

SUPREME COURT OF OHIO

State v. Roberts, 110 Ohio St. 3d 71, 2006-Ohio-3662

850 N.E.2d 1168 (2006) · Decided August 2, 2006

SUMMARY

The Ohio Supreme Court affirmed Donna M. Roberts’s aggravated-murder convictions and other sentences arising from the killing of Robert Fingerhut. It rejected her challenges to the conviction, including a challenge to the scope of her consent to a warrantless search. The court vacated the death sentence and remanded for resentencing because the trial judge improperly relied on the prosecutor in preparing the sentencing opinion.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	O'Connor, J.; Moyer, C.J.; Resnick, J.; Pfeifer, J.; Lundberg Stratton, J.; O'Donnell, J.; Lanzinger, J.
JURISDICTION	Ohio
DECIDED	August 2, 2006
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Direct appeal from convictions and death sentence for aggravated murder and related offenses.
STANDARD OF REVIEW	For suppression issues, the appellate court accepts factual findings supported by competent, credible evidence and independently determines whether those facts satisfy the applicable legal standard. Challenges to juror qualifications and change of venue are reviewed for abuse of discretion. Sufficiency of the evidence is reviewed under whether, viewing the evidence most favorably to the prosecution, any rational trier of fact could find the essential elements proven beyond a reasonable doubt. Unpreserved instructional claims are reviewed for plain error.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Ohio.
PARTIES	Donna M. Roberts v. State of Ohio

TOPICS

sentencing

suppression of evidence

search and seizure

jury selection

appellate procedure

PRACTICE AREAS

criminal law

capital sentencing

criminal procedure

constitutional law

evidence

QUESTIONS PRESENTED

1. Whether Roberts's consent to search her residence extended to the attached garage and a vehicle located inside it.
2. Whether the trial court abused its discretion by denying challenges for cause to prospective jurors and by denying a motion for change of venue.
3. Whether the evidence was sufficient to establish the theft element of aggravated robbery and the corresponding capital specification.
4. Whether the trial court committed plain error in instructing the jury on reasonable doubt.
5. Whether Roberts validly waived the presentation of mitigating evidence while making an unsworn statement.
6. Whether trial counsel rendered ineffective assistance regarding Roberts's mitigation decision.
7. Whether the trial court's use of the prosecutor in preparing its death-sentence opinion violated Ohio law and constitutional principles.
8. Whether the trial court's failure to afford Roberts allocution required reversal.

HOLDINGS

1. Roberts's open-ended consent to search the premises extended to the attached garage and the vehicle located inside it; the trial court properly denied the motion to suppress.
2. The evidence was sufficient to establish the theft element of aggravated robbery and the related aggravated-robbery capital specification because Jackson asserted control over and deprived Fingerhut of his automobile.
3. A capital defendant may choose to present no mitigating evidence or only an unsworn statement, and the specific inquiry required when a defendant presents no mitigating evidence whatsoever does not apply where the defendant presents an unsworn statement.
4. A trial judge may not delegate any degree of responsibility for preparing the statutory death-sentence opinion to the prosecutor, particularly through ex parte communications; such participation is a grievous violation requiring vacation of the death sentence and resentencing.

KEY QUOTATIONS

“R.C. 2929.03(F) clearly contemplates that the trial court itself will draft the death-sentence opinion” (110 Ohio St. 3d at 93)

“The trial court’s decision to use the prosecutor in preparing the sentencing opinion constitutes a grievous violation of the statutory deliberative process.” (110 Ohio St. 3d at 95)

“We find that we must vacate the sentence because of the critical constitutional interests and notions of justice that are implicated by the prosecutor’s participation in drafting the sentencing opinion.” (110 Ohio St. 3d at 95)

FACTUAL BACKGROUND

Roberts and Nathaniel Jackson were implicated in a plot to kill Roberts's former husband, Robert Fingerhut, after Jackson's release from prison. Fingerhut was shot and killed, and evidence included letters, recorded telephone conversations, forensic evidence, and circumstances connecting Roberts and Jackson to the murder. Roberts was convicted of aggravated murder and related offenses and received a death sentence after presenting only an unsworn statement in mitigation.

PROCEDURAL HISTORY

A jury found Roberts guilty of aggravated murder, aggravated burglary, aggravated robbery, and related firearm specifications. After Roberts waived the presentation of mitigating evidence except for an unsworn statement, the jury recommended death and the trial court imposed the death penalty. The Supreme Court of Ohio rejected all challenges to the convictions but vacated the death sentence because the trial judge used the prosecutor, ex parte, to assist in preparing the sentencing opinion, and remanded for resentencing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial judge must afford Roberts her right to allocution; personally review and evaluate the evidence; weigh aggravating circumstances against relevant mitigating evidence; determine anew whether the death penalty is appropriate under Ohio Rev. Code § 2929.03; personally prepare an entirely new penalty opinion under § 2929.03(F); and conduct any other proceedings required by law. The convictions and noncapital sentences are affirmed.

