

SUPREME COURT OF WYOMING

Sam v. State, 2017 WY 98

401 P.3d 834 (Wyo. 2017) · Decided August 24, 2017

SUMMARY

The Wyoming Supreme Court reviews Phillip Sam’s convictions for first-degree murder, aggravated assault and battery, and attempted aggravated assault and battery arising from a shooting committed when Sam was 16 years old. The court rejects challenges concerning transfer to juvenile court, jury instructions, prosecutorial misconduct, sufficiency of the evidence, and double jeopardy. It holds that the aggregate sentence exceeded constitutional limits applicable to juveniles under *Miller v. Alabama* and *Bear Cloud v. State*, and affirms in part, reverses in part, and remands for resentencing.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Fox, Justice; Burke, Justice; Davis, Justice; Hill, Justice; Kautz, Justice
JURISDICTION	Wyoming
DECIDED	August 24, 2017
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Direct appeal from convictions and sentences following a jury trial in district court. The appeal challenged denial of transfer to juvenile court, jury instructions, prosecutorial misconduct, sufficiency of the evidence, and the constitutionality of the aggregate juvenile sentence.
STANDARD OF REVIEW	Abuse of discretion for the juvenile-transfer decision, denial of a motion for new trial, and refusal to give a proposed jury instruction; de novo for statutory interpretation, constitutional claims, and sufficiency-related legal questions; plain-error review for unpreserved jury-instruction claims; harmless-error review for preserved prosecutorial misconduct; and deferential review of sufficiency of the evidence, viewing the evidence in the light most favorable to the State.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Phillip Sam v. State of Wyoming

TOPICS

sentencing

cruel and unusual punishment

jury instructions

prosecutorial misconduct

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the district court abused its discretion by denying transfer of the proceedings to juvenile court.
2. Whether admission of investigative hearsay at the transfer hearing violated Sam's statutory right to confront and cross-examine adverse witnesses.
3. Whether the district court properly assessed juvenile facilities and the likelihood of rehabilitation.
4. Whether the jury instructions concerning a corrected instruction, attempt, malice, recklessness, inference of malice, aggressor status, retreat, and perceived threat were erroneous and prejudicial.
5. Whether the prosecutor committed reversible misconduct by making victim-impact arguments during closing argument.
6. Whether sufficient evidence supported the ten attempted aggravated assault and battery convictions without proof that Sam intended to harm a particular individual.
7. Whether the aggregate sentence was an unconstitutional de facto life-without-parole sentence under the Eighth Amendment.
8. Whether the aggregate sentence unlawfully deprived the parole board of authority to consider parole after 25 years.
9. Whether separate sentences for murder and aggravated assault based on separate shots violated double jeopardy.

HOLDINGS

1. The district court did not abuse its discretion in denying transfer to juvenile court, and admission of Detective Harper's testimony about the nature of the allegations did not violate Sam's statutory right to confront and cross-examine adverse witnesses.
2. The first-degree murder malice instruction was erroneous because it omitted the requirement that the intentional act be committed with hatred, ill will, or hostility, but the error was not prejudicial and did not warrant a new trial.
3. The recklessness instruction was erroneous because it stated ordinary recklessness rather than the heightened recklessness required for second-degree murder, but the error was not prejudicial because the jury convicted Sam of first-degree murder and did not reach the lesser-included offense.
4. The previously approved Eckert malice-inference instruction did not constitute plain error in this case, but Wyoming courts should thereafter use the Hereford formulation, which states that the jury may, but is not required to, infer malice from use of a deadly weapon and that malice must be proved beyond a reasonable doubt.

5. The duty-to-retreat instruction misstated Wyoming law by imposing an absolute duty to retreat before asserting self-defense, but the error was not prejudicial because the evidence established that Sam was an aggressor by the time he fired the fatal shot.
6. The prosecutor's victim-impact argument during the guilt phase was improper, but the error was harmless because it was not pervasive or central to the case and the evidence of guilt was overwhelming.
7. Attempted aggravated assault and battery under Wyoming Statutes section 6-2-502(a)(ii) is a specific-intent crime, but the State need prove only an intent to cause bodily injury to a person, not an intent to harm a particular identified individual. Firing knowingly into a group supplied sufficient evidence of that intent.
8. An aggregate minimum sentence of 52 years with possible release at age 70 was the functional equivalent of life without parole and violated the Eighth Amendment under *Miller* and *Bear Cloud III* because the sentencing court had determined that Sam was not one of the rare juvenile offenders permanently incorrigible enough to warrant incarceration for life.
9. The aggregate sentence did not deprive the parole board of statutory authority to consider parole after 25 years.
10. Separate sentences for first-degree murder and aggravated assault based on separate shots did not violate the federal or Wyoming constitutional prohibitions against double jeopardy.

