

SUPREME COURT OF ALABAMA

Ex parte Michael Brown (In re Michael Brown v. State of Alabama)

11 So. 3d 933 (Ala. 2008) · No. 1061663 · Decided October 3, 2008

SUMMARY

The Supreme Court of Alabama affirmed Michael Brown’s capital-murder conviction and death sentence. The court assumed, without deciding, that admitting a detective’s testimony about an unavailable witness’s out-of-court statements may have been erroneous under the Confrontation Clause and the doctrine of curative admissibility. Because Brown did not object at trial and the evidence of guilt was overwhelming, the court held that any error did not constitute plain error.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Lyons, Justice; Lyons; See; Woodall; Stuart; Smith; Bolin; Parker; Murdock
JURISDICTION	Alabama
DECIDED	October 3, 2008
DOCKET	1061663
DISPOSITION	affirmed
PROCEDURAL POSTURE	Brown petitioned the Supreme Court of Alabama for certiorari review of the Court of Criminal Appeals' affirmance of his capital-murder convictions and death sentence. The Supreme Court granted review on whether testimonial out-of-court statements were admissible under curative admissibility, but affirmed without deciding that merits issue because any error did not constitute plain error.
STANDARD OF REVIEW	Pure questions of law in criminal cases are reviewed de novo. Because Brown failed to object to the challenged testimony, the Supreme Court reviewed for plain error under Rule 45A, Ala. R. App. P.; plain-error review is stricter than review of preserved claims.
PRECEDENTIAL VALUE	Published opinion; precedential authority of the Supreme Court of Alabama.
PARTIES	Michael Brown v. State of Alabama

TOPICS

criminal procedure

suppression of evidence

sixth amendment

appellate procedure

harmless error

PRACTICE AREAS

criminal procedure

evidence

constitutional criminal procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the admission of Robert Smith's testimonial out-of-court statements violated Brown's constitutional right to confront witnesses under Crawford v. Washington.
2. Whether the Court of Criminal Appeals correctly applied the doctrine of curative admissibility to permit testimony about Smith's statements after defense counsel's cross-examination of the investigating detective.
3. Whether, assuming the challenged testimony was inadmissible, its admission constituted plain error requiring reversal.

HOLDINGS

1. The court did not decide whether the challenged testimony was admissible under Crawford or the doctrine of curative admissibility because, even assuming it was inadmissible, the error could not constitute plain error.
2. Even assuming that the admission of the detective's testimony concerning Smith's statements was erroneous, it was harmless and did not rise to the level of plain error.

KEY QUOTATIONS

"The plain-error doctrine applies only if the error is 'particularly egregious' and if it 'seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.'" (11 So. 3d at 936)

"Therefore, under all the circumstances, any error in the admission of Hagler's testimony regarding Smith's statements would be harmless and would not constitute plain error." (11 So. 3d at 940-941)

FACTUAL BACKGROUND

Betty Kirkpatrick was found strangled and with her throat cut in her mobile home; her purse and gold Ford Thunderbird were missing. Multiple witnesses testified that Brown drove the Thunderbird and admitted killing Kirkpatrick, including statements that he attempted to choke her, cut her throat with a kitchen knife, and wrapped the knife handle with a paper towel. Forensic testing found blood on the paper towel consistent with Brown's blood, although Brown could not be excluded as the donor. At trial, a detective also testified on redirect about Robert Smith's out-of-court statements denying involvement and implicating Brown.

PROCEDURAL HISTORY

Brown was convicted in the trial court of two counts of capital murder and sentenced to death after the jury recommended death by an 11-1 vote. The Alabama Court of Criminal Appeals unanimously affirmed the conviction and sentence. The Supreme Court of Alabama granted certiorari to review the admission of

statements made by Robert Smith, but held that, even assuming the statements were inadmissible, their admission was harmless and did not constitute plain error.

DISPOSITION

affirmed

CASES CITED

- Brown v. State, [Ms. CR-04-0293, June 29, 2007] ____ So. 3d ____ (Ala. Crim. App. 2007)
- Ex parte Morrow, 915 So. 2d 539, 541 (Ala. 2004)
- Ex parte Key, 890 So. 2d 1056, 1059 (Ala. 2003)
- United States v. Young, 470 U.S. 1, 15 (1985)
- Ex parte Price, 725 So. 2d 1063, 1072 (Ala. 1998)
- Hall v. State, 820 So. 2d 113, 121-22 (Ala. Crim. App. 1999)
- Ex parte Walker, 972 So. 2d 737, 742-43 (Ala. 2007)
- Ex parte D.L.H., 806 So. 2d 1190, 1193 (Ala. 2001)
- Varner v. State, 497 So. 2d 1135, 1138 (Ala. Crim. App. 1986)
- Crawford v. Washington, 541 U.S. 36, 59, 68-69 (2004)
- United States v. Frady, 456 U.S. 152, 163 & n.14 (1982)
- United States v. Atkinson, 297 U.S. 157, 160 (1936)
- Ex parte Hodges, 856 So. 2d 936, 947-48 (Ala. 2003)
- Ex parte Bryant, 951 So. 2d 724, 727 (Ala. 2006)
- Hyde v. State, 778 So. 2d 199, 209 (Ala. Crim. App. 2000)
- Ex parte T.D.T., 745 So. 2d 899, 906 (Ala. 1999)