

COURT OF CRIMINAL APPEALS OF TENNESSEE

State v. Rogers

703 S.W.2d 166 (Tenn. Crim. App. 1985) · Decided June 28, 1985

SUMMARY

The Tennessee Court of Criminal Appeals affirmed Paul H. Rogers's incest conviction while addressing issues concerning newly discovered evidence, severance, evidentiary rulings, witness impeachment, expert testimony, jury instructions, probation, and sentencing classification. The court held that the victim's recantation did not require a new trial on the incest charge because recorded conversations provided independent evidence of sexual intercourse, and it declined to reach issues relating solely to the rape charge for which a new trial had been granted.

CASE DETAILS

COURT	Court of Criminal Appeals of Tennessee
WRITING FOR THE COURT	Walker, Presiding Judge; Byers, Judge; John D. Templeton, Special Judge
JURISDICTION	Tennessee
DECIDED	June 28, 1985
DISPOSITION	affirmed
PROCEDURAL POSTURE	Rogers appealed convictions for rape and incest after the trial court granted a new trial on the rape charge but denied a new trial on the incest charge. He challenged the denial of a new trial and raised additional issues concerning the rape prosecution, joinder and severance, evidence, jury instructions, probation, and sentencing classification.
STANDARD OF REVIEW	The denial of a new trial based on newly discovered evidence is reviewed for abuse of discretion; the trial judge's findings carry the weight of a jury verdict and will not be disturbed unless the evidence preponderates against them. Decisions concerning probation and especially mitigated-offender classification are likewise reviewed for capriciousness, arbitrariness, or palpable abuse of discretion. Evidentiary rulings, including expert qualification and admission of evidence, are reviewed under the applicable discretionary standard.
PRECEDENTIAL VALUE	Published Tennessee intermediate appellate opinion; precedential subject to Tennessee law governing Court of Criminal Appeals

opinions.

PARTIES

Paul H. Rogers v. State of Tennessee

TOPICS

criminal procedure

evidence

appellate procedure

standard of review

probation

PRACTICE AREAS

Tennessee criminal law

criminal procedure

evidence

sentencing

QUESTIONS PRESENTED

1. Whether the victim's post-trial recantation constituted newly discovered evidence requiring a new trial on the incest conviction.
2. Whether challenges to the Tennessee Rape Shield Law, consent, and the resistance instruction presented justiciable issues after a new trial had already been granted on the rape charge.
3. Whether the rape and incest charges should have been severed for separate trials.
4. Whether learned medical treatises could be introduced as substantive evidence and whether the victim's medical records were admissible to impeach her credibility.
5. Whether a police officer was qualified to testify concerning whether a tape recorder had been turned off during the recorded conversations.
6. Whether a prospective defense witness could be cross-examined about prior homicides resulting in findings of not guilty by reason of insanity.
7. Whether the jury should have received a special instruction concerning the testimony of a drug addict or abuser.
8. Whether the trial court erred by denying probation and by refusing to classify Rogers as an especially mitigated offender.

HOLDINGS

1. A new trial was not required because the victim's recantation would principally impeach or contradict her trial testimony, and the recorded admissions independently established that Rogers had sex with her.
2. The appellate court would not decide the constitutional challenge to the Rape Shield Law or the requested consent and resistance instructions because those issues concerned a rape charge for which a new trial had already been granted and therefore presented no current justiciable controversy.
3. Rogers was not entitled to severance because the offenses were tried together under the governing rule and consent was not an issue in the incest prosecution; the asserted prejudice from the rape-shield law therefore did not require separate trials.
4. The trial court properly excluded the learned medical treatises and the portions of the victim's medical records offered to attack her credibility.

5. The trial court did not err in permitting Officer Cooper to testify that, based on his experience, the tape recorder was not turned off during the conversations.
6. The trial court did not err in allowing the State to question the prospective defense witness about prior bad acts at a jury-out hearing conducted under Tennessee's adopted version of Federal Rule of Evidence 608(b).
7. The trial court properly refused the requested special instruction because the general instruction on witness credibility fully and fairly stated the applicable law.
8. The denial of probation was not capricious, arbitrary, or a palpable abuse of discretion and therefore was affirmed.
9. The trial court did not abuse its discretion in refusing to classify Rogers as an especially mitigated offender.

KEY QUOTATIONS

“A new trial will not be granted on newly discovered evidence where it appears that such new evidence can have no other effect than to discredit the testimony of a witness at the original trial, contradict a witness' statements or impeach a witness, unless the testimony of the witness who is sought to be impeached was so important to the issue, and the evidence impeaching the witness so strong and convincing that a different result at trial would necessarily follow.” (703 S.W.2d at 169)

“An appellate court will not pass on lawsuits when there is no justiciable controversy presented, or render advisory opinions on questions which are premature and contingent and may never arise in the future.” (703 S.W.2d at 169)

“The records showed minor inconsistencies between her statements and statements to the medical personnel, her requests for additional medication during hospitalization, and her physician's evaluation of her mental and physical condition.” (703 S.W.2d at 169)

FACTUAL BACKGROUND

The victim, Rogers's adult daughter, testified that Rogers raped her and committed incest while visiting her trailer. Rogers denied intercourse and claimed that the recorded conversations concerned only a kiss and his daughter's conduct. After Rogers's conviction, the victim recanted in a letter, a sworn statement, and testimony at the new-trial hearing. Two recorded conversations nevertheless contained Rogers's admission that he had sex with the victim, although he did not believe it was by force.

PROCEDURAL HISTORY

Rogers was convicted on May 11, 1984, of rape and incest in two cases tried together. The trial court granted a new trial as to rape but denied the motion as to incest. The Court of Criminal Appeals affirmed the conviction and rejected all appellate issues. The Tennessee Supreme Court denied permission to appeal on September 30, 1985.

DISPOSITION

affirmed

CASES CITED

- Rosenthal v. State, 200 Tenn. 178, 292 S.W.2d 1 (1956)
- Jones v. State, 519 S.W.2d 398 (Tenn. Crim. App. 1974)
- Janow v. State, 4 Tenn. Crim. App. 195, 470 S.W.2d 19 (1971)
- Staten v. State, 191 Tenn. 157, 232 S.W.2d 18 (1950)
- State v. King, 635 S.W.2d 113, 114 (Tenn. 1982)
- Griffin v. State, 595 S.W.2d 96, 101 (Tenn. Crim. App. 1980)
- Graham v. State, 547 S.W.2d 531, 538 (Tenn. 1977)
- Gray v. State, 191 Tenn. 526, 235 S.W.2d 20 (1950)
- Honeycutt v. State, 544 S.W.2d 912, 915-916 (Tenn. Crim. App. 1976)
- State v. Fears, 659 S.W.2d 370, 377 (Tenn. Crim. App. 1983)
- Pruitt v. State, 216 Tenn. 686, 393 S.W.2d 747, 692 (1965)
- State v. Morgan, 541 S.W.2d 385 (Tenn. 1976)
- Bostick v. State, 210 Tenn. 620, 360 S.W.2d 472 (1962)
- Edwards v. State, 540 S.W.2d 641 (Tenn. 1976)
- State v. Neeley, 678 S.W.2d 48, 49 (Tenn. 1984)
- Stiller v. State, 516 S.W.2d 617 (Tenn. 1974)