

SUPREME COURT OF SOUTH DAKOTA

State v. Tiegen

2008 SD 6 (2008) · No. No. 23759 · Decided January 16, 2008

SUMMARY

The Supreme Court of South Dakota affirmed Tory Tiegen’s conviction for kidnapping Troy Klug and his 100-year sentence. The court rejected claims involving speedy trial, the admission of jailhouse notes obtained by a co-defendant, admission of co-conspirator statements, confrontation rights, and proportionality of the sentence, although it found one co-conspirator statement was improperly admitted and harmless.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Konenkamp, Justice; Gilbertson, Chief Justice; Sabers, Justice; Zinter, Justice; Meierhenry, Justice
JURISDICTION	South Dakota
DECIDED	January 16, 2008
DOCKET	No. 23759
DISPOSITION	affirmed
PROCEDURAL POSTURE	Tory Tiegen appealed his conviction for kidnapping and 100-year sentence, challenging the denial of his speedy-trial claim, admission of jailhouse notes and co-conspirator statements, admission of statements from an incompetent co-conspirator, denial of confrontation rights, and the proportionality of his sentence.
STANDARD OF REVIEW	Constitutional-violation claims and suppression decisions are reviewed de novo; factual findings from suppression hearings are reviewed for clear error, with deference to credibility determinations. The admissibility of co-conspirator statements under SDCL 19-16-3(5) is reviewed for clear error. A gross-disproportionality challenge to a sentence is reviewed under State v. Bonner.
PRECEDENTIAL VALUE	published opinion
PARTIES	Tory Tiegen v. State of South Dakota

TOPICS

speedy trial

right to counsel

hearsay

sixth amendment

sentencing

PRACTICE AREAS

criminal procedure

evidence

constitutional law

sentencing

appellate procedure

QUESTIONS PRESENTED

1. Whether the delay between Tiegen's arrest and trial violated the federal or South Dakota constitutional right to a speedy trial.
2. Whether Tiegen's Sixth Amendment right to counsel was violated when inmate Tell Cook obtained incriminating jailhouse notes from him.
3. Whether statements by co-conspirator Cynthia Kindall were admissible under SDCL 19-16-3(5) as statements made during and in furtherance of the conspiracy.
4. Whether Kindall's incompetency to stand trial prevented her from being a co-conspirator whose statements could be admitted under the co-conspirator exception.
5. Whether admission of Kindall's unavailable out-of-court statements violated Tiegen's Sixth Amendment right to confront and cross-examine witnesses.
6. Whether Tiegen's 100-year sentence was grossly disproportionate because the sentencing court considered evidence suggesting that he killed Klug and concealed his body.

HOLDINGS

1. Tiegen's constitutional right to a speedy trial was not violated because the delay from arrest to trial was less than one year, was not presumptively prejudicial, and Tiegen failed to show that the delay impaired his defense.
2. Admission of Tiegen's jailhouse notes did not violate his Sixth Amendment right to counsel because Cook was not acting as a law-enforcement agent and investigators neither directed nor controlled Cook's questioning or communications with Tiegen.
3. The circuit court did not commit reversible error in admitting Kindall's challenged statements under SDCL 19-16-3(5). One statement was improperly admitted because it merely explained the alleged debt and did not further the conspiracy, but any error was harmless beyond a reasonable doubt in light of the overwhelming evidence of guilt.
4. Kindall's incompetency to stand trial did not establish that she was incapable of conspiring with Tiegen or that her statements were inadmissible under the co-conspirator exception.
5. Admission of Kindall's statements did not violate Tiegen's Sixth Amendment confrontation right because statements made by a co-conspirator in furtherance of a conspiracy are nontestimonial, even when the declarant is unavailable.
6. Tiegen's 100-year sentence was not grossly disproportionate because it was within the statutory maximum for kidnapping and the sentencing court could consider uncharged conduct and the probable consequences of the offense.

KEY QUOTATIONS

“Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance.” (¶17)

“As long as the police do nothing to direct or control or involve themselves in the questioning of a person in custody by a private citizen, such questioning does not violate the fifth or sixth amendments.” (¶25)

“To satisfy the test of admissibility, there need only be a showing that there is some reasonable basis for concluding that the statement was made in furtherance of [the] conspiracy.” (¶27)

“Incompetency to stand trial and incapacity to commit a crime because of insanity are, of course, distinct and separate issues.” (¶41)

FACTUAL BACKGROUND

Troy Klug disappeared after going to Cynthia Kindall's home to obtain drugs. Witnesses testified that Tiegen and Kindall possessed Klug, who was bound and placed in a vehicle trunk, later moved him to a toolbox, and discussed transporting or concealing him. Evidence also showed efforts to clean Kindall's vehicle and other items after Klug's disappearance. Jailhouse notes written by Tiegen to fellow inmate Tell Cook contained incriminating statements concerning Klug's disappearance and concealment.

