

SUPREME COURT OF CONNECTICUT

State v. Randolph, 284 Conn. 328

933 A.2d 1158 (2007) · No. No. 17352 · Decided November 13, 2007

SUMMARY

The Connecticut Supreme Court reviewed Gordon C. Randolph's convictions for felony murder, robbery, conspiracy to commit robbery, and criminal possession of a firearm arising from two restaurant robberies. The court held that the trial court improperly consolidated the cases and instructed the jury that evidence from each case could be considered in the other to establish a characteristic method in the commission of criminal acts. The court reversed the judgments of conviction.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	Borden, J.; Rogers, C.J.; Norcott, J.; Katz, J.; Palmer, J.; Vertefeuille, J.; Zarella, J.
JURISDICTION	Connecticut
DECIDED	November 13, 2007
DOCKET	No. 17352
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The defendant directly appealed from jury-trial convictions for felony murder, two counts of first-degree robbery, conspiracy to commit first-degree robbery, and criminal possession of a firearm.
STANDARD OF REVIEW	Joinder and severance decisions are reviewed for abuse of discretion. Evidentiary rulings are reviewed under the applicable constitutional or nonconstitutional harmless-error standard. Identification rulings are reviewed for abuse of discretion, with deference to subordinate factual findings unless clearly erroneous. The denial of a request to waive presence at a probable cause hearing is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Gordon C. Randolph v. State of Connecticut

TOPICS

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QUESTIONS PRESENTED

1. Whether the trial court improperly consolidated the Burger King and Empire Pizza prosecutions and permitted cross-use of the evidence to establish a common scheme or plan.
2. Whether the trial court improperly denied the defendant's request to waive his presence during eyewitness testimony at the probable cause hearing.
3. Whether admission of the postmortem report at the probable cause hearing violated the federal or state confrontation clauses, and, if so, whether the error was harmless.
4. Whether the pretrial photographic identification procedure was unnecessarily suggestive and required suppression of the pretrial and in-court identifications.

HOLDINGS

1. In a nonsex-crime case, evidence of uncharged misconduct may be admitted to establish a common scheme or plan only when it supports a permissive inference that the charged and uncharged crimes were related to an overall goal in the defendant's mind. When the claimed connection rests solely on modus operandi, the crimes must exhibit a distinctive signature and also support that inference. The two robberies shared only commonplace similarities and therefore were not cross-admissible to prove a common scheme or plan.
2. The improper admission of cross-case common-scheme evidence and the related jury instruction were harmful, requiring reversal of the convictions and a new trial.
3. A criminal defendant has a constitutional right to be present at a probable cause hearing but no corresponding constitutional right to be absent. The trial court may compel the defendant's presence when the state has a legitimate reason, including conducting an in-court identification to establish identity.
4. Assuming without deciding that admission of the postmortem report violated the confrontation clause, any error was harmless beyond a reasonable doubt.
5. The photographic identification procedure was not unnecessarily suggestive, so suppression of the pretrial and in-court identifications was unwarranted.

KEY QUOTATIONS

"Accordingly, to establish the existence of a true plan in the defendant's mind based solely on the marked similarities shared by the charged and uncharged crimes, the state must produce sufficient evidence to: (1) establish the existence of a signature, modus operandi, or logo; and (2) support "a permissive inference that both crimes were related to an overall goal in the defendant's mind." (284 Conn. at 1178)

“The judgment is reversed and the case is remanded for a new trial.” (284 Conn. at 1185)

FACTUAL BACKGROUND

The defendant was charged in two informations arising from separate armed robberies in Hartford. In the December 17, 2001 Burger King robbery, two masked gunmen took money without injuring anyone; an accomplice identified the defendant as the second gunman. In the March 23, 2002 Empire Pizza robbery, a lone masked gunman shot and killed an employee during the robbery, and eyewitnesses later identified the defendant. The trial court consolidated the cases and instructed the jury that it could consider evidence from each case in the other to determine whether it showed a characteristic method of committing criminal acts.

PROCEDURAL HISTORY

The trial court consolidated two criminal informations involving the Burger King and Empire Pizza robberies, denied the defendant's motion to sever, and entered judgments on the jury's guilty verdicts. The defendant also challenged rulings at the probable cause hearing and the denial of his motion to suppress eyewitness identifications. The Supreme Court of Connecticut reversed the judgments and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgments of conviction were reversed and the case was remanded for a new trial. If the state again moves to consolidate the Burger King and Empire Pizza cases, the trial court must determine whether consolidation is proper under *State v. Boscarino* and must provide adequate instructions requiring separate and independent consideration of the evidence. The evidence is not cross-admissible to establish a common scheme or plan.

CASES CITED

- *State v. Boscarino*, 204 Conn. 714, 529 A.2d 1260 (1987)
- *State v. McKenzie-Adams*, 281 Conn. 486, 915 A.2d 822 (2007)
- *State v. Shindell*, 195 Conn. 128, 486 A.2d 637 (1985)
- *State v. Mandrell*, 199 Conn. 146, 506 A.2d 100 (1986)
- *State v. Esposito*, 192 Conn. 166, 471 A.2d 949 (1984)
- *State v. Reddick*, 224 Conn. 445, 619 A.2d 453 (1993)
- *State v. Tatum*, 219 Conn. 721, 595 A.2d 322 (1991)
- *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004)
- *State v. Ledbetter*, 275 Conn. 534, 881 A.2d 290 (2005)
- *State v. Sawyer*, 279 Conn. 331, 904 A.2d 101 (2006)
- *State v. Payne*, 219 Conn. 93, 591 A.2d 1246 (1991)
- *State v. Sierra*, 213 Conn. 422, 568 A.2d 448 (1990)

- State v. Greene, 209 Conn. 458, 551 A.2d 1231 (1988)
- State v. Jones, 205 Conn. 638, 534 A.2d 1199 (1987)
- State v. Brown, 279 Conn. 493, 903 A.2d 169 (2006)

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