

SUPREME COURT OF MISSISSIPPI

Cox v. State

183 So. 3d 36 (Miss. 2016) · Decided June 25, 2016

SUMMARY

The Mississippi Supreme Court reviewed David Cox’s death sentence after he pleaded guilty to capital murder and related offenses arising from a hostage-taking, shooting, and sexual assaults. The court considered challenges involving venue, evidentiary rulings, jury selection, aggravating-circumstance instructions, the sufficiency and constitutionality of the death sentence, proportionality, and cumulative error.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Randolph, Presiding Justice; Waller, Chief Justice; Lamar, Justice; Chandler, Justice; Coleman, Justice; Dickinson, Presiding Justice; Kitchens, Justice; King, Justice; Pierce, Justice
JURISDICTION	Mississippi
DECIDED	June 25, 2016
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from convictions entered after Cox pleaded guilty to all eight counts and from the jury-imposed death sentence for capital murder, together with consecutive sentences on the remaining counts.
STANDARD OF REVIEW	The court applied heightened scrutiny to the death sentence; abuse-of-discretion review to the denial of a change of venue, evidentiary rulings, and jury-selection issues; clear-error or great-deference review to Batson findings; and de novo or constitutional review where constitutional challenges were presented. Unpreserved claims were reviewed for procedural bar and, where addressed, on the merits.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	David Cox v. State of Mississippi

TOPICS

- sentencing
- criminal procedure
- evidence
- jury selection
- appellate procedure

PRACTICE AREAS

criminal law

capital punishment

criminal procedure

evidence

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by denying Cox's motion for a change of venue.
2. Whether the trial court improperly admitted L.K.'s videotaped forensic interview and live testimony, evidence concerning Cox's prior incarceration, crime-scene and autopsy photographs, and alleged victim-impact evidence.
3. Whether the jury-selection process was constitutionally or procedurally defective, including alleged juror partiality, death-penalty exclusions, racially discriminatory peremptory strikes under Batson, sequestration, and alleged jury influence by the victim's family.
4. Whether the trial court improperly instructed the jury regarding capital aggravating circumstances and refused Cox's proposed mitigating, mercy, life-sentence, and deadlock instructions.
5. Whether the jury's written verdict satisfied Mississippi's capital-sentencing statutes.
6. Whether Mississippi's capital-sentencing scheme and Cox's death sentence violated the United States or Mississippi Constitutions, including under Apprendi, Ring, Enmund, Tison, and the Eighth Amendment.
7. Whether lethal injection constituted cruel and unusual punishment.
8. Whether the death sentence was constitutionally disproportionate in light of Cox's claimed mental illness, substance abuse, and alleged organic brain syndrome.
9. Whether cumulative error required reversal.

HOLDINGS

1. The trial court did not abuse its discretion in denying a change of venue because Cox failed to establish extraordinary, intensely prejudicial, or saturated pretrial publicity sufficient to show that he could not receive a fair and impartial trial.
2. The trial court properly admitted the challenged forensic interview, live testimony, limited prior-incarceration evidence, and crime-scene and autopsy photographs because the evidence was relevant to the aggravating circumstances and was not shown to be unfairly prejudicial.
3. Cox's victim-impact claim was procedurally barred because he did not renew his objection at the sentencing trial; alternatively, the challenged testimony was permissible evidence concerning the crime and aggravating circumstances and did not violate the Eighth or Fourteenth Amendments.
4. The trial court did not clearly err in finding that the State's peremptory strikes were based on race-neutral reasons and that Cox failed to prove purposeful discrimination.
5. Allowing the empaneled jurors to leave briefly to pack their bags did not violate sequestration, and Cox's unpreserved claim that the victim's family created a coercive atmosphere was procedurally barred and lacked merit.
6. The trial court properly instructed the jury on the seven challenged aggravating circumstances and did not violate due process by permitting aggravators based on separate and distinct felonies or by allowing

the same conduct to support the capital offense and an aggravator.

7. The trial court did not err by refusing Cox's proposed deadlock, mercy, individualized-mitigation, or life-sentence instructions, or by instructing that death could be imposed if mitigation did not outweigh aggravation.
8. The jury's written verdict sufficiently identified the aggravating circumstances and satisfied Mississippi Code sections 99-19-101 and 99-19-103.
9. Mississippi's capital-sentencing scheme was not rendered unconstitutional by the omission of aggravating circumstances from the indictment, by the asserted Enmund-Tison requirements, or by the asserted inadequacy of appellate proportionality review.
10. Cox failed to establish that Mississippi's lethal-injection protocol violated the Eighth Amendment.
11. Cox's death sentence was not constitutionally disproportionate, and *Atkins v. Virginia* and *Roper v. Simmons* did not extend to his claimed mental illness, substance abuse, or organic brain syndrome.
12. Cumulative error did not warrant reversal because the court found no individual reversible error.

