

SUPREME COURT OF WASHINGTON

State v. Posey, 161 Wash. 2d 638

167 P.3d 560 (2007) · Decided September 20, 2007

SUMMARY

The Washington Supreme Court held that a juvenile acquitted of the enumerated offense that triggered automatic decline of juvenile jurisdiction should be remanded to juvenile court for further proceedings on remaining nonenumerated convictions. The court reversed the adult sentencing jurisdiction ruling but affirmed the exclusion of an e-mail under Washington’s rape shield statute. The conviction was affirmed, and the matter was remanded to juvenile court.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	C. Johnson, J.; Alexander, C.J.; Madsen, J.; Bridge, J.; Owens, J.; Fairhurst, J.; J.M. Johnson, J.
JURISDICTION	Washington
DECIDED	September 20, 2007
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Washington Supreme Court reviewed a Court of Appeals decision upholding adult-court sentencing jurisdiction over Posey and affirming exclusion of proposed e-mail evidence under Washington's rape shield statute.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo. Exclusion of evidence, including the balancing of prejudice against probative value, is reviewed for abuse of discretion; the ruling is overturned only if no reasonable person could adopt the trial court's view.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	State of Washington v. Daniel Alfred Posey, Jr.

TOPICS

- statutory interpretation
- legislative intent
- criminal procedure
- evidence
- relevance

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether an adult criminal court retains jurisdiction to sentence a juvenile on remaining nonenumerated charges after the juvenile is acquitted of the enumerated serious violent offense that triggered automatic decline of juvenile-court jurisdiction under former RCW 13.04.030(1)(e)(v)(A) (2000).
2. Whether the trial court abused its discretion under Washington's rape shield statute, RCW 9A.44.020, by excluding an e-mail describing the victim's potential prior sexual conduct and sexual preferences.

HOLDINGS

1. When a juvenile is acquitted of the enumerated offense that triggered automatic decline of juvenile-court jurisdiction, the remaining nonenumerated charges must be remanded to juvenile court for a decline hearing or juvenile sentencing; the adult court did not retain sentencing jurisdiction over Posey after his acquittal for first degree assault.
2. The trial court did not abuse its discretion by excluding the e-mail because it described only potential prior sexual misconduct or sexual mores and was inadmissible under RCW 9A.44.020; the Washington Supreme Court affirmed the evidentiary ruling.

KEY QUOTATIONS

“The legislature intended that a juvenile receive treatment and rehabilitation through juvenile disposition, unless the juvenile commits an enumerated charge under the statute.” (at 646-47)

“The e-mail was not addressed to Posey nor was it sent to Posey, and it described only potential prior sexual misconduct or potential sexual mores, rendering the admission of the e-mail violative of the rape shield statute.” (at 649)

FACTUAL BACKGROUND

Posey and H.A.H. were high-school students who became romantically and sexually involved. After H.A.H. attempted to end the relationship, Posey allegedly forcibly had intercourse with her on two occasions and threatened her with a gun. Because Posey was sixteen and was charged with first degree assault, the juvenile court automatically declined jurisdiction and the case proceeded in adult court. Posey was acquitted of first degree assault and one rape count but convicted of two second degree rape counts; he also sought to introduce an e-mail from H.A.H.'s computer describing an interest in violent or nonconsensual sexual conduct.

PROCEDURAL HISTORY

Posey, who was sixteen when the alleged offenses occurred, was automatically declined into adult court because he was charged with first degree assault, a serious violent offense. He was acquitted of the first degree assault charge and one rape charge but convicted of two second degree rape counts and sentenced as an adult. The Court of Appeals upheld adult-court jurisdiction and the evidentiary ruling. The Washington Supreme Court reversed the jurisdictional sentencing ruling, affirmed the evidentiary ruling, affirmed the convictions, and remanded for juvenile-court proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand the matter to juvenile court for a decline hearing or sentencing as a juvenile on the remaining convictions; the convictions themselves were affirmed.

