

SUPREME COURT OF UTAH

State v. Lucero

2014 UT 15 · No. 20090751 · Decided May 13, 2014

SUMMARY

The Supreme Court of Utah affirmed Adrianna Lucero’s convictions for murder and child abuse arising from the death of her two-year-old son. The court held that the trial court properly admitted evidence of the child’s prior spinal injury under Utah Rule of Evidence 404(b), applying a preponderance-of-the-evidence standard to conditional relevance. The court also rejected Lucero’s ineffective-assistance and cumulative-error claims and vacated as moot an order concerning a remand for further proceedings.

CASE DETAILS

COURT	Supreme Court of Utah
WRITING FOR THE COURT	Chief Justice Durrant; Associate Chief Justice Nehring; Justice Durham; Justice Parrish; Justice Lee
JURISDICTION	Utah
DECIDED	May 13, 2014
DOCKET	20090751
DISPOSITION	affirmed
PROCEDURAL POSTURE	Lucero appealed her jury convictions for murder and child abuse to the Utah Supreme Court. She challenged the admission of prior-child-abuse evidence under Utah Rule of Evidence 404(b), alleged ineffective assistance of counsel, and asserted cumulative error. The court also reviewed the court of appeals' order granting her motion under Utah Rule of Criminal Procedure 23B to supplement the record.
STANDARD OF REVIEW	Admission of evidence under Utah Rule of Evidence 404(b) is reviewed for abuse of discretion, with a requirement that trial judges scrupulously examine the evidence. Ineffective-assistance claims raised for the first time on appeal present questions of law reviewed for correctness, subject to highly deferential review of counsel's performance. Cumulative error is assessed by whether the cumulative effect of alleged errors undermines confidence that the defendant received a fair trial.

PRECEDENTIAL VALUE	published and precedential
PARTIES	Adrianna Lucero v. State of Utah

TOPICS

evidence criminal procedure appellate procedure ineffective assistance harmless error

PRACTICE AREAS

criminal law evidence criminal appellate practice ineffective assistance of counsel

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by admitting evidence of Alex's prior spinal injury under Utah Rules of Evidence 404(b), 402, 403, and 104(b).
2. What evidentiary standard governs conditional relevance of prior-bad-acts evidence under Utah Rule of Evidence 104(b).
3. Whether the trial court properly applied the battered child syndrome framework and the requirement of a scrupulous examination of prior-bad-acts evidence.
4. Whether defense counsel provided ineffective assistance by stipulating to evidence concerning another child's seizures, allowing the largely unredacted interrogation video to be shown, and failing to present battered woman's syndrome expert testimony.
5. Whether the court of appeals' Rule 23B order should remain in effect.
6. Whether cumulative error required reversal of Lucero's convictions.

HOLDINGS

1. Prior-bad-acts evidence is admissible when it is relevant to a genuine noncharacter purpose, the probative value is not substantially outweighed by the danger of unfair prejudice, and any conditional relevance satisfies Utah Rule of Evidence 104(b). The prior spinal injury was properly admissible to prove identity through modus operandi.
2. When admissibility under Rule 404(b) depends on a conditional fact, the trial court must admit the evidence if the jury could reasonably find, by a preponderance of the evidence, both that the prior act occurred and that the defendant was the actor. Utah does not require clear and convincing evidence for this preliminary determination.
3. Evidence of battered child syndrome may be admitted in child-abuse and murder cases to establish that prior injuries were intentionally inflicted rather than accidental, but it must be introduced through expert testimony and is not evidence of the identity of the perpetrator. When prior abuse is offered to prove identity, the State must connect the prior abuse to the defendant by a preponderance of the evidence.
4. A trial court satisfies the scrupulous-examination requirement when it conducts the required three-step Rule 404(b), Rule 402, and Rule 403 analysis on the record; when conditional relevance is raised, the

analysis has four steps and includes Rule 104(b). The court need not discuss every Shickles factor individually if its Rule 403 inquiry is discernible.

5. Counsel was not constitutionally ineffective because each challenged decision had a conceivable tactical basis and the defense strategy of explaining Lucero's inconsistent statements through fear of Martinez's deportation was objectively reasonable. Strickland does not require counsel to pursue every reasonable alternative theory.
6. The court vacated the court of appeals' Rule 23B order as moot because additional factual development concerning battered woman's syndrome would not alter the conclusion that counsel's selected strategy was reasonable. Because the court identified no prejudicial errors, cumulative error did not warrant reversal.