KEY QUOTATIONS

“An aggregated minimum sentence exceeding the 45/61 standard is the functional equivalent of life without parole and violates Bear Cloud III and Miller and its progeny.” (401 P.3d at 860)

“We find that attempted aggravated assault is a specific intent crime; however, the specificity requires the attempt to assault a person, not a particular individual.” (401 P.3d at 857)

“In cases where the evidence establishes, as a matter of law, the defendant was not the aggressor, the jury should not be charged that he had an absolute duty to retreat.” (401 P.3d at 853)

FACTUAL BACKGROUND

Sixteen-year-old Phillip Sam had an ongoing conflict with a rival youth group. After vandalizing a rival's car and obtaining a stolen .40-caliber pistol, Sam arranged for the groups to meet at a park and told a friend he intended to kill someone. When approximately twelve youths approached, Sam emerged from behind trees and fired repeatedly, injuring two youths; he then approached Tyler Burns, who was wounded and on the ground, and shot him in the head, killing him. The jury convicted Sam of first-degree murder, aggravated assault and battery, and ten attempted aggravated assault and battery offenses.

PROCEDURAL HISTORY

Sam was charged as an adult after the district court denied his motion to transfer the proceedings to juvenile court. A jury convicted him of first-degree murder, one count of aggravated assault and battery, and ten counts of attempted aggravated assault and battery. The district court denied his motion for a new trial and imposed life imprisonment with parole eligibility after 25 years, plus consecutive groups of concurrent 9-to-10-year

sentences. The Wyoming Supreme Court affirmed the convictions and most rulings but reversed and remanded for resentencing because the aggregate sentence was the functional equivalent of life without parole for a juvenile.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the aggregate sentence and remand for resentencing within the constitutional limits described in *Bear Cloud III*, *Miller*, and their progeny, ensuring that the sentence does not function as life without parole for a juvenile offender whom the sentencing court has determined is not permanently incorrigible.

CASES CITED

- *Miller v. Alabama*, *Miller v. Alabama*, 567 U.S. 460 (2012)
- *Bear Cloud v. State*, 2014 WY 113, 334 P.3d 132 (Wyo. 2014)
- *Johnson v. State*, 2015 WY 118, 356 P.3d 767 (Wyo. 2015)
- *Wilkerson v. State*, 2014 WY 136, 336 P.3d 1188 (Wyo. 2014)
- *Hereford v. State*, 2015 WY 17, 342 P.3d 1201 (Wyo. 2015)
- *Drennen v. State*, 2013 WY 118, 311 P.3d 116 (Wyo. 2013)
- *Haire v. State*, 2017 WY 48, 393 P.3d 1304 (Wyo. 2017)
- *Haynes v. State*, 2008 WY 75, 186 P.3d 1204 (Wyo. 2008)
- *McGinn v. State*, 2015 WY 140, 361 P.3d 295 (Wyo. 2015)
- *Cox v. State*, 829 P.2d 1183 (Wyo. 1992)
- *Leavitt v. State*, 2011 WY 11, 245 P.3d 831 (Wyo. 2011)
- *Walter v. State*, 811 P.2d 716 (Wyo. 1991)
- *Sen v. State*, 2017 WY 30, 390 P.3d 769 (Wyo. 2017)
- *Kent v. United States*, 383 U.S. 541 (1966)
- *JB v. State*, 2013 WY 85, 305 P.3d 1137 (Wyo. 2013)
- *Cecil v. State*, 2015 WY 158, 364 P.3d 1086 (Wyo. 2015)
- *Butz v. State*, 2007 WY 152, 167 P.3d 650 (Wyo. 2007)
- *Grander v. State*, 2008 WY 118, 193 P.3d 266 (Wyo. 2008)
- *Hawes v. State*, 2014 WY 127, 335 P.3d 1073 (Wyo. 2014)
- *Janpol v. State*, 2008 WY 21, 178 P.3d 396 (Wyo. 2008)
- *Shull v. State*, 2017 WY 14, 388 P.3d 763 (Wyo. 2017)
- *Mendoza v. State*, 2013 WY 55, 300 P.3d 487 (Wyo. 2013)
- *Blevins v. State*, 2017 WY 43, 393 P.3d 1249 (Wyo. 2017)
- *Graham v. Florida*, *Graham v. Florida*, 560 U.S. 48 (2010)

- *Montgomery v. Louisiana*, 577 U.S. 190 (2016)
- *Budder v. Addison*, 851 F.3d 1047 (10th Cir. 2017)
- *Solis v. State*, 2013 WY 152, 315 P.3d 622 (Wyo. 2013)
- *State v. Burlison*, 868 S.W.2d 713 (Tenn. Crim. App. 1993)

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