

SUPREME COURT OF INDIANA

Wilkes v. State

917 N.E.2d 675 (Ind. 2009) · No. No. 10S00-0808-DP-453 · Decided December 10, 2009

SUMMARY

The Indiana Supreme Court affirmed Danny Ray Wilkes's convictions for three murders and his death sentences. The court addressed the voluntariness and admissibility of Wilkes's police and media interviews, evidentiary challenges involving child molestation evidence and phenolphthalein testing, and constitutional challenges to Indiana's death penalty statute. The court found one evidentiary error concerning a detective's opinion on guilt but held it harmless.

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Boehm, Justice; Shepard, Chief Justice; Dickson, Justice; Rucker, Justice; Sullivan, Justice
JURISDICTION	Indiana
DECIDED	December 10, 2009
DOCKET	No. 10S00-0808-DP-453
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from convictions for three murders and three death sentences after the penalty-phase jury found the statutory aggravating circumstances but could not agree on a sentencing recommendation.
STANDARD OF REVIEW	Voluntariness of confessions was reviewed as a sufficiency matter, without reweighing the evidence, and the trial court's finding was affirmed if supported by substantial evidence. Admission of scientific expert testimony under Indiana Evidence Rule 702(b) was reviewed for abuse of discretion. Other evidentiary and sentencing rulings were reviewed under their applicable deferential standards, including harmless-error review and abuse-of-discretion review.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Indiana
PARTIES	Danny Ray Wilkes v. State of Indiana

TOPICS

criminal procedure

miranda rights

hearsay

expert testimony

sentencing

PRACTICE AREAS

criminal procedure

evidence

constitutional law

capital sentencing

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court properly admitted Wilkes's statements from four interviews as voluntary and consistent with his right to remain silent and Miranda requirements.
2. Whether evidence of Wilkes's sexual activity with Avery was admissible under Indiana Evidence Rule 404(b) despite the corpus delicti rule.
3. Whether phenolphthalein presumptive blood-test evidence was sufficiently reliable under Indiana Evidence Rule 702(b).
4. Whether a detective's statement expressing an opinion on Wilkes's guilt was inadmissible under Indiana Evidence Rule 704(b), and if so, whether the error was harmless.
5. Whether Indiana's death-penalty statute's special-verdict provision violated separation of powers or the Sixth Amendment.
6. Whether, when a penalty-phase jury finds aggravating circumstances but cannot agree on a sentencing recommendation, the trial court may independently impose death and must independently find the aggravators and weighing findings.
7. Whether *Ring v. Arizona* requires a jury to determine that aggravating circumstances outweigh mitigating circumstances and that death is appropriate.
8. Whether counsel conceded the aggravating circumstances and the weighing of aggravators against mitigators.
9. Whether the trial court properly considered Wilkes's adjustment to incarceration and uncharged misconduct in sentencing.
10. Whether the trial court should have considered the jury's inability to reach a sentencing recommendation as a relevant sentencing factor.
11. Whether Wilkes's death sentences were inappropriate under Indiana Appellate Rule 7(B).

HOLDINGS

1. The trial court properly admitted the April 26 interview because the State presented sufficient evidence that Wilkes's statements were voluntary under the totality of the circumstances. Drug use, detective-supplied details, inconsistent statements, the cigarette offer, and Wilkes's expressions of reluctance did not establish that his free will was overcome.
2. A second Miranda advisement was not required before the April 27 interview because it occurred only a few hours after the prior warned interview as part of a continuous investigative effort, and the interruption did not deprive Wilkes of an informed assessment of his interests.