KEY QUOTATIONS

“We agree with the Supreme Court’s reasoning and interpret Utah Rule of Evidence 104 to require a judge to admit evidence when it determines that the jury could reasonably find matters of conditional fact by a preponderance of the evidence.” (¶ 19)

“We now clarify that the scrupulous examination requirement is met when the trial court engages in this three- or four-step analysis on the record.” (¶ 37)

“But Strickland does not require counsel to argue every reasonable theory—the standard requires only that the theory ultimately employed, itself, be reasonable.” (¶ 54)

FACTUAL BACKGROUND

Lucero's two-year-old son, Alex, died after his spine was bent backward, snapping the spine and rupturing his aorta. Alex had suffered a similar spinal injury approximately a week earlier, and the State introduced evidence of that prior injury to prove the identity of the person who caused the fatal injury. Lucero initially told police and others that she had taken Alex to get Jell-O and later changed her account to blame her boyfriend, Sergio Martinez. The defense relied on a theory that Lucero initially lied to protect Martinez from deportation and challenged counsel's decisions not to present battered woman's syndrome expert testimony.

PROCEDURAL HISTORY

After a jury trial, Lucero was convicted of murder and child abuse and sentenced to concurrent prison terms of fifteen years to life and one to fifteen years. She appealed, and the Utah Supreme Court recalled the case from the court of appeals after briefing but before oral argument. The court of appeals had granted Lucero's Rule 23B motion, but the parties stipulated to stay the remand pending the supreme court's decision. The supreme court affirmed the convictions and vacated the Rule 23B remand order as moot.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

None. The convictions were affirmed, and the court of appeals' Rule 23B order was vacated as moot.

CASES CITED

- State v. Killpack, 2008 UT 49, ¶¶ 18, 46, 191 P.3d 17
- State v. Widdison, 2001 UT 60, ¶¶ 42, 44, 28 P.3d 1278
- State v. Charles, 2011 UT App 291, ¶ 18, 263 P.3d 469
- State v. Maestas, 2012 UT 46, ¶ 363, 299 P.3d 892
- State v. Decorso, 1999 UT 57, ¶¶ 18, 20–24, 993 P.2d 837
- State v. Clopten, 2009 UT 84, ¶ 37, 223 P.3d 1103
- State v. Richardson, 2013 UT 50, ¶ 19 n.1, 308 P.3d 526
- State v. Verde, 2012 UT 60, ¶¶ 16–18, 22, 24–26, 46, 55, 296 P.3d 673
- United States v. Mower, 351 F. Supp. 2d 1225, 1230 (D. Utah 2005)
- United States v. Kendall, 766 F.2d 1426, 1436 (10th Cir. 1985)
- State v. Nelson-Waggoner, 2000 UT 59, ¶¶ 19, 22, 28–30, 6 P.3d 1120
- United States v. Miller, 959 F.2d 1535, 1539 (11th Cir. 1992)
- United States v. Goodwin, 492 F.2d 1141, 1154 (5th Cir. 1974)
- Angel Investors, LLC v. Garrity, 2009 UT 40, ¶ 19 n.9, 216 P.3d 944
- State v. Fedorowicz, 2002 UT 67, ¶ 30 n.1, 52 P.3d 1194
- Hansen v. Heath, 852 P.2d 977, 979 (Utah 1993)
- Huddleston v. United States, 485 U.S. 681, 689–92 (1988)
- United States v. Beechum, 582 F.2d 898, 912 (5th Cir. 1978)
- State v. Terrazas, 944 P.2d 1194, 1198 (Ariz. 1997)
- State v. Tanner, 675 P.2d 539, 541–42 (Utah 1983)
- Estelle v. McGuire, 502 U.S. 62, 68–69, 74 (1991)
- State v. Shickles, 760 P.2d 291, 295–96 (Utah 1988)
- State v. Bair, 2012 UT App 106, ¶ 22, 275 P.3d 1050
- State v. Dunn, 850 P.2d 1201, 1221–22 (Utah 1993)
- State v. Virgin, 2006 UT 29, ¶ 26, 137 P.3d 787
- State v. High, 2012 UT App 180, ¶¶ 29–31, 39, 41, 282 P.3d 1046
- State v. Ferguson, 2011 UT App 77, ¶¶ 17–18, 250 P.3d 89
- Strickland v. Washington, 466 U.S. 668, 687–89 (1984)
- State v. Tennyson, 850 P.2d 461, 466 (Utah Ct. App. 1993)
- State v. Clark, 2004 UT 25, ¶ 6, 89 P.3d 162
- State v. Jimenez, 2012 UT 41, ¶ 15, 284 P.3d 640
- State v. Munguia, 2011 UT 5, ¶ 13, 253 P.3d 1082
- In re L.O., 2012 UT 23, ¶ 8, 282 P.3d 977
- State v. Hamilton, 2003 UT 22, ¶ 56, 70 P.3d 111

- Archuleta v. Galetka, 2011 UT 73, ¶ 146, 267 P.3d 232

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