CASES CITED

- State v. Salavea, 151 Wn.2d 133, 140, 86 P.3d 125 (2004)
- In re Boot, 130 Wn.2d 553, 565, 570-71, 925 P.2d 964 (1996)
- State v. Mora, 138 Wn.2d 43, 50, 54, 977 P.2d 564 (1999)
- State v. Rice, 98 Wn.2d 384, 392, 655 P.2d 1145 (1982)
- Monroe v. Soliz, 132 Wn.2d 414, 419-20, 939 P.2d 205 (1997)
- State v. Hudlow, 99 Wn.2d 1, 17, 659 P.2d 514 (1983)
- State v. Taylor, 60 Wn.2d 32, 40, 371 P.2d 617 (1962)
- State v. Carver, 37 Wn. App. 122, 123-24, 678 P.2d 842 (1984)
- State v. Posey, 130 Wn. App. 262, 122 P.3d 914 (2005)

OPINION

State v. Posey

161 Wash. 2d 638

JOHNSON, J.

*641¶1 This case asks us to determine whether a juvenile’s acquittal in adult court on an assault charge automatically restores juvenile court jurisdiction over remaining charges under the statute then in effect, former RCW 13.04.030 (2000), and whether the trial court improperly excluded e-mail evidence under the rape shield statute, RCW 9A.44.020. We reverse in part and affirm in part. We reverse the Court of Appeals and hold that Daniel Alfred Posey, Jr., was incorrectly sentenced as an adult. We affirm the Court of Appeals’ holding that the trial court did not abuse its discretion when it excluded the e-mail evidence.

C. Johnson, J.

FACTUAL AND PROCEDURAL HISTORY

¶2 Posey and H.A.H. met in high school in September 2002 and became romantically and sexually involved with each other. After H.A.H. tried to end the relationship, Posey allegedly had forcible intercourse with H.A.H. on two occasions and threatened her with a gun. The State charged Posey with first degree assault-domestic violence¹ and three counts of second degree rape-domestic violence.² Posey was 16 years old at the time of the alleged crimes, but because first degree assault is considered a “serious violent offense” under former RCW 9.94A.030(37)(a)(v) (2002),³

the juvenile court was required to automatically decline juvenile jurisdiction over Posey pursuant to former RCW 13.04.030(1)(e)(v)(A) (2000).⁴ Posey was acquitted on the first degree assault charge and one count of second degree rape, but the jury found him guilty on the remaining two counts of second degree rape. The adult criminal court sentenced Posey to a minimum term of 119 months and a maximum term of life in prison.

*642¶3 In his appeal to Division Three of the Court of Appeals, Posey challenged the automatic decline on numerous grounds, including violations of his constitutional rights to equal protection and due process. Further, Posey argued the adult court lacked jurisdiction to sentence him because he was acquitted of the first degree assault charge (the crime prompting the automatic decline of jurisdiction by the juvenile court). Also, Posey argued that a 2005 amendment to RCW 13.04.030 applied retroactively to him, thus, automatic juvenile court jurisdiction was restored. See Laws of 2005, ch. 238, § 1. Finally, Posey argued the trial court erred when it precluded the introduction of evidence pursuant to the rape shield statute, RCW 9A.44.020.

¶4 Specifically, Posey sought to introduce an e-mail copied by police from ELA.H.'s computer as evidence that the victim would have consented to violence and rape. The e-mail was written around the time H.A.H. met Posey, but it was neither addressed to nor sent to Posey. According to the record and offer of proof, H.A.H.'s e-mail stated that she would "enjoy" being raped and that she wanted a boyfriend who would "choke her" and "beat her." The trial court excluded the e-mail. Report of Proceedings (RP) (Jan. 12, 2004) at 51-60. ¶5 The Court of Appeals held the trial court had proper jurisdiction over Posey, that the 2005 amendment to RCW 13.04.030 did not apply retroactively, and that the trial court did not abuse its discretion when it excluded the e-mail evidence. *State v. Posey*, 130 Wn. App. 262, 122 P.3d 914 (2005). Also, the Court of Appeals concluded that the automatic decline statute affords equal protection of law if the class to be protected is all juveniles charged with a " 'serious violent offense.' " *Posey*, 130 Wn. App. at 273. The court also found that we have already held the statute does not deny due process of law. *Posey*, 130 Wn. App. at 265; *In re Boot*, 130 Wn.2d 553, 570-71, 925 P.2d 964 (1996). We reverse in part and affirm in part. Also, we find it necessary to address only the issues of the trial court's jurisdiction and its exclusion of the e-mail evidence.

