

SUPREME COURT OF MISSISSIPPI

Robert Lester Cox v. State of Mississippi

Robert Lester Cox v. State of Mississippi · No. 2001-KA-01427-SCT · Decided June 8, 2001

SUMMARY

The Supreme Court of Mississippi, on motion for rehearing, denied rehearing, withdrew its prior opinion, and substituted this opinion. The court affirmed Robert Lester Cox's murder conviction and life sentence, rejecting challenges concerning circumstantial evidence, sufficiency of the evidence, destruction of physical evidence, denial of a continuance, hearsay, and prosecutorial closing argument. The opinion also addressed the State's cross-appeal concerning a computer-animated reenactment and Rowland's medical records.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| COURT                 | Supreme Court of Mississippi                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| WRITING FOR THE COURT | Waller, Justice; Pittman, C.J.; McRae, P.J.; Smith, P.J.; Cobb, J.; Diaz, J.; Easley, J.; Graves, J.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| JURISDICTION          | Mississippi                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| DECIDED               | June 8, 2001                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| DOCKET                | 2001-KA-01427-SCT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| PROCEDURAL POSTURE    | Cox appealed his murder conviction and life sentence, raising five issues on direct appeal. The State filed an authorized cross-appeal concerning the admission of medical records and a computer-generated reenactment. On motion for rehearing, the court denied rehearing, withdrew its prior opinion, substituted this opinion, and affirmed.                                                                                                                                                                                                                                                                           |
| STANDARD OF REVIEW    | For sufficiency of the circumstantial evidence, the evidence and reasonable inferences were viewed in the light most favorable to the State, with the question being whether the jury could reasonably exclude the hypothesis of suicide. A denial of JNOV is reversed only if, considering the credible evidence and favorable inferences, reasonable and fair-minded jurors could only find the defendant not guilty. Evidentiary rulings, including relevance, hearsay, expert testimony, and Rule 403 determinations, are reviewed for abuse of discretion. A denial of continuance is reviewed for abuse of discretion |

and requires manifest injustice for reversal. Due-process claims based on lost or destroyed evidence require the applicable materiality and bad-faith analysis.

**PRECEDENTIAL VALUE**

published precedential opinion

**PARTIES**

Robert Lester Cox v. State of Mississippi

**TOPICS**

criminal procedure

evidence

hearsay

expert testimony

appellate procedure

**PRACTICE AREAS**

criminal law

criminal procedure

evidence

appellate procedure

constitutional law

**QUESTIONS PRESENTED**

1. Whether the State's circumstantial evidence excluded the reasonable hypothesis that Rowland committed suicide.
2. Whether the evidence was sufficient to sustain the conviction and whether the circuit court erred in denying Cox's motion for JNOV.
3. Whether the loss, destruction, or inadequate preservation of physical evidence violated Cox's due-process right to a fair trial.
4. Whether the circuit court erred in denying a continuance to investigate a possible alternate suspect.
5. Whether testimony concerning Rowland's statement that Cox had threatened him was inadmissible hearsay or irrelevant.
6. Whether the prosecution's closing-argument comments concerning Cox's inability to explain the presence of his shotgun improperly commented on his failure to testify.
7. Whether the circuit court erred in admitting Rowland's privileged medical and pharmacological records obtained through subpoenas without notice to the State or court.
8. Whether the circuit court erred in admitting Cox's expert testimony concerning crime-scene reconstruction, ballistics, and blood spatter.
9. Whether the circuit court erred in admitting a computer-generated animation without an adequate foundation.
10. Whether demonstrative evidence admitted only for explanatory purposes may be given to the jury during deliberations.

**HOLDINGS**

1. A conviction based wholly on circumstantial evidence is permissible when the evidence excludes every other reasonable hypothesis of innocence, and the evidence here permitted the jury reasonably to reject the hypothesis that Rowland committed suicide.

2. The denial of Cox's motion for JNOV was proper because, viewing the evidence and reasonable favorable inferences under the applicable standard, reasonable and fair-minded jurors could find Cox guilty.
3. The loss or destruction of the death-scene evidence did not violate due process because Cox showed neither that the evidence had apparent exculpatory value and was irreplaceable nor bad faith by law enforcement.
4. The denial of a continuance did not require reversal because Cox failed to demonstrate manifest injustice.
5. The trial court did not abuse its discretion by admitting Rowland's statement under the present-sense-impression and excited-utterance exceptions to the hearsay rule.
6. The State's comments concerning Cox's failure to explain the presence of his shotgun were not improper comments on his failure to testify but comments on his failure to present a successful defense; in any event, the issue was procedurally barred because Cox did not object contemporaneously.
7. Medical and pharmacological records of a deceased victim remain privileged, and access to such records in a criminal case should be limited to material, relevant, and exculpatory information reviewed in camera and disclosed in redacted form; the admission of all of Rowland's records was error but harmless.
8. Computer-generated animation offered as demonstrative evidence is admissible only when supported by an adequate foundation, including scientific, identifiable, and objective facts establishing that it is relevant and a fair and accurate representation; the new rule applies prospectively.
9. Evidence admitted for demonstrative purposes only should not be given to the jury for consideration during deliberations.