3. Miranda warnings were not required before the media interview because Miranda governs custodial interrogation by police, not questioning conducted by private citizens or media representatives acting on their own.
4. The trial court properly admitted the later April 28 police interview because the earlier interviews were not involuntary and therefore did not taint the later statements.
5. The corpus delicti rule does not bar admission of a defendant's confession to an uncharged crime when the evidence is offered under Evidence Rule 404(b) to prove motive, intent, or another permissible purpose rather than to obtain a conviction for that crime.
6. The trial court did not abuse its discretion by admitting testimony that a phenolphthalein test was presumptively positive for blood. The testimony established sufficient reliability, and the test's uncertainty affected weight rather than admissibility.
7. The trial court erred by admitting the detective's statement that Wilkes was present and that the police knew he was involved because the statement expressed an opinion concerning guilt. The error was harmless because it was a single line in a lengthy transcript and the remaining forensic and confession evidence overwhelmingly supported guilt.
8. Indiana Code section 35-50-2-9(d)'s requirement that the penalty-phase jury use a special verdict form for each alleged aggravating circumstance does not violate separation of powers or conflict impermissibly with Indiana Trial Rule 49.
9. When the jury finds the statutory aggravating circumstances but cannot agree on a sentencing recommendation, Indiana Code section 35-50-2-9(f) permits the trial court to proceed as if the penalty hearing had been to the court alone, independently determine the aggravators and weighing, and impose death, life without parole, or a term of years under the death-penalty statute.
10. Ring requires a jury to determine death-penalty eligibility by finding a statutory aggravating circumstance beyond a reasonable doubt, but it does not require the jury to decide whether aggravators outweigh mitigators, impose death, or apply a reasonable-doubt standard to the weighing determination.
11. Defense counsel's penalty-phase statements were sufficient to constitute admissions of the multiple-murder aggravator, the under-twelve victim aggravator, and the conclusion that aggravating circumstances outweighed mitigating circumstances. In any event, the jury and trial court independently made those findings.
12. Positive adjustment to incarceration is relevant mitigating evidence that the sentencing court must consider, but the court need not assign it the weight urged by the defendant. The trial court adequately considered the evidence and did not abuse its discretion in imposing death.
13. The corpus delicti rule does not bar a sentencing court from considering a defendant's admissions to uncharged criminal conduct when evaluating a claimed lack of criminal history or otherwise assessing mitigation.
14. A trial court may consider the jury's inability to reach a unanimous sentencing recommendation as an appropriate relevant consideration in selecting the sentence, although it is not necessarily a mitigating circumstance bearing on the defendant's conduct or culpability.

15. Wilkes's three death sentences were not inappropriate in light of the nature of the offenses and his character.

KEY QUOTATIONS

“An assertion of the Miranda right to remain silent must be clear and unequivocal.” (683)

“The corpus delicti rule does not apply to evidence of other crimes permitted by Evidence Rule 404(b).” (685)

“We therefore accept the provision for special verdicts as a proper means of implementing the requirement that a statutory aggravating circumstance be found by a jury before a defendant is eligible for the death penalty.” (687)

“If the jury makes the requisite findings but cannot agree on a recommended sentence, subsection (f) requires the trial court to proceed “as if the hearing had been to the court alone.”” (688)

“We therefore reach the same result as the Roche and Burris dissenters and hold that it is “appropriate” for the trial court to consider the fact that the jury—whose recommendation would otherwise be binding—could not agree.” (693)

FACTUAL BACKGROUND

Wilkes lived with Donna Claspell and her two daughters, eight-year-old Sydne and thirteen-year-old Avery, after meeting them at a drug rehabilitation center. He admitted having sexual contact with Avery and was told to leave the home after Donna discovered him with Avery. Soon afterward, Donna, Sydne, and Avery were found dead in the home; the victims had suffered severe blunt-force, cutting, binding, and strangulation injuries. DNA and blood-related evidence linked Wilkes to the crime scene, and he confessed during several interviews.

PROCEDURAL HISTORY

Wilkes was tried and convicted of murdering Donna Claspell, Sydne Claspell, and Avery Pike. In the penalty phase, the jury found the alleged aggravating circumstances and found that they outweighed mitigating circumstances but failed to reach a unanimous sentencing recommendation. The trial court discharged the jury, independently made the required findings, and sentenced Wilkes to death for each murder. Wilkes appealed directly to the Supreme Court of Indiana, which affirmed.