*643ISSUES

A. Whether the adult court retained jurisdiction over Posey's remaining charges under former RCW 13.04-.030(1)(e)(v)(A) when Posey was acquitted of first degree assault. B. Whether the trial court abused its discretion when it refused to admit evidence of the victim's e-mail under the rape shield statute.

ANALYSIS

Jurisdiction ¶6 Statutory interpretation is a question of law; therefore, we review the interpretation of former RCW 13.04.030(1)(e)(v)(A) de novo. *State v. Salavea*, 151 Wn.2d 133, 140, 86 P.3d 125 (2004). ¶7 The relevant portion of the statute provides: [T]he juvenile courts in this state shall have exclusive original jurisdiction over all proceedings . . . unless . . . [t]he juvenile is sixteen or

seventeen years old and the alleged offense is [a] serious violent offense as defined in RCW 9.94A.030. Former RCW 13.04.030(1)(e)(v)(A). ¶8 The relevant portion of former RCW 9.94A.030 provides: “Serious violent offense” is a subcategory of violent offense and means . . . [a]ssault in the first degree. Former RCW 9.94A.030(37)(a)(v). ¶9 Posey argues that the automatic decline provision in former RCW 13.04.030(1)(e)(v)(A) is dictated by the conviction, not the charge. Posey was charged with assault in the first degree, which prompted the decline of juvenile jurisdiction. Posey argues that when he was acquitted of the enumerated charge, jurisdiction should have automatically *644transferred to juvenile court for sentencing on his two convictions for second degree rape, which is a nonenum-erated crime that does not prompt decline of juvenile jurisdiction. f 10 In contrast, the State argues the charge dictates jurisdiction because the statute uses the words “alleged offense.” We have already determined that former RCW 13.04.030(1)(e)(v)(A) is unambiguous and that the legislature set up exclusive original jurisdiction in adult court over juveniles 16 or 17 years of age who committed the enumerated violent offenses. *Boot*, 130 Wn.2d at 565. However, we have also recognized the statute furthers the legislative intent to punish with certainty and more severity those juvenile offenders who commit violent crimes rather than those youthful offenders who commit other crimes. *State v. Mora*, 138 Wn.2d 43, 50, 977 P.2d 564 (1999). ¶11 In *Mora*, we explicitly recognized these statutory principles. There, a juvenile had originally been charged with one count of possession of a stolen firearm. The information was amended to add a count of second degree assault while armed with a firearm, a crime that automatically brought the juvenile under the jurisdiction of adult criminal court. The information was then amended a second time, which “reduced” the charges to possession of a stolen firearm and assault in the third degree; neither of the offenses charged in the second amended information automatically subjected a juvenile to adult court jurisdiction. The juvenile was tried as an adult on two offenses, which would have otherwise brought him under the exclusive original jurisdiction of the juvenile court. The juvenile challenged adult court jurisdiction, arguing that when the charges were amended, the superior court was required to remand his case to juvenile court for trial or to conduct a decline hearing. We agreed. We reversed and remanded the matter for further proceedings, holding that the trial court erred when it failed to remand the case to juvenile court following the State’s decision to prosecute the juvenile for *645offenses not enumerated in the statute. *Mora*, 138 Wn.2d at 54. ¶12 Although *Mora* involved a situation where the information was amended before trial, the statutory framework and principles we recognized are equally applicable here. The legislature has established a statutory scheme intended to impose more severe punishment on juveniles who have committed certain criminal offenses. ¶13 Additionally, we have recognized the difference between Washington’s juvenile justice and adult criminal systems. The purpose of the juvenile justice system is to establish a system of having primary responsibility for, and responding to the needs of, offenders, as well as to hold juveniles responsible for their offenses. *State v. Rice*, 98 Wn.2d 384, 392, 655 P.2d 1145 (1982). The critical distinction between the two systems lies in the Juvenile Justice Act of 1977’s (chapter 13.40 RCW) policy of

