

SUPREME COURT OF RHODE ISLAND

Jason Ferrell v. A.T. Wall, Warden of the Adult Correctional Institutions

Ferrell v. Wall, 889 A.2d 177 (R.I. 2005) · No. No. 2005-54-Appeal · Decided December 27, 2005

SUMMARY

The Supreme Court of Rhode Island reversed an order granting Jason Ferrell post-conviction relief and reinstated his convictions for conspiracy and assault-related offenses arising from the murder of John Carpenter. The court held that an unsworn videotaped recantation was insufficiently reliable and inadmissible hearsay where the recanting witness invoked the Fifth Amendment and was unavailable for cross-examination. The court also addressed Ferrell’s ineffective-assistance claim based on trial counsel’s failure to disclose portions of an alibi witness’s anticipated testimony.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	Chief Justice Williams; Justice Flaherty; Justice Suttell; Justice Robinson
JURISDICTION	Rhode Island
DECIDED	December 27, 2005
DOCKET	No. 2005-54-Appeal
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State appealed from an order of the Rhode Island Superior Court granting Jason Ferrell post-conviction relief, vacating his convictions and sentence based on an unsworn videotaped recantation by the principal trial witness and alleged ineffective assistance of trial counsel.
STANDARD OF REVIEW	Factual findings on an application for post-conviction relief are reviewed for clear error or if the hearing justice overlooked or misconceived material evidence. Alleged constitutional violations are reviewed de novo, including post-conviction decisions involving facts or mixed questions of law and fact pertaining to constitutional claims. Evidentiary rulings are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Supreme Court of Rhode Island.

PARTIES

A.T. Wall, Warden of the Adult Correctional Institutions v. Jason Ferrell

TOPICS

post-conviction relief hearsay ineffective assistance evidence appellate procedure

PRACTICE AREAS

criminal law post-conviction relief evidence constitutional criminal procedure appellate procedure

QUESTIONS PRESENTED

1. Whether the Superior Court clearly erred in finding an unsworn, out-of-court videotaped recantation credible when the recanting witness invoked the Fifth Amendment and could not be cross-examined at the post-conviction hearing.
2. Whether the videotaped recantation was admissible as non-hearsay or under the statement-against-penal-interest exception.
3. Whether trial counsel's Rule 16 failure to disclose additional alibi testimony caused constitutionally significant prejudice under Strickland v. Washington.

HOLDINGS

1. The hearing justice clearly erred in finding Evans's unsworn, out-of-court videotaped recantation credible enough to support post-conviction relief because Evans did not testify under oath or submit to cross-examination at the hearing, while his original trial testimony had been sworn and extensively cross-examined.
2. The videotaped recantation was inadmissible hearsay and did not qualify as non-hearsay under Rule 801(d)(1)(A) or as a statement against penal interest under Rule 804(b)(3). The hearing justice therefore abused his discretion by admitting it as substantive evidence.
3. Ferrell failed to establish constitutionally significant prejudice from counsel's Rule 16 violation because the excluded alibi testimony was cumulative of alibi evidence admitted at trial; therefore, his ineffective-assistance claim failed under Strickland.

KEY QUOTATIONS

"We hold that the hearing justice in this case was presented with insufficient evidence to properly determine the credibility of Evans's recantation." (889 A.2d at 188)

"Accordingly, we hold the trial justice abused his discretion by admitting Evans's recantation into evidence." (889 A.2d at 190)

"We hold that the defendant did not suffer constitutionally significant prejudice as a result of Debra's excluded testimony; therefore, the defendant's ineffective assistance claim must fail." (889 A.2d at 191)

FACTUAL BACKGROUND

Lorenzo Evans initially told police that he could not identify Carpenter's assailants, later identified several alleged assailants, and testified at Ferrell's trial that he saw Ferrell near the scene holding an object resembling a handgun. The jury acquitted Ferrell of first-degree murder but convicted him of three conspiracy and assault-related offenses. One day before sentencing, Evans made an unsworn videotaped recantation, but at the later post-conviction hearing he invoked the Fifth Amendment and was not available for cross-examination. Ferrell also claimed that trial counsel's failure to disclose part of an alibi witness's testimony caused the witness to be precluded from testifying that Ferrell returned to the alibi location after 11:15 a.m.; other alibi evidence was admitted at trial.

PROCEDURAL HISTORY

Ferrell was convicted in 1997 of conspiracy to commit first-degree murder, conspiracy to commit assault with intent to murder, and assault with intent to murder; those convictions were affirmed in *State v. Oliveira*. Ferrell later filed an application for post-conviction relief based primarily on Lorenzo Evans's videotaped recantation and trial counsel's failure to disclose portions of an alibi witness's anticipated testimony under Rule 16. The Superior Court granted relief, and the State timely appealed. The Supreme Court reversed and directed reinstatement of the convictions.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Superior Court's judgment granting post-conviction relief was reversed, Ferrell's 1997 convictions were reinstated, and the record was remanded for entry of judgment not inconsistent with the opinion.

CASES CITED

- *State v. Oliveira*, 774 A.2d 893 (R.I. 2001)
- *Young v. State*, 877 A.2d 625 (R.I. 2005)
- *Bustamante v. Wall*, 866 A.2d 516 (R.I. 2005)
- *Hampton v. State*, 786 A.2d 375 (R.I. 2001)
- *Carillo v. State*, 773 A.2d 248 (R.I. 2001)
- *Ouimette v. Moran*, 541 A.2d 855 (R.I. 1988)
- *Fontaine v. State*, 602 A.2d 521 (R.I. 1992)
- *State v. Lanoue*, 117 R.I. 342, 366 A.2d 1158 (1976)
- *State v. Luanglath*, 863 A.2d 631 (R.I. 2005)
- *State v. Brown*, 528 A.2d 1098 (R.I. 1987)
- *State v. Briggs*, 886 A.2d 735 (R.I. 2005)
- *State v. Lynch*, 854 A.2d 1022 (R.I. 2004)

- Crawford v. Washington, 541 U.S. 36 (2004)
- State v. Fontaine, 559 A.2d 622 (R.I. 1989)
- State v. Jaiman, 850 A.2d 984 (R.I. 2004)
- State v. DeRoche, 120 R.I. 523, 389 A.2d 1229 (1978)
- Chambers v. Mississippi, 410 U.S. 284 (1973)
- Strickland v. Washington, 466 U.S. 668 (1984)
- State v. Dunn, 726 A.2d 1142 (R.I. 1999)
- State v. Engram, 479 A.2d 716 (R.I. 1984)
- United States v. Baxter, 733 F.2d 1443 (11th Cir. 1984)
- State v. Landon, 69 Wash. App. 83, 848 P.2d 724 (1993)
- United States v. Stewart, 445 F.2d 897 (8th Cir. 1971)
- Berger v. United States, 295 U.S. 78 (1935)

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