

SUPREME COURT OF WASHINGTON

State v. Davis, 175 Wn. 2d 287

290 P.3d 43 (2012) · Decided September 20, 2012

SUMMARY

The Washington Supreme Court reviewed Cecil Davis’s second capital penalty proceeding after his original death sentence was vacated because jurors had seen him in shackles. The court rejected challenges concerning judicial recusal, dismissal of prospective jurors for cause, and exclusion of mitigation evidence, and affirmed the death sentence.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Alexander, J.; Alexander; Chambers; Fairhurst; Johnson; Madsen; Owens; Stephens; Wiggins
JURISDICTION	Washington
DECIDED	September 20, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a second capital penalty proceeding following the Washington Supreme Court's vacation of Davis's original death sentence and remand for resentencing because a juror saw Davis in shackles.
STANDARD OF REVIEW	Recusal decisions and evidentiary rulings were reviewed for abuse of discretion; challenges for cause to jurors were reviewed for manifest abuse of discretion; prosecutorial-misconduct claims were reviewed under the applicable preservation and prejudice standards; sufficiency of mitigating evidence was reviewed by asking whether, viewing the evidence in the light most favorable to the prosecution, any rational fact finder could find beyond a reasonable doubt that leniency was not warranted; proportionality was reviewed under RCW 10.95.130.
PRECEDENTIAL VALUE	Published precedential Washington Supreme Court opinion
PARTIES	Cecil Davis v. State of Washington

TOPICS

- sentencing
- criminal procedure
- cruel and unusual punishment
- jury selection
- evidence

PRACTICE AREAS

criminal law

capital punishment

criminal procedure

constitutional law

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial judge abused his discretion by refusing to recuse after ex parte communication with prosecutors concerning scheduling.
2. Whether the trial court abused its discretion by dismissing two prospective jurors for cause.
3. Whether excluding videotaped interviews of Davis's aunts violated his right to present mitigating evidence.
4. Whether the trial court properly admitted a police officer's testimony concerning Davis's mental state shortly after the crime as rebuttal evidence.
5. Whether the jury instructions adequately permitted consideration of major mental illness and other mitigating circumstances.
6. Whether the prosecutor's closing argument constituted prejudicial misconduct or denied Davis a fair capital sentencing proceeding.
7. Whether Washington's death penalty violated the Eighth Amendment or article I, section 14 of the Washington Constitution.
8. Whether cumulative error required reversal.
9. Whether the death sentence was invalid under RCW 10.95.130 based on insufficient mitigating-evidence support, disproportionality, passion or prejudice, or intellectual disability.

HOLDINGS

1. A violation of the prohibition on ex parte judicial communication does not automatically require recusal. Recusal is required when, viewed objectively and with knowledge of the relevant facts, the judge's impartiality might reasonably be questioned. The scheduling communication did not demonstrate bias or create a reasonable appearance of partiality.
2. The trial court properly dismissed jurors whose views or knowledge could substantially impair their ability to perform their duties impartially in a capital penalty proceeding. A trial judge may excuse a juror for cause on the judge's own motion when grounds for challenge are present.
3. In a capital penalty proceeding, relevant mitigating evidence may not be excluded through a mechanistic application of the hearsay rule, but the trial court retains authority to impose reasonable reliability limits on the form in which mitigating evidence is presented. The court did not abuse its discretion by excluding the aunts' largely irrelevant and unreliable videotaped interviews.
4. A police officer's firsthand observations of a capital defendant's behavior shortly after the crime may be admitted as lay rebuttal evidence when the defense has placed the defendant's mental functioning in issue and the testimony is based on personal observations rather than an expert diagnosis.
5. The Constitution does not require a separate jury instruction identifying every potentially relevant nonstatutory mitigating circumstance. An instruction directing jurors to consider any relevant mitigating

factors, while listing statutory factors, adequately permits consideration of major mental illness and other relevant mitigation.

6. The challenged prosecutorial comments did not require reversal. Although the imagined dialogue between the victim and Davis approached impropriety and the prosecutor implied that vaginal scrubbing occurred while the victim was alive, the unobjected-to remarks were not sufficiently flagrant or ill-intentioned, and the remaining comments were either proper or nonprejudicial.
7. Washington's death penalty scheme does not violate the Eighth Amendment's prohibition against cruel and unusual punishment based on the asserted arbitrary imposition of death sentences. The court declined to reach Davis's developed state constitutional challenge because it was inadequately preserved and the record was insufficient.
8. The limited errors identified in the penalty proceeding, considered cumulatively, did not deprive Davis of a fair sentencing proceeding and did not warrant reversal.
9. The evidence was sufficient to support the jury's finding that mitigating circumstances did not warrant leniency, the death sentence was not excessive or disproportionate to sentences in similar cases, the sentence was not imposed through passion or prejudice, and Davis was not intellectually disabled. The death sentence therefore remained valid.

KEY QUOTATIONS

"This requires a more careful look at the record but does not raise the standard of review." (175 Wn. 2d at 303)

"Rather, the trial court properly exercised its "authority to set reasonable limits upon the evidence a defendant can submit, and to control the manner in which it is submitted."" (175 Wn. 2d at 322)

"Today, we reaffirm the holdings of Cross and Yates that Washington's death penalty does not violate the Eighth Amendment." (175 Wn. 2d at 343)

FACTUAL BACKGROUND

In 1997, Cecil Davis entered the Tacoma home of 65-year-old Yoshiko Couch, raped and brutally assaulted her, robbed her, and killed her by suffocation and chemical toxicity. Couch was found naked from the waist down in a bathtub, with towels around her head and household cleanser in and around her vaginal area. Evidence connected Davis to the crime, including biological and fingerprint evidence, possession of property believed to belong to the victim, an attempted sale of her wedding ring, and incriminating statements. Davis had an extensive criminal history, including a later conviction for second degree intentional murder.

