

SUPREME COURT OF KENTUCKY

Ricardo D. Taylor v. Commonwealth of Kentucky; Conrai Andre Kaballah, Jr. v. Commonwealth of Kentucky

Taylor and Kaballah · No. 2018-SC-000605-MR; 2018-SC-000613-MR · Decided August 17, 2020

SUMMARY

The Supreme Court of Kentucky reviewed the convictions and life sentences of Ricardo D. Taylor and Conrai Andre Kaballah, arising from the assault of a fellow inmate. The court addressed issues including continuances, delayed disclosure of a witness, Brady obligations, Fifth and Sixth Amendment rights, double jeopardy, admission of injury photographs, Miranda warnings, and cumulative error. It held that some errors occurred, but affirmed because the errors were harmless or otherwise adequately remedied.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Justice VanMeter
JURISDICTION	Kentucky
DECIDED	August 17, 2020
DOCKET	2018-SC-000605-MR; 2018-SC-000613-MR
DISPOSITION	affirmed
PROCEDURAL POSTURE	As a matter-of-right appeal from Jefferson Circuit Court judgments convicting Taylor and Kaballah of multiple offenses arising from an assault on a fellow inmate and sentencing each to life imprisonment.
STANDARD OF REVIEW	Abuse of discretion for denial of a continuance, delayed witness disclosure, and evidentiary rulings; de novo or constitutional harmless-error review for constitutional claims; constitutional errors are harmless beyond a reasonable doubt, and nonconstitutional errors are harmless unless they substantially swayed the verdict.
PRECEDENTIAL VALUE	Published and designated to be published; precedential value is not otherwise specified in the source.
PARTIES	Ricardo D. Taylor, Conrai Andre Kaballah, Jr. v. Commonwealth of Kentucky

TOPICS

criminal procedure

miranda rights

suppression of evidence

double jeopardy

appellate procedure

PRACTICE AREAS

criminal procedure

constitutional criminal procedure

criminal evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by denying a continuance after the Commonwealth disclosed the identity of its key witness three days before trial.
2. Whether the trial court properly deferred disclosure of the key witness's identity to protect his safety.
3. Whether the Commonwealth violated *Brady v. Maryland* by disclosing during trial a further reduction in the witness's sentence or by failing to disclose information concerning Weaver's federal case.
4. Whether the trial court violated the defendants' Sixth Amendment right to compulsory process by allowing counsel for seven co-defendants to invoke their clients' Fifth Amendment privilege without calling them to testify.
5. Whether convictions for attempted murder and first-degree assault based on the same act violated Kentucky's statutory double-jeopardy provision.
6. Whether the trial court properly admitted photographs of Weaver's injuries under the Hall and KRE 403 analysis.
7. Whether Taylor and Kaballah were subjected to custodial interrogation without Miranda warnings and, if so, whether the error was harmless.
8. Whether the trial court erred by allowing the Commonwealth to display its own transcript of Taylor's difficult-to-understand jail phone call during closing argument and, if so, whether the error was harmless.
9. Whether cumulative error required reversal.

HOLDINGS

1. The trial court did not abuse its discretion in denying the defendants' motion for a continuance because the defendants failed to identify particularized prejudice or specific actions they would have taken with additional time.
2. The trial court properly exercised its discretion under RCr 7.24(8) by delaying disclosure of Payne's identity until shortly before trial to protect his safety.
3. The Commonwealth did not violate *Brady* by disclosing Payne's further sentence reduction during trial or by failing to disclose unspecified public information concerning Weaver's federal case.
4. The trial court did not violate the defendants' Sixth Amendment rights by allowing counsel to invoke the seven co-defendants' Fifth Amendment privileges without calling those co-defendants to the stand.

5. Convicting a defendant of both attempted murder and first-degree assault for the same act violates Kentucky's statutory double-jeopardy restraint under KRS 505.020(1)(b), but the error was cured because the first-degree assault conviction was effectively vacated and the defendants were sentenced only for attempted murder.
6. The trial court properly admitted the twenty-five photographs because their probative value, including their cumulative depiction of the extensive injuries relevant to attempted murder, was not substantially outweighed by undue prejudice.
7. Taylor and Kaballah were subjected to custodial interrogation and should have received Miranda warnings before questioning.
8. The failure to provide Miranda warnings was harmless beyond a reasonable doubt.
9. The trial court erred by allowing the Commonwealth to display its own interpretation of a difficult-to-understand jail phone call while the recording was played to the jury.
10. The error in displaying the Commonwealth's transcript was harmless because it did not substantially influence the verdict.
11. Cumulative error did not require reversal because the two errors identified by the court did not substantially influence the verdict.

