

SUPREME COURT OF CALIFORNIA

People v. Howard

42 Cal. 4th 1000, 175 P.3d 264, 71 Cal. Rptr. 3d 264 (Cal. 2008) · No. S029489 · Decided February 4, 2008

SUMMARY

The Supreme Court of California affirmed Alphonso Howard’s convictions and death sentence for the murder, rape, and forcible lewd act upon an 11-year-old child. The opinion addresses challenges concerning notice of aggravating evidence and alleged discriminatory peremptory challenges under Wheeler and Batson, along with the evidence supporting the convictions and penalty.

CASE DETAILS

COURT	Supreme Court of California
WRITING FOR THE COURT	Corrigan, J.; George, C.J.; Baxter, J.; Werdegar, J.; Chin, J.; Kennard, J.; Moreno, J.
JURISDICTION	California
DECIDED	February 4, 2008
DOCKET	S029489
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from a judgment imposing the death penalty after a jury convicted defendant of first degree murder, rape, and a forcible lewd act upon a child under 14, and found firearm-use, bodily-injury, and special-circumstance allegations true.
STANDARD OF REVIEW	Independent review of the record for the prima facie showing in the first stage of a Wheeler/Batson claim; abuse-of-discretion review for admission of photographs and continuation of penalty deliberations; substantial-evidence review of the trial court's ultimate Wheeler/Batson findings; harmless-error review where applicable; de novo review of constitutional claims.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of California
PARTIES	Alphonso Howard v. The People

TOPICS

- sentencing
- criminal procedure
- jury selection
- evidence
- cruel and unusual punishment

PRACTICE AREAS

criminal law

capital punishment

criminal procedure

evidence

jury selection

constitutional law

QUESTIONS PRESENTED

1. Whether notice of aggravating evidence involving jailhouse criminal activity was legally inadequate or constitutionally prejudicial.
2. Whether the prosecutor exercised peremptory challenges on the basis of race or ethnicity in violation of Wheeler and Batson.
3. Whether the trial court properly instructed the jury on flight, accomplice testimony, motive, consciousness of guilt, alternative murder theories, lesser included offenses, and reasonable doubt.
4. Whether the trial court abused its discretion or violated due process by admitting a larger autopsy photograph.
5. Whether the penalty-phase instructions concerning prior criminal activity and possession of a deadly weapon were constitutionally deficient.
6. Whether the trial court coerced the penalty-phase jury by continuing deliberations, retaining the foreperson, and inquiring into numerical vote divisions.
7. Whether California's death-penalty statute was unconstitutional under the federal and state Constitutions.
8. Whether the death sentence was intracase disproportionate or cumulatively prejudiced by trial error.

HOLDINGS

1. A defendant who fails to object to the adequacy of timely notice of penalty-phase aggravating evidence forfeits the claim on appeal, and notice provided more than a month before the penalty trial afforded sufficient time to prepare a defense.
2. The defendant failed to make a prima facie showing that the prosecutor's peremptory challenges were motivated by discriminatory purpose; the trial court therefore properly denied the Wheeler/Batson motions.
3. The trial court properly gave the flight instruction because the jury could reasonably infer that Howard's departure after discovery of the body reflected consciousness of guilt; the instruction was neither impermissibly argumentative nor unconstitutional.
4. Any failure to give accomplice-testimony instructions concerning Kimbell was harmless because Kimbell's testimony did not establish Howard's guilt and the independent evidence against Howard was overwhelming.
5. Admission of the larger autopsy photograph was within the trial court's discretion because its probative value concerning the disputed extent of the victim's injuries was not substantially outweighed by undue prejudice.
6. The penalty-phase instructions adequately conveyed the reasonable-doubt burden for prior criminal activity, and the failure to redefine reasonable doubt was harmless. The instruction concerning possession of a deadly weapon in jail was also constitutionally adequate.

7. The trial court did not abuse its discretion or coerce the penalty-phase jury by retaining the foreperson, excusing another juror, continuing deliberations, and asking about numerical vote divisions.
8. California's death-penalty statute was constitutional as applied, and Howard's death sentence was not intracase disproportionate or otherwise constitutionally infirm.

