

SUPREME COURT OF KENTUCKY

Osborne v. Commonwealth

43 S.W.3d 234 (Ky. 2001) · No. 1999-SC-0124-MR · Decided April 26, 2001

SUMMARY

The Supreme Court of Kentucky reversed Larry Osborne's convictions and death sentences for two murders and related offenses because the trial court improperly admitted a deceased accomplice's grand jury testimony under the statement-against-interest hearsay exception. The court held that the testimony was not sufficiently self-inculpatory or corroborated and that its admission violated applicable hearsay principles. The court also addressed juvenile transfer proceedings, the admissibility of a 911 recording and crime-route video, glass-particle evidence, and jury instructions as issues likely to recur on retrial.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Cooper, Justice; Lambert, Chief Justice; Johnstone, Justice; Stumbo, Justice; Wintersheimer, Justice; Keller, Justice; Graves, Justice
JURISDICTION	Kentucky
DECIDED	April 26, 2001
DOCKET	1999-SC-0124-MR
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Direct appeal as a matter of right from convictions and death sentences for two murders, first-degree arson, first-degree burglary, and first-degree robbery.
STANDARD OF REVIEW	The court reviewed evidentiary rulings for abuse of discretion, applied the statutory hearsay rules to the admission of Reid's testimony, reviewed the sufficiency issue under the directed-verdict standard, and gave substantial weight to the trial court's venue decision.
PRECEDENTIAL VALUE	Published Kentucky Supreme Court opinion; precedential.
PARTIES	Larry Osborne v. Commonwealth of Kentucky

TOPICS

- hearsay
- evidence
- criminal procedure
- double jeopardy
- appellate procedure

PRACTICE AREAS

criminal law

evidence

juvenile justice

appellate procedure

capital punishment

QUESTIONS PRESENTED

1. Whether the youthful-offender transfer to circuit court authorized indictment and conviction for offenses arising from the same course of conduct that were not charged in the juvenile petition.
2. Whether the transfer order satisfied KRS 640.010 by stating the reasons for transfer and identifying the factors favoring transfer.
3. Whether Joe Reid's grand-jury testimony was admissible under KRE 804(b)(3) as a statement against penal interest despite its principal effect of inculcating Osborne.
4. Whether the 911 recording was inadmissible hearsay.
5. Whether the crime-route video was properly admitted.
6. Whether evidence of glass particles found on Osborne's clothing was irrelevant or was misused in closing argument.
7. Whether the evidence supported instructions on first-degree manslaughter and reckless homicide.
8. Whether the trial court erred by denying a change of venue.
9. Whether retrial was barred by double jeopardy after reversal for evidentiary error.

HOLDINGS

1. Reid's grand-jury testimony was inadmissible hearsay because the testimony principally inculpated Osborne, the isolated chain-related statement did not sufficiently expose Reid to criminal liability or have the required corroboration, and non-self-inculpatory portions of a broader narrative do not qualify as statements against penal interest.
2. Kentucky courts must follow the United States Supreme Court's interpretation of what constitutes an admissible out-of-court statement under the hearsay exception for statements against penal interest because application of the exception implicates the Sixth Amendment Confrontation Clause as applied to the states.
3. The 911 recording was not hearsay because it was offered to show that the statements were made as part of an alleged scheme to divert police attention, rather than to prove the truth of the assertion that Osborne heard glass breaking.
4. Under Kentucky's youthful-offender statutory scheme, the offender, not a particular offense, is transferred to circuit court; once transferred, the circuit court may adjudicate additional offenses arising from the same course of conduct.
5. The transfer order satisfied KRS 640.010 because it stated that all statutory factors had been considered, identified three factors favoring transfer, and stated the reasons for transfer.
6. The trial court was not required to instruct on first-degree manslaughter or reckless homicide because the evidence did not support a reasonable finding that Osborne intended merely to injure the victims or failed to perceive the risk that setting fire to an occupied residence would kill them.

