 N.W.2d 584
- *State v. Hezzie R.*, 219 Wis. 2d 848, 580 N.W.2d 660 (1998)
- *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110
- *State v. Williams*, 198 Wis. 2d 516, 544 N.W.2d 406 (1996)
- *Bailey v. State*, 65 Wis. 2d 331, 222 N.W.2d 871 (1974)
- *Wittke v. State ex rel. Smith*, 80 Wis. 2d 332, 259 N.W.2d 515 (1977)
- *State v. Dominic E.W.*, 218 Wis. 2d 52, 579 N.W.2d 282 (Ct. App. 1998)
- *State v. Verhagen*, 198 Wis. 2d 177, 542 N.W.2d 189 (Ct. App. 1995)
- *T.R.B. v. State*, 109 Wis. 2d 179, 325 N.W.2d 329 (1982)
- *Kent v. United States*, 383 U.S. 541, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966)
- *State v. Weber*, 174 Wis. 2d 98, 496 N.W.2d 762 (Ct. App. 1993)
- *State v. Watson*, 227 Wis. 2d 167, 595 N.W.2d 403 (1999)
- *State v. Coogan*, 154 Wis. 2d 387, 453 N.W.2d 186 (Ct. App. 1990)
- *State v. Lindell*, 2001 WI 108, 245 Wis. 2d 689, 629 N.W.2d 223
- *State v. Dyess*, 124 Wis. 2d 525, 370 N.W.2d 222 (1985)
- *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- *State v. Haseltine*, 120 Wis. 2d 92, 352 N.W.2d 673 (Ct. App. 1984)
- *State v. Jensen*, 147 Wis. 2d 240, 432 N.W.2d 913 (1988)
- *State v. Davis*, 2002 WI 75, 254 Wis. 2d 1, 645 N.W.2d 913
- *State v. Briand*, 130 N.H. 650, 547 A.2d 235 (1988)
- *Buchanan v. Kentucky*, 483 U.S. 402, 107 S. Ct. 2906, 97 L. Ed. 2d 336 (1987)
- *Estelle v. Smith*, 451 U.S. 454, 101 S. Ct. 1866, 68 L. Ed. 2d 359 (1981)
- *Wurtz v. Fleischman*, 97 Wis. 2d 100, 293 N.W.2d 155 (1980)
- *State v. Rewolinski*, 159 Wis. 2d 1, 464 N.W.2d 401 (1990)
- *Roth v. LaFarge School District Board of Canvassers*, 2004 WI 6, 268 Wis. 2d 335, 677 N.W.2d 599

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