responding to the needs of juvenile offenders; we have found this policy “as rehabilitative in nature, whereas the criminal system is punitive.” *Monroe v. Soliz*, 132 Wn.2d 414, 419-20, 939 P.2d 205 (1997). ¶14 As if to underscore this critical distinction between the juvenile justice and criminal adult systems, the legislative history leading the way to the 2005 amendment to RCW 13.04.030, in addition to the amendment itself, reinforces the legislature’s intent for juveniles to receive treatment and rehabilitation through juvenile disposition. Specifically, the Senate Bill Report reflects the intent to keep juveniles in the juvenile system to allow creative intervention at the juvenile justice level.⁵ In keeping with the policy to treat juveniles and adults differently, the legislature amended former RCW 13.04.030(1)(e)(v)(A) to provide juvenile court jurisdiction on remaining nonenumerated crimes in the event a juvenile was acquitted on enumerated crimes.

*646¶15 As a final point, the enumerated offenses referenced in former RCW 13.04.030 and defined in RCW 9.94A.030 are exceptions to the general rule that juvenile courts in Washington shall have exclusive original jurisdiction over all proceedings. Because of the legislature’s intent to treat juvenile offenders differently from adult offenders and because of the legislature’s intent to impose more severe punishment on juveniles who have committed certain criminal offenses, the exceptions listed in former RCW 13.04.030 apply narrowly. In fact, the subsequent amendment to former RCW 13.04.030 — which requires remand to juvenile court for sentencing juveniles acquitted in adult court of enumerated charges — bolsters the principles set out by the legislature that the more severe punishment should be imposed only on defendants who actually commit an enumerated charge. The legislature intended that a juvenile receive treatment and rehabilitation through juvenile disposition, unless the juvenile commits an enumerated charge under the statute.

¶16 The legislature, subsequent to our decision in *Mora*, has revised the statutory scheme and removed any doubt on *Mora*’s statutory interpretation by affirming what we determined underscores the statutory division between the juvenile and adult criminal systems. ¶17 RCW 13.04.030 now provides: The juvenile court shall have exclusive jurisdiction over the disposition of any remaining charges in any case in which the juvenile is found not guilty in the adult criminal court of the charge or charges for which he or she was transferred, or is convicted in the adult criminal court of a lesser included offense that is not also an offense listed in (e)(v) of this subsection. RCW 13.04.030(1)(e)(v)(E)(II). ¶18 Under this section, any juvenile properly charged in adult court of an enumerated offense is “returned” to juvenile court for imposition of sentence as a juvenile should the juvenile be convicted of a nonenumerated offense. This statutory revision is consistent with what we determined in *Mora*.

*647¶19 Here, Posey was acquitted of the enumerated charge that triggered the automatic decline provision. While the alleged charge of first degree assault properly placed Posey in the jurisdiction of adult court under the statute, once Posey was acquitted of the enumerated charge, the matter should have been remanded to juvenile court for a decline hearing or sentencing because, as stated previously, the legislative intent underlying the automatic decline provision is to impose more severe punishment on juveniles who have committed certain criminal offenses. Posey was

acquitted of the only charge that properly placed him in the jurisdiction of the adult court. Therefore, we reverse the Court of Appeals' holding below that the adult court had proper sentencing jurisdiction over Posey after he was acquitted of first degree assault.

Evidentiary Issue ¶20 Posey argues the trial court erred when it precluded the introduction of e-mail evidence based on Washington's rape shield statute. The relevant portion of the statute provides:

(2) Evidence of the victim's past sexual behavior including but not limited to the victim's . . . general reputation for promiscuity, nonchastity, or sexual mores contrary to community standards is inadmissible on the issue of credibility and is inadmissible to prove the victim's consent except as provided in subsection (3)

(3) In any prosecution for the crime of rape ... evidence of the victim's past sexual behavior ... is admissible on the issue of consent only pursuant to the following procedure:

(d) At the conclusion of the hearing, if the court finds that the evidence proposed ... is relevant to the issue of the victim's consent... the court shall make an order stating what evidence may be introduced by the defendant RCW 9A.44.020.