KEY QUOTATIONS

"Therefore, the trial court did not err in allowing their attorneys to invoke their Fifth Amendment privilege against self-incrimination without calling each co-defendant to the stand." (13-14)

"The Commonwealth has the burden to establish that no custodial interrogation took place, or that the defendant knowingly and voluntarily waived his rights." (20-21)

"Nonetheless, as each error was harmless, we affirm each defendant's convictions and sentence." (24)

FACTUAL BACKGROUND

Taylor and Kaballah were housed with Cedric Weaver at the Louisville Metro Detention Center. After a dispute over a chess game, a group of inmates dragged Weaver from his bed and violently assaulted him; Taylor also anally sodomized Weaver with a toilet-brush handle. Weaver suffered a traumatic brain injury and extensive injuries requiring months of therapy. The Commonwealth used Luke Payne, a former co-defendant, as a key witness and disclosed his identity three days before trial; the trial court had previously deferred disclosure to protect Payne's safety while incarcerated.

PROCEDURAL HISTORY

Ten defendants were indicted in connection with the assault, but seven pleaded guilty before trial, leaving Taylor and Kaballah as the defendants tried before a jury. The Jefferson Circuit Court denied motions for a continuance, challenges to delayed disclosure of the Commonwealth's key witness, a motion alleging Brady violations, objections concerning co-defendants' invocation of the Fifth Amendment, and other evidentiary and constitutional challenges. Although the jury found both defendants guilty of both attempted murder and first-

degree assault, the trial court did not sentence them on first-degree assault and the final judgment did not list that conviction. The defendants appealed as a matter of right to the Supreme Court of Kentucky.

DISPOSITION

affirmed

CASES CITED

- Brady v. Maryland, 373 U.S. 83, 87 (1963)
- Miranda v. Arizona, 384 U.S. 436, 458, 460, 467 (1966)
- Hall v. Commonwealth, 468 S.W.3d 814, 823-26 (Ky. 2015)
- Kiper v. Commonwealth, 399 S.W.3d 736, 744, 746 (Ky. 2012)
- Howes v. Fields, 565 U.S. 499, 508-15 (2012)
- Stansbury v. California, 511 U.S. 318, 323 (1994)
- Sanborn v. Commonwealth, 754 S.W.2d 534, 539-40 (Ky. 1988)
- Allen v. Commonwealth, 395 S.W.3d 451, 467 (Ky. 2013)
- Nunn v. Commonwealth, 461 S.W.3d 741, 750 (Ky. 2015)
- Hilton v. Commonwealth, 539 S.W.3d 1, 7, 10-11 (Ky. 2018)
- Snodgrass v. Commonwealth, 814 S.W.2d 579, 581 (Ky. 1991)
- Lawson v. Commonwealth, 53 S.W.3d 534 (Ky. 2001)
- Bartley v. Commonwealth, 400 S.W.3d 714, 733 (Ky. 2013)
- Hudson v. Commonwealth, 202 S.W.3d 17, 23 (Ky. 2006)
- Turner v. Commonwealth, 544 S.W.3d 610, 620 (Ky. 2018)
- Morgan v. Commonwealth, 421 S.W.3d 388, 393 (Ky. 2014)
- McCoy v. Commonwealth, 553 S.W.3d 816, 821 (Ky. 2018)
- Gosser v. Commonwealth, 31 S.W.3d 897, 905 (Ky. 2000)
- Herp v. Commonwealth, 491 S.W.3d 507, 512 (Ky. 2016)
- Commonwealth v. Nichols, 280 S.W.3d 39, 43 (Ky. 2009)
- Burks v. Commonwealth, 471 S.W.2d 298, 301 (Ky. 1971)
- State v. McKelton, 70 N.E.3d 508, 539 (Ohio 2016)
- People v. Rose, 794 N.E.2d 1004, 1007 (Ill. App. Ct. 2003)
- Butler v. State, 372 N.E.2d 190, 193 (Ind. Ct. App. 1978)
- Hawkins v. Commonwealth, 536 S.W.3d 697, 704 (Ky. 2017)
- Bowling v. Commonwealth, 80 S.W.3d 405, 410 (Ky. 2002)
- United States v. Agurs, 427 U.S. 97, 103 (1976)
- Combs v. Commonwealth, 74 S.W.3d 738, 742 (Ky. 2002)
- McLemore v. Commonwealth, 590 S.W.3d 229, 239-40 (Ky. 2019)
- People v. Cortez, 832 N.W.2d 1, 9, 11 (Mich. Ct. App. 2013)

- Smith v. Commonwealth, 520 S.W.3d 340, 348 (Ky. 2017)

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