CASES CITED

- State v. Jackson, 107 Ohio St. 3d 300, 2006-Ohio-1, 839 N.E.2d 362
- Coolidge v. New Hampshire, 403 U.S. 443, 454-455 (1971)
- Payton v. New York, 445 U.S. 573, 586 (1980)
- Schneckloth v. Bustamonte, 412 U.S. 218, 227, 249 (1973)
- Florida v. Jimeno, 500 U.S. 248, 251 (1991)
- State v. Posey, 40 Ohio St. 3d 420, 427, 534 N.E.2d 61 (1988)
- State v. Mills, 62 Ohio St. 3d 357, 366, 582 N.E.2d 972 (1992)
- State v. Fanning, 1 Ohio St. 3d 19, 20, 437 N.E.2d 583 (1982)
- State v. Burnside, 100 Ohio St. 3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8
- State v. Cornwell, 86 Ohio St. 3d 560, 563, 715 N.E.2d 1144 (1999)

- State v. Allard, 75 Ohio St. 3d 482, 495, 663 N.E.2d 1277 (1996)
- State v. Williams, 6 Ohio St. 3d 281, 288, 452 N.E.2d 1323 (1983)
- State v. Tyler, 50 Ohio St. 3d 24, 31, 553 N.E.2d 576 (1990)
- Wainwright v. Witt, 469 U.S. 412, 426 (1985)
- State v. Group, 98 Ohio St. 3d 248, 2002-Ohio-7247, 781 N.E.2d 980, ¶ 61 & fn. 1
- State v. Leonard, 104 Ohio St. 3d 54, 2004-Ohio-6235, 818 N.E.2d 229, ¶ 61
- State v. Broom, 40 Ohio St. 3d 277, 288, 533 N.E.2d 682 (1988)
- State v. Lundgren, 73 Ohio St. 3d 474, 479-480, 653 N.E.2d 304 (1995)
- State v. Landrum, 53 Ohio St. 3d 107, 116-117, 559 N.E.2d 710 (1990)
- State v. Lynch, 98 Ohio St. 3d 514, 2003-Ohio-2284, 787 N.E.2d 1185, ¶¶ 35, 37
- State v. Treesh, 90 Ohio St. 3d 460, 464, 739 N.E.2d 749 (2001)
- Mayola v. Alabama, 623 F.2d 992, 996 (5th Cir. 1980)
- Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 554 (1976)
- State v. Gross, 97 Ohio St. 3d 121, 2002-Ohio-5524, 776 N.E.2d 1061, ¶ 30
- State v. Jenks, 61 Ohio St. 3d 259, 574 N.E.2d 492 (1991)
- Jackson v. Virginia, 443 U.S. 307 (1979)
- State v. DeHass, 10 Ohio St. 2d 230, 227 N.E.2d 212 (1967)
- State v. Dennis, 79 Ohio St. 3d 421, 430, 683 N.E.2d 1096 (1997)
- State v. Biros, 78 Ohio St. 3d 426, 450, 678 N.E.2d 891 (1997)
- State v. Rojas, 64 Ohio St. 3d 131, 139, 592 N.E.2d 1376 (1992)
- State v. Underwood, 3 Ohio St. 3d 12, 444 N.E.2d 1332 (1983)
- State v. Jones, 90 Ohio St. 3d 403, 417, 739 N.E.2d 300 (2000)
- State v. Jenkins, 15 Ohio St. 3d 164, 473 N.E.2d 264 (1984)
- Lockett v. Ohio, 438 U.S. 586, 604 (1978)
- State v. Barton, 108 Ohio St. 3d 402, 2006-Ohio-1324, 844 N.E.2d 307, ¶¶ 47, 50
- State v. Scott, 101 Ohio St. 3d 31, 2004-Ohio-10, 800 N.E.2d 1133, ¶ 64
- State v. Mink, 101 Ohio St. 3d 350, 2004-Ohio-1580, 805 N.E.2d 1064, ¶¶ 113-114
- State v. Vrabel, 99 Ohio St. 3d 184, 2003-Ohio-3193, 790 N.E.2d 303, ¶ 22
- State v. Strickland, 466 U.S. 668, 687 (1984)
- State v. Bradley, 42 Ohio St. 3d 136, 538 N.E.2d 373 (1989)
- State v. Monroe, 105 Ohio St. 3d 384, 2005-Ohio-2282, 827 N.E.2d 285, ¶ 100
- State v. Cowans, 87 Ohio St. 3d 68, 81, 717 N.E.2d 298 (1999)
- State v. Keith, 79 Ohio St. 3d 514, 536, 684 N.E.2d 47 (1997)
- State v. Sapp, 105 Ohio St. 3d 104, 2004-Ohio-7008, 822 N.E.2d 1239, ¶ 103
- State v. Clemons, 82 Ohio St. 3d 438, 444, 696 N.E.2d 1009 (1998)
- State v. Carter, 72 Ohio St. 3d 545, 559, 651 N.E.2d 965 (1995)
- State v. Jordan, 101 Ohio St. 3d 216, 2004-Ohio-783, 804 N.E.2d 1, ¶ 86

- State v. Steffen, 31 Ohio St. 3d 111, 509 N.E.2d 383 (1987)
- State v. Green, 90 Ohio St. 3d 352, 360, 363-364, 738 N.E.2d 1208 (2000)
- State v. Davis, 38 Ohio St. 3d 361, 372-373, 528 N.E.2d 925 (1988)
- Proffitt v. Florida, 428 U.S. 242, 258 (1976)
- Gardner v. Florida, 430 U.S. 349, 362 (1977)
- State v. Vrabel, Mahoning App. No. 95 CA 221 (Ohio Ct. App. Mar. 2, 2000)
- State v. Issa, 93 Ohio St. 3d 49, 69, 752 N.E.2d 904 (2001)
- State v. Carter, 89 Ohio St. 3d 593, 608, 734 N.E.2d 345 (2000)
- State v. Gumm, 73 Ohio St. 3d 413, 417-418, 653 N.E.2d 253 (1995)
- State v. Henderson, 39 Ohio St. 3d 24, 29, 528 N.E.2d 1237 (1988)
- State v. Poindexter, 36 Ohio St. 3d 1, 520 N.E.2d 568 (1988)
- State v. Stumpf, 32 Ohio St. 3d 95, 104, 512 N.E.2d 598 (1987)
- State v. Buell, 22 Ohio St. 3d 124, 135-142, 489 N.E.2d 795 (1986)