PROCEDURAL HISTORY

Tiegen was arrested on July 23, 2004, indicted for kidnapping and conspiracy to commit kidnapping, and tried separately from Cynthia Kindall after the circuit court granted severance. The conspiracy charge was later dismissed. After a jury convicted Tiegen of kidnapping, the circuit court imposed a 100-year sentence. The Supreme Court of South Dakota affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Dillon, 2001 SD 97, ¶12, 632 N.W.2d 37, 43
- State v. Stanga, 2000 SD 129, ¶8, 617 N.W.2d 486, 488
- State v. Stevens, 2007 SD 54, ¶5, 734 N.W.2d 344, 346
- State v. Hess, 2004 SD 60, ¶9, 680 N.W.2d 314, 319
- State v. Herrmann, 2002 SD 119, ¶9, 652 N.W.2d 725, 728
- State v. Tofani, 2006 SD 63, ¶24, 719 N.W.2d 391, 398
- State v. Bonner, 1998 SD 30, ¶17, 577 N.W.2d 575, 580
- State v. Jones, 521 N.W.2d 662, 668-70 (S.D. 1994)
- Barker v. Wingo, 407 U.S. 514, 530 (1972)
- State v. Karlen, 1999 SD 12, ¶¶20-21, 589 N.W.2d 594, 599

- State v. Goodroad, 521 N.W.2d 433, 437 (S.D. 1994)
- State v. Stock, 361 N.W.2d 280, 284 (S.D. 1985)
- State v. Holiday, 335 N.W.2d 332, 334-35 (S.D. 1983)
- State v. Krana, 272 N.W.2d 75, 77-78 (S.D. 1978)
- State v. Black Feather, 249 N.W.2d 261, 264 (S.D. 1976)
- State v. Pickering, 87 S.D. 331, 338, 207 N.W.2d 511, 515 (1973)
- People v. Holtzer, 660 N.W.2d 405, 414 (Mich. Ct. App. 2003)
- United States v. Titlbach, 339 F.3d 692, 699 (8th Cir. 2003)
- Main v. Moulton, 474 U.S. 159, 176 (1985)
- State v. Lockstedt, 2005 SD 47, ¶14, 695 N.W.2d 718, 722
- State v. Guthrie, 2001 SD 61, ¶56, 627 N.W.2d 401, 423
- United States v. Surridge, 687 F.2d 250, 255 (8th Cir. 1982)
- State v. Stavig, 416 N.W.2d 39, 41 (S.D. 1987)
- State v. Smith, 353 N.W.2d 338, 343-44 (S.D. 1984)
- United States v. Beckman, 222 F.3d 512, 523 (8th Cir. 2000)
- United States v. Oseby, 148 F.3d 1016, 1023 (8th Cir. 1998)
- United States v. Handy, 668 F.2d 407, 408 (8th Cir. 1982)
- United States v. Miller, 664 F.2d 94, 98 (5th Cir. 1981)
- United States v. James, 510 F.2d 546, 549 (5th Cir. 1975)
- United States v. Overshon, 494 F.2d 894, 898-99 (8th Cir. 1974)
- United States v. Halpin, 374 F.2d 493, 495-96 (7th Cir. 1967)
- State v. Jones, 406 N.W.2d 366, 369 (S.D. 1987)
- State v. Rough Surface, 440 N.W.2d 746, 757 (S.D. 1989)
- State v. Hays, 1999 SD 89, ¶16, 598 N.W.2d 200, 203
- Crawford v. Washington, 541 U.S. 36, 51-56 (2004)
- White v. Illinois, 502 U.S. 346, 365 (1992) (Thomas, J., concurring in part and concurring in judgment)
- United States v. Inadi, 475 U.S. 387, 394-96 (1986)
- United States v. Ramirez, 479 F.3d 1229, 1249 (10th Cir. 2007)
- United States v. Sullivan, 455 F.3d 248, 258 (4th Cir. 2006)
- United States v. Allen, 425 F.3d 1231, 1235 (9th Cir. 2005)
- McKinney, 2005 SD 74, ¶17, 699 N.W.2d 465-66
- State v. McCary, 2004 SD 18, ¶8, 676 N.W.2d 116, 120
- State v. Arabie, 2003 SD 57, ¶21, 663 N.W.2d 250, 257