PROCEDURAL HISTORY

Davis was convicted in Pierce County Superior Court of aggravated first degree murder and sentenced to death in 1998. The Washington Supreme Court upheld the conviction and sentence on direct appeal, but later granted a personal restraint petition and vacated the death sentence because jurors had seen Davis in shackles and defense counsel had failed to object. After a second penalty proceeding in 2007, a new jury again found insufficient

mitigating circumstances to warrant leniency and Davis was again sentenced to death. The Washington Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Davis, 141 Wn. 2d 798, 10 P.3d 977 (2000)
- In re Pers. Restraint of Davis, 152 Wn. 2d 647, 101 P.3d 1 (2004)
- State v. Stenson, 132 Wn. 2d 668, 940 P.2d 1239 (1997)
- State v. Leon, 133 Wn. App. 810, 138 P.3d 159 (2006)
- In re Marriage of Farr, 87 Wn. App. 177, 940 P.2d 679 (1997)
- State v. Watson, 155 Wn. 2d 574, 122 P.3d 903 (2005)
- Sherman v. State, 128 Wn. 2d 164, 905 P.2d 355 (1995)
- In re Disciplinary Proceeding Against Sanders, 159 Wn. 2d 517, 145 P.3d 1208 (2006)
- State v. Gregory, 158 Wn. 2d 759, 147 P.3d 1201 (2006)
- State v. Gentry, 125 Wn. 2d 570, 888 P.2d 1105 (1995)
- Taylor v. Louisiana, 419 U.S. 522 (1975)
- Wainwright v. Witt, 469 U.S. 412 (1985)
- Adams v. Texas, 448 U.S. 38 (1980)
- State v. Rupe, 108 Wn. 2d 734, 743 P.2d 210 (1987)
- Patton v. Yount, 467 U.S. 1025 (1984)
- Lockett v. Ohio, 438 U.S. 586 (1978)
- State v. Pirtle, 127 Wn. 2d 628, 904 P.2d 245 (1995)
- Green v. Georgia, 442 U.S. 95 (1979)
- Chambers v. Mississippi, 410 U.S. 284 (1973)
- Oregon v. Guzek, 546 U.S. 517 (2006)
- State v. Finch, 137 Wn. 2d 792, 975 P.2d 967 (1999)
- State v. Markle, 118 Wn. 2d 424, 823 P.2d 1101 (1992)
- State v. Bartholomew, 101 Wn. 2d 631, 683 P.2d 1079 (1984)
- State v. Lord, 117 Wn. 2d 829, 822 P.2d 177 (1991)
- State v. Crenshaw, 27 Wn. App. 326, 617 P.2d 1041 (1980), aff'd, 98 Wn. 2d 789, 659 P.2d 488 (1983)
- Ashley v. Hall, 138 Wn. 2d 151, 978 P.2d 1055 (1999)
- State v. Farr-Lenzini, 93 Wn. App. 453, 970 P.2d 313 (1999)
- Boyde v. California, 494 U.S. 370 (1990)
- Johnson v. Texas, 509 U.S. 350 (1993)
- State v. Yates, 161 Wn. 2d 714, 168 P.3d 359 (2007)

- State v. Hoffman, 116 Wn. 2d 51, 804 P.2d 577 (1991)
- State v. Belgarde, 110 Wn. 2d 504, 755 P.2d 174 (1988)
- In re Pers. Restraint of Rupe, 115 Wn. 2d 379, 798 P.2d 780 (1990)
- Urbin v. State, 714 So. 2d 411 (Fla. 1998)
- State v. Coe, 101 Wn. 2d 772, 684 P.2d 668 (1984)
- State v. Badda, 63 Wn. 2d 176, 385 P.2d 859 (1963)
- Brown v. United States, 411 U.S. 223 (1973)
- Bruton v. United States, 391 U.S. 123 (1968)
- Furman v. Georgia, 408 U.S. 238 (1972)
- State v. Fain, 94 Wn. 2d 387, 617 P.2d 720 (1980)
- State v. Manussier, 129 Wn. 2d 652, 921 P.2d 473 (1996)
- State v. O'Hara, 167 Wn. 2d 91, 217 P.3d 756 (2009)
- State v. Kirkman, 159 Wn. 2d 918, 155 P.3d 125 (2007)
- State v. Brown, 132 Wn. 2d 529, 940 P.2d 546 (1997)
- State v. Elledge, 144 Wn. 2d 62, 26 P.3d 271 (2001)
- State v. Woods, 143 Wn. 2d 561, 23 P.3d 1046 (2001)
- In re Pers. Restraint of Jeffries, 114 Wn. 2d 485, 789 P.2d 731 (1990)
- Loving v. Virginia, 388 U.S. 1 (1967)
- Skinner v. Oklahoma, 316 U.S. 535 (1942)
- Woodson v. North Carolina, 428 U.S. 280 (1976)
- State v. Green, 91 Wn. 2d 431, 588 P.2d 1370 (1979), adhered to in part on reconsideration, 94 Wn. 2d 216, 616 P.2d 628 (1980)
- Roberts v. Louisiana, 431 U.S. 633 (1977)
- State v. Benn, 120 Wn. 2d 631, 845 P.2d 289 (1993)