

SUPREME COURT OF UTAH

State v. Beverly

2018 UT 60 · No. 20160511 · Decided November 29, 2018

SUMMARY

The Utah Supreme Court affirmed Mark Anthony Beverly’s convictions for rape and forcible sexual abuse of his wife. The court rejected or declined to reach his claims concerning the trial judge’s voir dire comments about the O.J. Simpson trial, exclusion of minor DNA-profile evidence, admission of prior domestic-violence evidence, limits on cross-examination, and cumulative error. The court concluded that the unpreserved jury-comment challenge did not satisfy an exception to preservation and that the evidentiary rulings did not constitute an abuse of discretion.

CASE DETAILS

COURT	Supreme Court of Utah
WRITING FOR THE COURT	Chief Justice Durrant; Associate Chief Justice Lee; Justice Himonas; Justice Pearce; Justice Petersen
JURISDICTION	Utah
DECIDED	November 29, 2018
DOCKET	20160511
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from convictions for rape and forcible sexual abuse following a jury trial.
STANDARD OF REVIEW	Preservation issues were reviewed under Utah's preservation and exception doctrines. Legal questions concerning admissibility were reviewed for correctness, factual findings for clear error, and application of evidentiary principles, including Rules 403, 404(b), and 412, for abuse of discretion. Limits on cross-examination were also reviewed for abuse of discretion. Cumulative error was reviewed under the fair-trial prejudice standard.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Mark Anthony Beverly v. State of Utah

TOPICS

evidence

criminal procedure

jury selection

preservation of error

appellate procedure

PRACTICE AREAS

criminal procedure

evidence

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial judge's comments about the O.J. Simpson trial during jury selection violated Beverly's constitutional rights or otherwise warranted appellate review despite the lack of a contemporaneous objection.
2. Whether the trial court abused its discretion under Utah Rules of Evidence 412 and 403 by excluding evidence concerning a minor DNA profile allegedly suggesting another sexual partner or source of injuries.
3. Whether the trial court abused its discretion under Rule 404(b) by admitting evidence of Beverly's prior choking and death threats against his wife to show her state of mind during the alleged rape.
4. Whether the trial court abused its discretion by limiting cross-examination concerning a 1993 New Year's Eve incident.
5. Whether cumulative error required reversal of Beverly's convictions.

HOLDINGS

1. The court declined to reach Beverly's constitutional challenge because he failed to preserve it below and did not establish ineffective assistance of counsel, plain error, or exceptional circumstances.
2. The trial court properly excluded Beverly's proposed use of the minor DNA profile to impeach his wife's credibility by suggesting that she had another sexual partner, because Rule 412 contains no exception permitting prior sexual conduct evidence solely for witness impeachment.
3. Even assuming the minor DNA profile could fall within Rule 412(b)(1)'s source-of-injury exception, the trial court properly excluded it under Rule 403 because its probative value was slight and its prejudicial effect was substantial.
4. The trial court did not abuse its discretion by admitting evidence that Beverly had previously choked and threatened to kill his wife because the evidence served a plausible, non-propensity purpose—showing the wife's mental state and explaining her lack of physical resistance.
5. The trial court did not abuse its discretion by limiting cross-examination concerning the 1993 New Year's Eve incident because that incident involved no choking, violence, or death threat, was remote in time, and had little probative value; Beverly was permitted to question his wife about the two choking incidents.
6. The cumulative-error doctrine did not warrant reversal because Beverly demonstrated, at most, one potential error, and cumulative-error review requires multiple errors whose combined effect undermines confidence in the fairness of the trial.

KEY QUOTATIONS

“Because the risk of prejudicing the parties is high in circumstances such as this, judges should steer clear of remarking upon infamous cases and their results, particularly when such a case is factually similar to the case the potential jury members will be reviewing.” (¶ 39)

“It is meant to restrict the admission of “all activities that involve actual physical conduct . . . or that imply sexual intercourse or sexual contact.”” (¶ 47)

“The trial court did not err in admitting Mr. Beverly’s prior bad acts, because the probative value of this evidence was overwhelming.” (¶ 72)

FACTUAL BACKGROUND

After a period of separation, Mark Beverly moved into his wife's home and slept on the couch. During an August 2014 incident, he entered his wife's bedroom, demanded sex despite her repeated refusals, and had intercourse with her while she cried; she later called 911 and reported rape. Beverly admitted to police that he had intercourse with her, that she had said no more than once, and that she cried during the incident. At trial, the court admitted evidence of Beverly's prior choking and death threats against his wife, excluded proposed use of a minor DNA profile to suggest another sexual partner, and limited cross-examination concerning an old domestic incident.

PROCEDURAL HISTORY

Beverly was convicted by a jury in the Third District Court of rape and forcible sexual abuse and acquitted of domestic violence in the presence of a child. He timely appealed to the Utah Supreme Court. The Supreme Court initially transferred the case to the court of appeals, later vacated that transfer and recalled the case, and affirmed the convictions.

DISPOSITION

affirmed

CASES CITED

- State v. Boyd, 2001 UT 30, ¶ 2, 25 P.3d 985
- State v. Hopkins, 1999 UT 98, ¶ 2, 989 P.2d 1065
- Patterson v. Patterson, 2011 UT 68, ¶ 12, 266 P.3d 828
- State v. Johnson, 2017 UT 76, ¶¶ 18-21, 416 P.3d 443
- Arnold v. Grigsby, 2018 UT 14, ¶ 9, 417 P.3d 606
- State v. Tarrats, 2005 UT 50, ¶¶ 16, 20-22, 122 P.3d 581
- State v. Kell, 2002 UT 106, ¶ 32, 61 P.3d 1019
- State v. Thornton, 2017 UT 9, ¶¶ 56, 58, 391 P.3d 1016
- State v. Lucero, 2014 UT 15, ¶ 13, 328 P.3d 841
- State v. Dunn, 850 P.2d 1201, 1225, 1229 (Utah 1993)
- State v. Roth, 2001 UT 103, ¶ 5, 37 P.3d 1099

- State v. Parker, 2000 UT 51, ¶ 10, 4 P.3d 778
- State v. Clark, 2004 UT 25, ¶ 6, 89 P.3d 162
- State v. Moore, 2012 UT 62, ¶ 29 n.5, 289 P.3d 487
- Strickland v. Washington, 466 U.S. 668, 694-96 (1984)
- Adoption of K.A.S., 2016 UT 55, ¶ 19, 390 P.3d 278
- State v. Beck, 2006 UT App 177, ¶ 9, 136 P.3d 1288
- State v. McNeil, 2016 UT 3, ¶ 29, 365 P.3d 699
- Verde v. State, 2012 UT 60, ¶ 31, 296 P.3d 673
- ConocoPhillips Co. v. Utah Department of Transportation, 2017 UT App 68, ¶ 32, 397 P.3d 772