

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

John Henry Epps v. State of Iowa

John Henry Epps v. State of Iowa, 901 F.2d 1481 (8th Cir. 1990) · No. 89-2470 · Decided May 2, 1990

SUMMARY

Black habeas petitioner challenged his Iowa felony-murder conviction, arguing that a change of venue to a county with virtually no black residents denied him a fair and impartial jury, and that trial counsel was ineffective for failing to object to prosecutorial comments. The Eighth Circuit affirmed the denial of habeas relief, holding that even if the venue change violated equal protection, that would be a new constitutional rule inapplicable on habeas review under *Teague v. Lane*. The court also found that the ineffective assistance claims were either procedurally barred or meritless because the prosecutor's comments were not improper. This case addresses venue and jury composition under the Equal Protection Clause, retroactivity of new constitutional rules, procedural default, and ineffective assistance of counsel in the context of prosecutorial comments.

CASE DETAILS

COURT	United States Court of Appeals for the Eighth Circuit
WRITING FOR THE COURT	McMILLIAN; FAGG; BOWMAN
JURISDICTION	Federal
DECIDED	May 2, 1990
DOCKET	89-2470
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the Southern District of Iowa denying habeas corpus petition under 28 U.S.C. § 2254.
PRECEDENTIAL VALUE	Published
PARTIES	John Henry Epps v. State of Iowa

TOPICS

- criminal procedure
- venue
- constitutional law
- appellate procedure

QUESTIONS PRESENTED

1. Whether the change of venue to a county with almost no black residents violated Epps's constitutional rights to a fair and impartial jury.

2. Whether trial counsel was ineffective for failing to object to the prosecutor's comments during closing argument regarding Epps's prior felony, his lack of reaction to identification, and the absence of alibi witnesses.

HOLDINGS

1. The change of venue did not violate Epps's constitutional rights because no existing precedent supported such a conclusion, and any new rule would not apply retroactively on habeas review.
2. Trial counsel was not ineffective because the comments were not improper; the comments about the felony record were first raised by defense counsel, the comment about lack of reaction was not a comment on failure to testify, and the comments about alibi witnesses were directed to the evidence and not impermissible.

FACTUAL BACKGROUND

John Henry Epps, a black man, was charged with the murder of an 87-year-old white man during a burglary. Due to extensive pretrial publicity, the state trial court changed venue from Black Hawk County to Howard County, which had a population of 11,114 with only 3 black residents. The sole eyewitness was the victim's wife, who identified two black men. No physical evidence connected Epps to the crime. During closing argument, the prosecutor commented on Epps's prior felony conviction, his lack of reaction to in-court identification, and the absence of alibi witnesses. Defense counsel did not object to these comments.

PROCEDURAL HISTORY

Epps was convicted of felony murder in Iowa state court. The conviction was affirmed on direct appeal. He then filed a state post-conviction application, which the state trial court granted ordering a new trial, but the Iowa Supreme Court reversed. He then filed a federal habeas petition, which the district court denied. This appeal followed.

DISPOSITION

affirmed

CASES CITED

- State v. Epps, 322 N.W.2d 288 (Iowa 1982)
- Epps v. State, No. 87-230, slip op. at 2 (Iowa Nov. 25, 1987) (unpublished per curiam), reported at 418 N.W.2d 354 (table)
- Mallett v. State, 769 S.W.2d 77 (Mo. 1989)
- Mallett v. Missouri, 494 U.S. 1059 (1990) (cert. denied)
- Batson v. Kentucky, 476 U.S. 79 (1986)
- Butler v. McKellar, 494 U.S. 407 (1990)
- Saffle v. Parks, 494 U.S. 484 (1990)
- Teague v. Lane, 489 U.S. 288 (1989)

- Harris v. Reed, 489 U.S. 255 (1989)
- United States v. Montgomery, 819 F.2d 847 (8th Cir. 1987)

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