

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Olu Rhodes v. Michael Dittmann

No. No. 17-2223, United States Court of Appeals for the Seventh Circuit (September 10, 2018)

SUMMARY

Olu Rhodes v. Michael Dittmann, 7th Cir. 2018. Habeas corpus; Confrontation Clause (Sixth Amendment); limitations on cross-examination of a key witness regarding motive; state court's routine application of Rule 403 balancing without special consideration of the defendant's constitutional right was contrary to and an unreasonable application of clearly established federal law under *Olden v. Kentucky* and *Delaware v. Van Arsdall*. The Seventh Circuit held the constitutional error was not harmless under *Brecht v. Abrahamson* because the prosecution's motive theory was central and the excluded evidence would have rebutted it, and the state had waived or forfeited harmless error but the court exercised discretion to review it. The court reversed the district court's denial of the writ and remanded for a new trial.

CASE DETAILS

COURT	United States Court of Appeals for the Seventh Circuit
WRITING FOR THE COURT	Hamilton; SYKES; HAMILTON; LEE
JURISDICTION	Federal
DECIDED	September 10, 2018
DOCKET	No. 17-2223
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the district court's denial of a writ of habeas corpus.
STANDARD OF REVIEW	De novo review of district court's denial of habeas corpus; under AEDPA, state court's decision must be contrary to or an unreasonable application of clearly established federal law, 28 U.S.C. § 2254(d)(1).
PRECEDENTIAL VALUE	Published
PARTIES	Olu A. Rhodes v. Michael A. Dittmann

TOPICS

- criminal procedure
- habeas corpus
- sixth amendment
- harmless error
- evidence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court's limitation on cross-examination of Nari Rhodes violated the Confrontation Clause of the Sixth Amendment.
2. Whether any such violation was harmless error.

HOLDINGS

1. The trial court's limitation on cross-examination violated the Confrontation Clause because the court applied ordinary Rule 403 balancing without giving special consideration to the defendant's constitutional right. The Wisconsin Supreme Court's decision upholding the limitation was both contrary to and an unreasonable application of clearly established Supreme Court precedent.
2. The constitutional error was not harmless because it had a substantial and injurious effect on the jury's verdict.

KEY QUOTATIONS

“The Wisconsin Supreme Court decision was actually both contrary to and an unreasonable application of clearly established Supreme Court precedents recognizing the right of the accused to cross-examine witnesses on issues central to the case.” (at 15)

“That analysis was contrary to clearly established Supreme Court precedent holding that the Confrontation Clause is not satisfied merely because the evidence offered by the accused might be excluded properly under Rule 403 or its equivalent.” (at 21)

“The notion that the State could put on its evidence of motive but that rebuttal evidence would ‘confuse’ the jury misunderstands the role of the jury. It is not to be protected from evidence that would directly rebut the State’s theory.” (at 26)

FACTUAL BACKGROUND

On April 4, 2006, two men shot Robert Davis and Jonte Watt, killing Davis. The State's theory was that Rhodes and his brother shot Davis in retaliation for a beating of their sister Nari the day before. Nari testified about the beating and her injuries. On cross-examination, the defense sought to question Nari about prior abuse by Davis, including an incident where Davis broke her orbital bone, to rebut the motive theory. The trial court limited that cross-examination, ruling it would confuse the jury. The jury convicted Rhodes but acquitted his brother.

PROCEDURAL HISTORY

Rhodes was convicted in Wisconsin state court. The Wisconsin Court of Appeals reversed, finding a Confrontation Clause violation that was not harmless. The Wisconsin Supreme Court reversed, finding no violation. Rhodes then filed a federal habeas petition. The district court found a violation but held it was harmless, denying the petition. Rhodes appealed.

DISPOSITION

REMAND INSTRUCTIONS

Grant the writ of habeas corpus ordering that Rhodes be released or retried promptly.

CASES CITED

- Olden v. Kentucky, 488 U.S. 227 (1988)
- Delaware v. Van Arsdall, 475 U.S. 673 (1986)
- Davis v. Alaska, 415 U.S. 308 (1974)
- Delaware v. Fensterer, 474 U.S. 15 (1985)
- Chambers v. Mississippi, 410 U.S. 284 (1973)
- Pointer v. Texas, 380 U.S. 400 (1965)
- Harrington v. Richter, 562 U.S. 86 (2011)
- Bell v. Cone, 535 U.S. 685 (2002)
- Williams v. Taylor, 529 U.S. 362 (2000)
- Wiggins v. Smith, 539 U.S. 510 (2003)
- Redmond v. Kingston, 240 F.3d 590 (7th Cir. 2001)
- Carey v. Musladin, 549 U.S. 70 (2006)
- Maryland v. Craig, 497 U.S. 836 (1990)
- Brecht v. Abrahamson, 507 U.S. 619 (1993)
- Fry v. Pliler, 551 U.S. 112 (2007)
- Davis v. Ayala, 135 S. Ct. 2187 (2015)
- Kotteakos v. United States, 328 U.S. 750 (1946)
- Chapman v. California, 386 U.S. 18 (1967)
- State v. Rhodes, 336 Wis. 2d 64, 799 N.W.2d 850 (Wis. 2011)
- State v. Rhodes, 329 Wis. 2d 268 (Wis. App. 2010)
- State v. McCall, 202 Wis. 2d 29, 549 N.W.2d 418 (Wis. 1996)
- Rhodes v. Meisner, 2017 WL 2345671 (E.D. Wis. May 30, 2017)
- Wilson v. O'Leary, 895 F.2d 378 (7th Cir. 1990)
- United States v. Giovannetti, 928 F.2d 225 (7th Cir. 1991)
- Sanders v. Cotton, 398 F.3d 572 (7th Cir. 2005)
- Jensen v. Clements, 800 F.3d 892 (7th Cir. 2015)
- Jones v. Basinger, 635 F.3d 1030 (7th Cir. 2011)