

SUPREME COURT OF WASHINGTON

State v. Brush

183 Wash. 2d 550 (2015) · Decided July 2, 2015

SUMMARY

The Washington Supreme Court held that a jury instruction defining a "prolonged period of time" as more than a few weeks improperly commented on the evidence and relieved the State of part of its burden to prove an aggravated domestic violence sentencing factor. The court reversed the defendant’s exceptional sentence and remanded for possible jury consideration of the prolonged pattern of abuse. It also held that testimony concerning the victim’s statements during a stalking incident was properly admitted under the excited utterance and present sense impression exceptions to hearsay.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Owens, J.; Madsen, C.J.; Johnson, J.; González, J.; McCloud, J.
JURISDICTION	Washington
DECIDED	July 2, 2015
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State petitioned the Washington Supreme Court for review of the Court of Appeals' reversal of Brush's exceptional sentence. Brush cross-petitioned on additional issues, and the Supreme Court granted review of the jury-instruction issue and the hearsay-admission issue.
STANDARD OF REVIEW	The jury-instruction and constitutional-comment issues were reviewed as questions of law; admission of hearsay evidence was reviewed for abuse of discretion. Judicial comments on the evidence are presumed prejudicial unless the State demonstrates that no prejudice could have resulted.
PRECEDENTIAL VALUE	Published Washington Supreme Court opinion; precedential.
PARTIES	State of Washington v. Brian Brush

TOPICS

- jury instructions
- standard jury instructions
- sentencing
- hearsay
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the pattern jury instruction defining "prolonged period of time" as more than a few weeks was an improper judicial comment on the evidence under article IV, section 16 of the Washington Constitution.
2. Whether the trial court abused its discretion by admitting the victim's daughter's testimony about statements made by the victim during a stalking incident under the excited-utterance and present-sense-impression exceptions to hearsay.

HOLDINGS

1. The instruction stating that a "prolonged period of time" means more than a few weeks incorrectly interpreted the law, resolved a contested factual issue for the jury, and constituted an improper judicial comment on the evidence.
2. The trial court did not abuse its discretion by admitting most of the victim's daughter's testimony concerning her mother's statements during the stalking incident because the statements qualified as excited utterances or present sense impressions.

KEY QUOTATIONS

"Thus, we clarify that legal definitions should not be fashioned out of courts' findings regarding legal sufficiency." (558)

"We hold that the instruction constituted an improper comment on the evidence because it resolved a contested factual issue for the jury." (559)

"Most certainly, the State does not meet the high burden of showing from the record that "no prejudice could have resulted."" (560)

FACTUAL BACKGROUND

Brush shot his ex-fiancée four times with a shotgun on a beach on September 11, 2009, and was arrested at the scene. During the penalty phase, evidence showed additional incidents of alleged abuse during the preceding two months, including striking the victim's car with a hammer and stalking the victim and her daughter. The victim's daughter also testified about statements made by her mother during the stalking incident, including statements indicating fear and directing them to run and hide.

PROCEDURAL HISTORY

Brush was convicted of first degree murder and the jury found several aggravating factors, including aggravated domestic violence. The trial court imposed an exceptional sentence of 1,000 months plus a 60-month firearm enhancement. The Court of Appeals affirmed the conviction but reversed the exceptional sentence, concluding that the instruction defining "prolonged period of time" was an improper comment on the evidence. The

Washington Supreme Court affirmed the Court of Appeals, reversed the exceptional sentence, and remanded for possible further jury proceedings concerning the prolonged pattern of abuse.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The exceptional sentence is reversed. On remand, if requested, the trial court may impanel a jury to consider evidence of a prolonged pattern of abuse.

CASES CITED

- State v. Woods, 143 Wn.2d 561, 591, 23 P.3d 1046 (2001)
- State v. Barnett, 104 Wn. App. 191, 202-03, 16 P.3d 74 (2001)
- State v. Schmeck, 98 Wn. App. 647, 651, 990 P.2d 472 (1999)
- State v. Duvall, 86 Wn. App. 871, 877, 940 P.2d 671 (1997)
- State v. Quigg, 72 Wn. App. 828, 841, 866 P.2d 655 (1994)
- Blakely v. Washington, 542 U.S. 296, 301, 313-14, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004)
- State v. Epefanio, 156 Wn. App. 378, 392, 234 P.3d 253 (2010)
- State v. Levy, 156 Wn.2d 709, 721-23, 132 P.3d 1076 (2006)
- State v. Brush, 181 Wn.2d 1007, 335 P.3d 940 (2014)
- State v. Brush, 181 Wn. App. 1009-*8-24