

SUPREME COURT OF DELAWARE

Capano v. State

781 A.2d 556 (Del. 2001) · No. Nos. 110 and 149, 1999 · Decided August 10, 2001

SUMMARY

The Supreme Court of Delaware reviewed Thomas J. Capano's convictions for first-degree murder and his death sentence. The court addressed evidentiary issues, lesser-included-offense instructions, allocution limits, juror misconduct, alleged constitutional violations, and the constitutionality and proportionality of Delaware's death penalty statute. The court found no reversible error, affirmed the Superior Court's judgment, and remanded for the setting of a new execution date.

CASE DETAILS

COURT	Supreme Court of Delaware
WRITING FOR THE COURT	Veasey, Chief Justice; Walsh, Justice; Holland, Justice; Steele, Justice; Chandler, Chancellor
JURISDICTION	Delaware
DECIDED	August 10, 2001
DOCKET	Nos. 110 and 149, 1999
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from a first-degree murder conviction and death sentence entered by the Delaware Superior Court.
STANDARD OF REVIEW	Evidentiary rulings are reviewed for abuse of discretion; unpreserved evidentiary claims are reviewed for plain error; constitutional claims are reviewed de novo; harmless-error analysis considers the entire record and whether the error substantially prejudiced the defense.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Delaware, decided en banc.
PARTIES	Thomas J. Capano v. State of Delaware

TOPICS

- hearsay
- evidence
- criminal procedure
- sentencing
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether references to a lie detector or polygraph test and related testimony by Gerry Capano's attorney required reversal or a mistrial.
2. Whether testimony recounting Fahey's statements to psychotherapists and friends was admissible under the state-of-mind and medical-diagnosis-or-treatment hearsay exceptions.
3. Whether admission of Fahey's statements violated the Confrontation Clause.
4. Whether the trial court erred by refusing to instruct the jury on lesser-included offenses.
5. Whether the trial court improperly limited Capano's allocution during the penalty phase.
6. Whether Delaware's death-penalty statute was unconstitutional because the jury's penalty-phase findings or recommendation were not unanimous.
7. Whether the remaining asserted errors involving character evidence, recusal, juror misconduct, post-arrest silence, Brady material, cross-examination, witness opinions, presence at conferences, impeachment evidence, aggravating-circumstance instructions, and proportionality review required reversal.

HOLDINGS

1. A mistrial is not automatically required whenever a witness refers to a polygraph. A mistrial is required only when the reference raises an inference about the result that substantially prejudices the defendant's case. The unsolicited reference by Gerry Capano was improper, but the trial court's striking of the testimony and immediate limiting instruction neutralized the prejudice.
2. References to a threat or possibility of a polygraph test are not categorically excluded, but they require enhanced scrutiny beyond ordinary Rule 403 analysis. The trial court must determine that the reference is necessary, minimally prejudicial, and that no suitable alternative evidence exists, and must give a clear cautionary instruction. The admission of the reference in this case was error but harmless.
3. A lawyer's testimony may improperly vouch for another witness when it directly or indirectly conveys an opinion that the witness is truthful. The testimony of Gerry Capano's attorney, including his warnings to tell the truth and his professional credentials, created a substantial risk of improper vouching. The error was harmless in light of the entire record.
4. An evidentiary error is harmless when the evidence excluding the improperly admitted evidence is sufficient to sustain the conviction and the error did not substantially prejudice the defense. The polygraph references and improper vouching did not warrant reversal.
5. D.R.E. 803(3) permits statements reflecting a declarant's then-existing emotional or mental state, such as fear, distress, or an intent to end a relationship, but does not permit statements of memory or belief offered to prove the facts remembered or believed. Fahey's statements describing her emotional state and intent were admissible; descriptions of specific events and opinions about Capano were not admissible under Rule 803(3).

6. Statements describing a victim's fear of the defendant may be admitted during the State's case-in-chief when they are sufficiently relevant to prove an element of the prima facie case, including motive, intent, or premeditation. They need not always be reserved for rebuttal.
7. D.R.E. 803(3), as applied to admissible statements concerning a declarant's emotional state, is a firmly rooted hearsay exception for Confrontation Clause purposes. Such statements therefore satisfy the Confrontation Clause without a separate particularized-reliability showing.
8. Although testimony recounting Fahey's specific memories and factual allegations was improperly admitted under D.R.E. 803(3), the error was harmless beyond a reasonable doubt because the evidence was cumulative of extensive evidence admitted by stipulation and had minimal additional prejudicial impact.
9. Statements made by a patient to a qualified psychiatrist or psychologist during diagnosis or mental-health treatment may be admissible under D.R.E. 803(4), provided the proponent establishes the required reliability foundation and the trial court conducts the required prejudice balancing.
10. Even if D.R.E. 803(4) was not historically firmly rooted as applied to psychotherapists in Delaware, the statements admitted here satisfied the Confrontation Clause because their circumstances supplied particularized guarantees of trustworthiness.
11. A trial court need not instruct on lesser-included offenses when the evidence provides no rational basis for acquitting on the charged offense and convicting on a lesser offense. The evidence here supported either first-degree murder or outright acquittal, so no lesser-included-offense instructions were required and their omission did not violate due process.
12. The trial court erroneously restricted Capano's penalty-phase allocution by preventing him from discussing or arguing from facts already in the record. Because the issue was unpreserved, it was reviewed for plain error, and the error was harmless because Capano was not unduly prejudiced.
13. Delaware's death-penalty statute is constitutional even though the trial judge imposed death after a unanimous guilt finding and a less-than-unanimous jury recommendation in the penalty phase. The statute, as applied to Capano, did not violate the right to a jury trial or due process.

KEY QUOTATIONS

"Accordingly, we do not pronounce today a per se exclusionary rule prohibiting any reference to a lie detector test, but we caution that one cannot rely on a broad reading of Whalen." (at 593-594)

"Declarations of intention, casting light upon the future, have been sharply distinguished from declarations of memory pointing backwards to the past." (at 608)

"We have concluded that the better-reasoned view is that statements to either a psychiatrist ... and a psychologist ... may be admissible under D.R.E. 803(4)." (at 624)

FACTUAL BACKGROUND

Thomas J. Capano was convicted of murdering Anne Marie Fahey, who disappeared after meeting Capano on June 27, 1996. The State presented circumstantial evidence of motive, planning, concealment, and disposal of

Fahey's body, including testimony from Capano's brothers and evidence concerning a cooler, firearms, and a boat. Capano admitted concealing Fahey's death and disposing of her body but claimed that Fahey had been accidentally shot by Deborah MacIntyre.

PROCEDURAL HISTORY

Capano was indicted in December 1997, tried in Superior Court beginning in October 1998, convicted by a jury of first-degree murder, and sentenced to death by the trial judge on March 16, 1999, after a separate penalty hearing. He raised sixteen grounds for reversal in the direct appeal. The Supreme Court of Delaware found no reversible error, affirmed the judgment, and remanded for the setting of a new execution date.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The judgment of the Superior Court was affirmed, and the matter was remanded for the setting of a new execution date.

CASES CITED

- Whalen v. State
- Graves v. State
- Van Arsdall
- Shepard v. United States
- United States v. Brown
- State v. Porter
- State v. Wood
- United States v. Iron Shell
- Derrickson
- Lilly

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