KEY QUOTATIONS

"convictions upon indictments for capital murder and sentences of death must be subjected to "heightened scrutiny." (183 So. 3d at 44)

"It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court." (183 So. 3d at 47)

"the appellant caused the situation and cannot complain, if the evidence has probative value." (183 So. 3d at 50)

"Because we find no merit in the errors presented, this issue is likewise without merit." (183 So. 3d at 64)

FACTUAL BACKGROUND

After separating from Kim Cox, David Cox was arrested and jailed on earlier charges after Kim reported that he had raped her daughter, L.K. While incarcerated, Cox repeatedly expressed hatred toward Kim and threatened to kill her after his release. On May 14, 2010, after purchasing a handgun, Cox went to the home where Kim, L.K., and other family members were staying, shot his way inside, and held Kim and two children hostage for more than eight hours. Cox shot Kim, refused to release her for medical treatment, sexually assaulted L.K. in Kim's presence, threatened the children and responding officers, and watched Kim bleed to death before a SWAT team entered the residence.

PROCEDURAL HISTORY

Cox was indicted in the Circuit Court of Union County for capital murder, two counts of kidnapping, three counts of sexual battery, burglary, and firing into an occupied dwelling. After being found competent, he pleaded guilty to all charges. A jury then conducted the capital-sentencing proceeding and returned a death verdict; the trial court imposed death for capital murder and consecutive terms for the remaining offenses. The trial court

denied Cox's motion for a new trial, and Cox appealed, raising nine claims of error. The Mississippi Supreme Court found no reversible error and affirmed all convictions and sentences.

DISPOSITION

affirmed

CASES CITED

- Balfour v. State, 598 So. 2d 731 (Miss. 1992)
- Irving v. State, 361 So. 2d 1360 (Miss. 1978)
- Moffett v. State, 49 So. 3d 1073, 1079 (Miss. 2010)
- Loden v. State, 971 So. 2d 548 (Miss. 2007)
- Thorson v. State, 895 So. 2d 85 (Miss. 2004)
- Gray v. State, 728 So. 2d 36 (Miss. 1998)
- Fisher v. State, 481 So. 2d 203 (Miss. 1985)
- White v. State, 495 So. 2d 1346 (Miss. 1986)
- Rideau v. State of Louisiana, 373 U.S. 723 (1963)
- Irvin v. Dowd, 366 U.S. 717 (1961)
- Tudor v. State, 299 So. 2d 682 (Miss. 1974)
- Ross v. State, 954 So. 2d 968 (Miss. 2007)
- Sudduth v. State, 562 So. 2d 67 (Miss. 1990)
- Evans v. State, 422 So. 2d 737 (Miss. 1982)
- Payne v. Tennessee, 501 U.S. 808 (1991)
- Booth v. Maryland, 482 U.S. 496 (1987)
- Carrothers v. State, 148 So. 3d 278 (Miss. 2014)
- Batson v. Kentucky, 476 U.S. 79 (1986)
- Strickland v. State, 980 So. 2d 908 (Miss. 2008)
- Snyder v. Louisiana, 552 U.S. 472 (2008)
- Hernandez v. New York, 500 U.S. 352 (1991)
- Watts v. State, 733 So. 2d 214 (Miss. 1999)
- Simmons v. State, 805 So. 2d 452 (Miss. 2001)
- Gillett v. State, 56 So. 3d 469 (Miss. 2010)
- Goodin v. State, 787 So. 2d 639 (Miss. 2001)
- Jordan v. State, 786 So. 2d 987 (Miss. 2001)
- Batiste v. State, 121 So. 3d 808 (Miss. 2013)
- Apprendi v. New Jersey, 530 U.S. 466 (2000)
- Ring v. Arizona, 536 U.S. 584 (2002)
- Kansas v. Marsh, 548 U.S. 163 (2006)

- *Enmund v. Florida*, 458 U.S. 782 (1982)
- *Tison v. Arizona*, 481 U.S. 137 (1987)
- *Lester v. State*, 692 So. 2d 755 (Miss. 1997)
- *Baze v. Rees*, 553 U.S. 35 (2008)
- *Atkins v. Virginia*, 536 U.S. 304 (2002)
- *Roper v. Simmons*, 543 U.S. 551 (2005)
- *Doss v. State*, 709 So. 2d 369 (Miss. 1996)

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