7. Retrial was not barred by double jeopardy because the evidence actually admitted at trial was sufficient to submit the case to the jury, even though the improperly admitted grand-jury testimony required reversal.

KEY QUOTATIONS

“Impeachment of incompetent evidence is no substitute for its exclusion.” (240)

“The improper admission of the grand jury testimony of Joe Reid requires reversal for a new trial at which none of Reid's statements inculpatory Appellant shall be admitted.” (241)

“Accordingly, the judgments of conviction and sentences imposed by the Whitley Circuit Court are reversed, and this case is remanded for a new trial in accordance with the content of this opinion.” (245)

FACTUAL BACKGROUND

Sam and Lillian Davenport died in a house fire that forensic evidence indicated had been intentionally set; both had cranial injuries, but smoke inhalation was the cause of death. Evidence placed Osborne and Joe Reid traveling near the Davenport residence shortly before the fire, and Reid's grand-jury testimony implicated Osborne in a robbery, burglary, and arson. The Commonwealth also introduced a 911 recording, a route video, and evidence of glass particles on Osborne's clothing.

PROCEDURAL HISTORY

Osborne, who was seventeen when the offenses occurred, was initially proceeded against in the juvenile division of the Whitley District Court and was transferred to the Whitley Circuit Court as a youthful offender. After a joint indictment with his mother was severed for trial, Osborne was convicted of all charges and sentenced to death for each murder, life imprisonment for first-degree arson, and twenty years each for first-degree burglary and first-degree robbery. The Supreme Court of Kentucky reversed because the trial court improperly admitted Joe Reid's grand-jury testimony and remanded for a new trial, while addressing additional issues likely to recur on retrial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgments of conviction and sentences are reversed, and the case is remanded for a new trial. On retrial, none of Joe Reid's statements inculpatory Osborne may be admitted.

CASES CITED

- Harden v. Commonwealth, 885 S.W.2d 323 (Ky. App. 1994)
- Williamson v. United States, 512 U.S. 594 (1994)
- Vincent v. Seabold, 226 F.3d 681 (6th Cir. 2000)

- Moseley v. Commonwealth, 960 S.W.2d 460 (Ky. 1997)
- Gabow v. Commonwealth, 34 S.W.3d 63 (Ky. 2000)
- Moore v. Commonwealth, 282 S.W.2d 613 (Ky. 1955)
- Ohio v. Roberts, 448 U.S. 56 (1980)
- Pointer v. Texas, 380 U.S. 400 (1965)
- Perdue v. Commonwealth, 916 S.W.2d 148 (Ky. 1995)
- Gorman v. Hunt, 19 S.W.3d 662 (Ky. 2000)
- Sanders v. Commonwealth, 801 S.W.2d 665 (Ky. 1991)
- Cosby v. Commonwealth, 776 S.W.2d 367 (Ky. 1989)
- St. Clair v. Roark, 10 S.W.3d 482 (Ky. 1999)
- Skinner v. Commonwealth, 864 S.W.2d 290 (Ky. 1993)
- Luttrell v. Commonwealth, 554 S.W.2d 75 (Ky. 1977)
- Commonwealth v. Wolford, 4 S.W.3d 534 (Ky. 1999)
- Kordenbrock v. Commonwealth, 700 S.W.2d 384 (Ky. 1985)
- Hodge v. Commonwealth, 17 S.W.3d 824 (Ky. 2000)
- Nickell v. Commonwealth, 371 S.W.2d 849 (Ky. 1963)
- Tamme v. Commonwealth, 973 S.W.2d 13 (Ky. 1998)
- Bills v. Commonwealth, 851 S.W.2d 466 (Ky. 1993)
- McQueen v. Parker, 950 S.W.2d 226 (Ky. 1997)
- Bowling v. Commonwealth, 942 S.W.2d 293 (Ky. 1997)
- Kordenbrock v. Scroggy, 919 F.2d 1091 (6th Cir. 1990)
- Lockhart v. Nelson, 488 U.S. 33 (1988)
- Commonwealth v. Benham, 816 S.W.2d 186 (Ky. 1991)