#### KEY QUOTATIONS

*"To sustain a conviction on circumstantial evidence, every other reasonable hypothesis of innocence must be excluded."* (§ 8)

*"However, 'unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law.'"* (§ 27)

*"However, the law pertaining to computer animations and demonstrative evidence announced today will be prospectively applied in both criminal and civil cases."* (§ 60)

#### FACTUAL BACKGROUND

Charles David Rowland was found dead beside his Subaru on April 19, 1999, with the top of his head destroyed by a shotgun blast and a sawed-off shotgun nearby. Cox's wife had maintained a long-term romantic relationship with Rowland, and the State presented evidence of motive, Cox's surveillance of Rowland's property, Cox's access to the area, and the fact that the murder weapon belonged to Cox. Cox argued that Rowland committed suicide and presented expert testimony concerning bloodstains, ballistics, the death scene, and Rowland's use of antidepressants. The jury rejected the suicide theory and convicted Cox of murder.

## PROCEDURAL HISTORY

Cox was indicted in the Circuit Court of the First Judicial District of Tallahatchie County for the murder of Charles David Rowland. After a three-week trial, the jury rejected Cox's suicide theory, convicted him of murder, and the circuit court sentenced him to life imprisonment. The Supreme Court of Mississippi affirmed the conviction and sentence, holding that the asserted errors were either meritless or harmless.

## DISPOSITION

affirmed

## CASES CITED

- Neal v. State, 805 So. 2d 520, 526 (Miss. 2002)
- Underwood v. State, 708 So. 2d 18, 35 (Miss. 1998)
- Conner v. State, 632 So. 2d 1239, 1252 (Miss. 1993)
- Weatherspoon v. State, 732 So. 2d 158 (Miss. 1999)
- Tolbert v. State, 407 So. 2d 815, 820 (Miss. 1981)
- Hilliard v. State, 749 So. 2d 1015 (Miss. 1999)
- Steele v. State, 544 So. 2d 802, 807-09 (Miss. 1989)
- McDonald v. State, 454 So. 2d 488, 492-93 (Miss. 1984)
- Morgan v. State, 741 So. 2d 246, 256 (Miss. 1999)
- Franklin v. State, 676 So. 2d 287, 288 (Miss. 1996)
- Wetz v. State, 503 So. 2d 803, 808 (Miss. 1987)
- Northup v. State, 793 So. 2d 618, 623 (Miss. 2001)
- Tolbert v. State, 511 So. 2d 1368, 1372-73 (Miss. 1987)
- California v. Trombetta, 467 U.S. 479, 488 (1984)
- Washington v. State, 478 So. 2d 1028, 1032-33 (Miss. 1985)
- Wilson v. State, 574 So. 2d 1324, 1329 (Miss. 1990)
- Arizona v. Youngblood, 488 U.S. 51, 58 (1988)
- Lambert v. State, 654 So. 2d 17, 22 (Miss. 1995)
- Johnson v. State, 631 So. 2d 185, 189 (Miss. 1994)
- Wallace v. State, 607 So. 2d 1184, 1190 (Miss. 1992)
- Morris v. State, 595 So. 2d 840, 844 (Miss. 1991)
- Fisher v. State, 532 So. 2d 992, 998 (Miss. 1988)
- Mitchell v. State, 792 So. 2d 192, 217 (Miss. 2001)
- Johnston v. State, 567 So. 2d 237, 238 (Miss. 1990)
- Green v. State, 614 So. 2d 926, 935 (Miss. 1992)
- Baldwin v. State, 784 So. 2d 148, 156 (Miss. 2001)
- Foster v. State, 508 So. 2d 1111, 1117-18 (Miss. 1987)

- Slaughter v. State, 815 So. 2d 1122, 1131 (Miss. 2002)
- Jones v. State, 669 So. 2d 1383, 1390 (Miss. 1995)
- Thompson v. State, 773 So. 2d 955, 961 (Miss. Ct. App. 2000)
- Shields v. State, 702 So. 2d 380, 383 (Miss. 1997)
- Cosby v. Jones, 682 F.2d 1373, 1380 (11th Cir. 1982)
- Jimpson v. State, 532 So. 2d 985, 991 (Miss. 1988)
- Cotton v. State, 275 So. 2d 308, 312-13 (Miss. 1976)
- Windham v. State, 800 So. 2d 1257, 1260-62 (Miss. Ct. App. 2001)
- People v. Deadmond, 683 P.2d 763, 771 (Colo. 1984)
- People v. Bean, 560 N.E.2d 258, 268-69 (Ill. 1990)
- State v. Stuck, 434 N.W.2d 43, 54 (S.D. 1988)
- Pennsylvania v. Ritchie, 480 U.S. 39, 58-61 (1987)
- Pierce v. State, 718 So. 2d 806 (Fla. Dist. Ct. App. 1997)
- Clark v. Cantrell, 529 S.E.2d 528 (S.C. 2000)
- State v. Farner, 66 S.W.3d 188 (Tenn. 2001)
- Murriel v. State, 515 So. 2d 952, 956 (Miss. 1987)
- Marcum v. Miss. Valley Gas Co., 587 So. 2d 223, 225 (Miss. 1991)

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