DISPOSITION

affirmed

CASES CITED

- *Lego v. Twomey*, 404 U.S. 477, 488-89 (1972)
- *Pruitt v. State*, 834 N.E.2d 90, 114-15 (Ind. 2005)
- *Miller v. State*, 770 N.E.2d 763, 767 (Ind. 2002)
- *Owens v. State*, 427 N.E.2d 880, 884 (Ind. 1981)
- *Clark v. State*, 808 N.E.2d 1183, 1190-91 (Ind. 2004)

- *Pierce v. State*, 761 N.E.2d 821, 824 (Ind. 2002)
- *Light v. State*, 547 N.E.2d 1073, 1077 (Ind. 1989)
- *Anderson v. Terhune*, 467 F.3d 1208, 1213 (9th Cir. 2006), rev'd en banc on other grounds, 516 F.3d 781 (9th Cir. 2008)
- *Griffith v. State*, 788 N.E.2d 835, 842 (Ind. 2003)
- *Haviland v. State*, 677 N.E.2d 509, 514 (Ind. 1997)
- *Ogle v. State*, 698 N.E.2d 1146, 1149 (Ind. 1998)
- *Ritchie v. State*, 875 N.E.2d 706, 717 (Ind. 2007)
- *Workman v. State*, 716 N.E.2d 445, 447 (Ind. 1999)
- *Sweeney v. State*, 704 N.E.2d 86, 111 (Ind. 1998)
- *Malinski v. State*, 794 N.E.2d 1071, 1084 (Ind. 2003)
- *Rondon v. State*, 711 N.E.2d 506, 516 (Ind. 1999)
- *Brown v. State*, 783 N.E.2d 1121, 1125 (Ind. 2003)
- *Smith v. State*, 721 N.E.2d 213, 217 (Ind. 1999)
- *Lampkins v. State*, 778 N.E.2d 1248, 1251 (Ind. 2002)
- *Apprendi v. New Jersey*, 530 U.S. 466 (2000)
- *Ring v. Arizona*, 536 U.S. 584 (2002)
- *State v. Barker*, 809 N.E.2d 312, 316 (Ind. 2004)
- *Ritchie v. State*, 809 N.E.2d 258, 266 (Ind. 2004), cert. denied, 546 U.S. 828 (2005)
- *Trusley v. State*, 829 N.E.2d 923, 926 (Ind. 2005)
- *Skipper v. South Carolina*, 476 U.S. 1, 4-8 (1986)
- *Eddings v. Oklahoma*, 455 U.S. 104, 114 (1982)
- *Lockett v. Ohio*, 438 U.S. 586, 604 (1978)
- *Weeks v. Angelone*, 528 U.S. 225, 232 (2000)
- *Tennard v. Dretke*, 542 U.S. 274, 285-87 (2004)
- *Gross v. State*, 769 N.E.2d 1136, 1140 (Ind. 2002)
- *Thompson v. State*, 804 N.E.2d 1146, 1149 (Ind. 2004)
- *Anglemyer v. State*, 868 N.E.2d 482, 490-91 (Ind. 2007), reh'g granted, 875 N.E.2d 218 (Ind. 2007)
- *Anglemyer v. State*, 875 N.E.2d 218, 220-21 (Ind. 2007)
- *Rouster v. State*, 600 N.E.2d 1342, 1348-49 (Ind. 1992)
- *Roche v. State*, 596 N.E.2d 896, 899 (Ind. 1992)
- *Burris v. State*, 642 N.E.2d 961 (Ind. 1994)
- *Holmes v. State*, 671 N.E.2d 841, 851 (Ind. 1996)
- *Dunlop v. State*, 724 N.E.2d 592, 600 (Ind. 2000)
- *Ward v. State*, 903 N.E.2d 946, 962-63 (Ind. 2009)
- *Baer v. State*, 866 N.E.2d 752, 766 (Ind. 2007)

