

SUPREME COURT OF RHODE ISLAND

State v. Werner

851 A.2d 1093 (R.I. 2004) · No. 1996-570-C.A. · Decided July 1, 2004

SUMMARY

The Rhode Island Supreme Court affirmed Keith A. Werner's convictions for robbery, assault with a dangerous weapon, and larceny. The court upheld the exclusion of expert eyewitness-identification testimony and polygraph evidence, rejected challenges concerning preservation of a surveillance videotape, and addressed other appellate claims arising from the trial and sentencing.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	Williams, C.J.; Flanders, J.; Suttell, J.
JURISDICTION	Rhode Island
DECIDED	July 1, 2004
DOCKET	1996-570-C.A.
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed from convictions and sentences entered by the Rhode Island Superior Court after a jury trial.
STANDARD OF REVIEW	The court reviewed expert-qualification and evidentiary rulings for abuse of discretion, the denial of a motion for judgment of acquittal under the same standard applied by the trial justice, prosecutorial-closing-argument rulings for clear error or abuse of discretion, and the legal application of the habitual offender statute de novo.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Keith A. Werner v. State of Rhode Island

TOPICS

- criminal procedure
- sentencing
- expert testimony
- evidence
- appellate procedure

PRACTICE AREAS

- criminal procedure
- evidence
- sentencing
- constitutional law
- appellate procedure

QUESTIONS PRESENTED

1. Whether the trial justice abused his discretion by denying defendant funds and permission to present expert testimony concerning eyewitness identification and by declining to hold a preliminary evidentiary hearing.
2. Whether polygraph evidence should be admissible under Daubert and whether its exclusion violated defendant's due process or Sixth Amendment rights.
3. Whether destruction of the original bank surveillance videotape violated defendant's due process rights or impaired his ability to impeach an eyewitness.
4. Whether the prosecutor's twenty-second timing demonstration during closing argument required reversal or a mistrial.
5. Whether the trial justice improperly applied habitual offender status and enhanced defendant's sentence without timely statutory notice from the state.
6. Whether defendant's claim under the Interstate Agreement on Detainers Act was barred by collateral estoppel based on prior litigation.
7. Whether the evidence was legally sufficient to support the larceny conviction involving the victim's automobile.
8. Whether defendant was denied the ability to obtain independent testing of hair samples and present a defense expert.

HOLDINGS

1. The trial justice did not abuse his discretion by denying defendant's request for funds and refusing to permit expert testimony concerning the potential unreliability of eyewitness identification.
2. Rhode Island's per se rule excluding polygraph evidence remains valid, and its application did not violate defendant's due process or Sixth Amendment rights.
3. The destruction of the original bank surveillance videotape did not violate defendant's due process rights or require dismissal because defendant failed to show apparent exculpatory value, constitutional materiality, or bad faith by the police.
4. The trial justice did not commit reversible error by allowing the state to conduct a twenty-second timing demonstration during closing argument; alternatively, the cautionary instruction cured any possible prejudice.
5. The trial justice erred by applying habitual offender status because the state failed to provide the notice required by R.I. Gen. Laws § 12-19-21(b); the additional sentence and related parole restriction therefore must be vacated.
6. Defendant's challenge under the Interstate Agreement on Detainers Act was barred by collateral estoppel because the same issues had already been resolved against him in his prior appeals.
7. The evidence was sufficient to support the over-\$500 element of the automobile-larceny conviction.
8. Defendant's right to present a defense was not violated because the trial justice did not prevent him from obtaining independent testing of the hair samples or presenting his own expert.

KEY QUOTATIONS

“eyewitness “identification must be viewed with great caution.”” (1103)

“Because the Legislature’s intent is clear under § 12-19-21, we are bound to reverse the trial justice’s decision to treat defendant as a habitual offender.” (1109)

“We reverse only the application of habitual offender status because, although it is clear that defendant is a career criminal, the state failed to put defendant on notice of its intent to pursue habitual offender status and the trial justice erred in enhancing the defendant’s sentence.” (1112)

FACTUAL BACKGROUND

During a March 7, 1992 robbery at a Fleet Bank night depository, the defendant seized money from a shoe-store manager and shot her in the abdomen before fleeing in her automobile. Two eyewitnesses identified Werner from a photographic array, while the injured manager’s identification was inconclusive and was excluded at trial. Police copied a poor-quality bank surveillance tape and the bank later recorded over the original. Werner was arrested in Massachusetts, later transferred to Rhode Island under the Interstate Agreement on Detainers Act, and convicted after extensive pretrial litigation.

PROCEDURAL HISTORY

A jury convicted Werner of robbery, two counts of assault with a dangerous weapon, and larceny over \$500. The Superior Court imposed consecutive sentences, including an enhanced sentence and parole restriction under the habitual offender statute. The Supreme Court of Rhode Island affirmed the convictions and most of the rulings, but reversed the application of habitual offender status and vacated the additional sentence and related parole restriction.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand the record to the Rhode Island Superior Court with the defendant’s convictions and underlying sentences intact, but vacate the additional twenty-four years and 364 days imposed under the habitual offender statute and the related determination that defendant would be ineligible for parole until the last day of the enhanced sentence.

CASES CITED

- State v. Arroyo, 844 A.2d 163, 167 (R.I. 2004)
- State v. Quattrocchi, 681 A.2d 879, 884 (R.I. 1996)
- DiPetrillo v. Dow Chemical Co., 729 A.2d 677, 683, 690 (R.I. 1999)
- State v. Gomes, 604 A.2d 1249, 1256 (R.I. 1992)
- State v. Gardiner, 636 A.2d 710, 713-714 (R.I. 1994)

- People v. McDonald, 690 P.2d 709 (Cal. 1984)
- State v. DuBray, 77 P.3d 247 (Mont. 2003)
- Nations v. State, 944 S.W.2d 795 (Tex. Ct. App. 1997)
- State v. Dery, 545 A.2d 1014, 1017-1018 (R.I. 1988)
- In re Ordell, 672 A.2d 457, 459 (R.I. 1996) (per curiam)
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)
- United States v. Scheffer, 523 U.S. 303, 307-08, 311-12, 317 n.13 (1998)
- State v. Harnois, 638 A.2d 532, 535-36 (R.I. 1994)
- State v. Garcia, 643 A.2d 180, 184-185 (R.I. 1994)
- California v. Trombetta, 467 U.S. 479, 486, 488-89 (1984)
- Arizona v. Youngblood, 488 U.S. 51, 56-58 (1988)
- State v. Roberts, 841 A.2d 175, 178 (R.I. 2003)
- State v. Harding, 740 A.2d 1270, 1274 (R.I. 1999) (per curiam)
- State v. Hernandez, 641 A.2d 62, 69 (R.I. 1994)
- State v. Donato, 592 A.2d 140, 143 (R.I. 1991)
- State v. Wiley, 567 A.2d 802, 803-805 (R.I. 1989)
- State v. Hazard, 785 A.2d 1111, 1121 (R.I. 2001)
- State v. Werner, 831 A.2d 183, 195 (R.I. 2003) (Werner I)
- State v. Werner, 830 A.2d 1107, 1110 (R.I. 2003) (Werner II)
- State v. Pacheco, 763 A.2d 971, 980 (R.I. 2001)
- State v. Brown, 798 A.2d 942, 950 (R.I. 2002)
- State v. Clifton, 777 A.2d 1272, 1276-77 (R.I. 2001)