KEY QUOTATIONS

“Whatever use comparative juror analysis might have in a third-stage case for determining whether a prosecutor's proffered justifications for his strikes are pretextual, it has little or no use where the analysis does not hinge on the prosecution's actual proffered rationales, and we thus decline to engage in a comparative analysis here.” (42 Cal. 4th at 1020)

“The instruction informs the jury that it may consider flight in connection with all other proven facts, giving the fact of flight the weight the jury deems appropriate.” (42 Cal. 4th at 1022)

“He raped an 11-year-old child, bound her, and shot her to death at point-blank range.” (42 Cal. 4th at 1034)

FACTUAL BACKGROUND

Eleven-year-old Wendy Bustamante disappeared from her Compton neighborhood and was later found dead in a vacant garage near Howard's room. Howard gave several inconsistent statements to police, eventually admitting that he had sexual intercourse with Wendy, shot her, concealed her body, and disposed of the weapon, although he characterized the shooting as accidental. Physical evidence included Howard's DNA and fingerprints, Wendy's necklace in Howard's dresser, and evidence consistent with a close-range gunshot and sexual assault. The penalty phase also included evidence of Howard's prior and jailhouse assaults, burglary, robbery, attempted extortion, and possession of a makeshift weapon.

PROCEDURAL HISTORY

A jury convicted Howard and returned a death verdict after the guilt and penalty phases of trial. The California Supreme Court reviewed the judgment on direct appeal and considered numerous pretrial, guilt-phase, penalty-phase, constitutional, and cumulative-error claims. The court affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- Batson v. Kentucky, 476 U.S. 79, 97, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986)
- People v. Wheeler, 22 Cal. 3d 258, 276-277, 148 Cal. Rptr. 890, 583 P.2d 748 (1978)
- Johnson v. California, 545 U.S. 162, 168, 125 S. Ct. 2410, 162 L. Ed. 2d 129 (2005)
- People v. Bonilla, 41 Cal. 4th 313, 341-350, 60 Cal. Rptr. 3d 209, 160 P.3d 84 (2007)
- People v. Medina, 11 Cal. 4th 694, 771, 47 Cal. Rptr. 2d 165, 906 P.2d 2 (1995)
- People v. Smith, 30 Cal. 4th 581, 619-620, 134 Cal. Rptr. 2d 1, 68 P.3d 302 (2003)

- People v. Visciotti, 2 Cal. 4th 1, 60, 5 Cal. Rptr. 2d 495, 825 P.2d 388 (1992)
- People v. Mendoza, 24 Cal. 4th 130, 180-181, 99 Cal. Rptr. 2d 485, 6 P.3d 150 (2000)
- People v. Zambrano, 41 Cal. 4th 1082, 1149-1150, 63 Cal. Rptr. 3d 297, 163 P.3d 4 (2007)
- People v. Holt, 15 Cal. 4th 619, 685, 63 Cal. Rptr. 2d 782, 937 P.2d 213 (1997)
- People v. Chatman, 38 Cal. 4th 344, 408, 42 Cal. Rptr. 3d 621, 133 P.3d 534 (2006)
- People v. Gray, 37 Cal. 4th 168, 235, 33 Cal. Rptr. 3d 451, 118 P.3d 496 (2005)
- People v. Pride, 3 Cal. 4th 195, 265, 10 Cal. Rptr. 2d 636, 833 P.2d 643 (1992)
- People v. Proctor, 4 Cal. 4th 499, 538-539, 15 Cal. Rptr. 2d 340, 842 P.2d 1100 (1992)
- Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000)
- Ring v. Arizona, 536 U.S. 584, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002)
- People v. Dickey, 35 Cal. 4th 884, 931, 28 Cal. Rptr. 3d 647, 111 P.3d 921 (2005)
- People v. Leonard, 40 Cal. 4th 1370, 1426-1427, 58 Cal. Rptr. 3d 368, 157 P.3d 973 (2007)