*648¶21 We review a trial court's decision to exclude evidence for an abuse of discretion; also, the exercise of discretion in balancing the danger of prejudice against the probative value of the evidence is a matter within the trial court's discretion and should be overturned only if no reasonable person could take the view adopted by the trial court. *State v. Hudlow*, 99 Wn.2d 1, 17, 659 P.2d 514 (1983). A trial judge, not an appellate court, is in the best position to evaluate the dynamics of a jury trial and therefore the prejudicial effect of a piece of evidence. *State v. Taylor*, 60 Wn.2d 32, 40, 371 P.2d 617 (1962).

¶22 Posey sought to introduce an e-mail copied by police from H.A.H.'s computer as evidence that the victim would have consented to violence and rape and to rebut the State's theory that Posey was violent and abusive. The trial court barred the admission of the evidence. Posey now argues the trial court erred and relies on *State v. Carver*, 37 Wn. App. 122, 124, 678 P.2d 842 (1984), to assert that the e-mail evidence should have been admitted. ¶23 In *Carver*, the defendant had been charged with one count of indecent liberties and one count of second degree statutory rape. The defendant in *Carver* attempted to introduce evidence that the victims had suffered prior sexual abuse by others to rebut the inference that the victims would have been unable to describe the abusive acts because of their age unless the abuse was experienced at the hand of the defendant. The Court of Appeals in that case reversed the trial court's decision to exclude the evidence and held it was admissible because (1) it was not evidence of a victim's prior misconduct but evidence of prior abuse, (2) consent was not at issue since the victims' ages made it impossible for them to consent, and (3) evidence of prior abuse was not so prejudicial as to "cause the jury to decide the case on an improper emotional basis." *Carver*, 37 Wn. App. at 123-24. ¶24 However, the Court of Appeals here found *Carver* distinguishable because the e-mail evidence described only potential prior sexual misconduct of H.A.H., not prior *649sexual abuse of a victim as in *Carver*. Also, it

found the factual issue here was consent and noted that consent was not at issue in Carver. Moreover, the Court of Appeals, in finding the trial court did not abuse its discretion, held the e-mail was of little probative value and included the following excerpt from the trial court in its opinion: “[P]eople might talk about something, but it is very different talking about it th[a]n actually doing it. Anybody who’s had an e-mail correspondence with anybody knows it’s easy to say things during that correspondence that you wouldn’t necessarily say to their face.” Posey, 130 Wn. App. 277 (first alteration in original) (quoting RP at 56). ¶25 We agree with this analysis and conclusion. Accordingly, under the applicable standard of review, we affirm the Court of Appeals and find that the trial court did not abuse its discretion when it precluded admission of the e-mail evidence. The e-mail was not addressed to Posey nor was it sent to Posey, and it described only potential prior sexual misconduct or potential sexual mores, rendering the admission of the e-mail violative of the rape shield statute.

CONCLUSION

¶26 We reverse the Court of Appeals’ holding that Petitioner was correctly sentenced as an adult, and we affirm that the trial court did not abuse its discretion when it excluded the e-mail evidence. We affirm the conviction and remand this matter to juvenile court for further proceedings.6 Alexander, C.J., and Madsen, Bridge, Owens, Fairhurst, and J.M. Johnson, JJ., concur. RCW 9A.36.011(1)(a). RCW 9A.44.050(1)(a). Amended by Laws of 2006, ch. 122, § 7. Amended by Laws of 2005, ch. 238, § 1. Senate Bill Report on Substitute H.B. 2061, 59th Leg., Reg. Sess. (Wash. 2005), as reported by Senate Committee on Human Services and Corrections (Mar. 31, 2005). At oral argument, the State conceded that Posey would not have been declined juvenile court jurisdiction had a hearing been held.