

Summary of SC90618, *State of Missouri v. Gregory Bowman*

Appeal from the St. Louis County circuit court, Judge David Lee Vincent III
Argued and submitted Dec. 1, 2010; opinion issued April 12, 2011

Attorneys: Bowman was represented by Stephen B. Evans, Katherine E. Hummel and Katherine Schierholz of the Evans Partnership in St. Louis, (314) 721-1024; and the state was represented by Terrence M. Messonnier of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man convicted of a 1977 murder challenges his conviction and death sentence. In a decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri affirms the conviction but reverses the death sentence and remands (sends back) the case for further proceedings. All seven judges agree that there is sufficient evidence to uphold the jury's determination that the man is guilty. All seven judges also agree the death sentence rests on invalid sentencing factors and, therefore, must be reversed. In an opinion concurring in part and dissenting in part, which was joined by one other judge, Judge Michael A. Wolff notes that he would not remand the case for further penalty phase proceedings. Because he would find the strength of the evidence is not compelling enough to support a death sentence, he would resentence the man to life in prison without eligibility for probation, parole or release except by act of the governor.

Facts: Velda Rumfelt was killed by strangulation in 1977. Certain biological material, including sperm, was recovered from the underwear she was wearing at the time. At the time, no one was charged with her murder. In 1979, Gregory Bowman was convicted in Illinois of killing two women and was sentenced to concurrent terms of life in prison. In 2001, those convictions were vacated and new trials were ordered on the ground that Bowman's confessions were coerced. Bowman remained in jail in Illinois until he posted bail in 2007. Shortly after his release, a Belleville, Illinois, police investigator forwarded a DNA profile taken from Bowman to the St. Louis County police department. Bowman's DNA profile matched the DNA profile of the sperm recovered from Rumfelt's underwear. St. Louis County authorities charged Bowman with Rumfelt's murder, and a jury found him guilty of first-degree murder. During the penalty phase of the trial, two officers who investigated the Illinois murders testified that Bowman admitted

killing both women (though Bowman later recanted both admissions), and the jury heard that Bowman had been convicted of both murders. The jury found six aggravating circumstances and recommended the death penalty. Bowman was sentenced accordingly. He appeals.

AFFIRMED IN PART; REVERSED IN PART; REMANDED.

Court en banc holds: (1) The trial court did not err in denying Bowman’s motion to suppress the admission of his DNA profile.

(a) Release of Bowman’s profile by the police in Illinois did not violate his Fourth Amendment right to be free from unreasonable search and seizure. An Illinois trial court in July 2001 entered an order permitting authorities to take a blood sample from Bowman as part of the investigation into the Illinois murders; Bowman consented to that procedure. There is nothing in the record indicating that either Bowman or the court limited the subsequent use of his DNA profile. Fourth Amendment analysis focuses only on the intrusiveness of the initial search, not on the subsequent use of information obtained from that search. Here, Bowman consented to giving the blood sample, and so there was no Fourth Amendment violation. As such, the subsequent use of the DNA sample obtained from that valid search and seizure does not constitute a Fourth Amendment violation. The use of Bowman’s DNA profile after it legally was acquired is neither a search nor a seizure.

(b) The release of Bowman’s DNA profile did not violate the Illinois genetic privacy act. State law privacy protections do not extend Fourth Amendment protections as applied to the states, and the act authorizes the disclosure of a legally obtained genetic sample to appropriate law enforcement authorities for the purposes of identifying the perpetrator of other crimes. That is what happened here: Bowman voluntarily submitted a genetic sample to Illinois authorities, who then disclosed that sample to Missouri authorities for purposes of identifying who killed Rumfelt.

(2) The trial court did not err in excluding Bowman’s proffered evidence that another man killed Rumfelt. Bowman’s offer of proof was that the other man was a suspect not only in Rumfelt’s death but also in the deaths of two other young St. Louis-area women who were killed in 1977. Bowman’s argument that the other man’s potential involvement in these other two murders establishes a distinct “modus operandi” is without merit. The bar for establishing a modus operandi is high: the charged and uncharged crimes must be nearly identical, and the methodology must be so unusual and distinctive that the crimes resemble a “signature” of the defendant’s involvement in both crimes. Here, there are not sufficient similarities – not in where the bodies were found, or in whether the victims were acquainted with the other man, or in how the victims were killed. The only common facts are that all three victims were young women in the St. Louis area and that, at one point, the other man was investigated as a suspect in all three. Further, Bowman did not establish the requisite direct connection between Rumfelt and the other man. He presented no evidence directly connecting him to Rumfelt’s murder: there is no physical evidence linking him to Rumfelt’s death, and no witnesses observed the two together at any time near her death.

(3) The trial court did not err in overruling Bowman's motion for a judgment of acquittal because the evidence was sufficient to support the jury's determination that he killed Rumfelt. That Bowman's semen was found inside Rumfelt's underwear demonstrates that Bowman had physical contact with Rumfelt and supports a reasonable inference that the two engaged in a sexual encounter. None of Rumfelt's family or friends knew Bowman, supporting the reasonable inference that Bowman's first contact with Rumfelt occurred during the sexual encounter. The physical evidence of the location and manner in which Rumfelt's body was found, along with the DNA evidence, indicates she was sexually assaulted. A witness identified Bowman as the man the witness had seen walking with Rumfelt the night before she was killed, and evidence puts the time of her death within hours after she was seen walking with Bowman. As such, a reasonable juror could have found guilt beyond a reasonable doubt.

(4) The trial court did not err in overruling Bowman's objection to the admissibility of the DNA test results. Visual identification of the underwear from which the DNA was taken was sufficient to support the admission of the evidence. The doctor from the police crime laboratory first opened the sealed evidence box containing the underwear when it arrived at the testing laboratory. A police detective identified the underwear as those worn by Rumfelt and testified that they were in substantially the same condition as when he observed them at the crime scene. Another witness testified that, based on the autopsy photos, the underwear appeared to be the same that Rumfelt wore.

(5) The trial court correctly prevented Bowman from cross-examining the doctor from the crime laboratory about two unidentified vaginal slides. Anything the doctor might have said about the slides would have been only to repeat what an officer told her when he delivered the slides; therefore, it would have been inadmissible hearsay testimony. Further, although the state indicated that officer was available to testify, Bowman declined to examine the officer about the slides.

(6) The trial court did not abuse its discretion in allowing the medical examiner to testify that Rumfelt was the victim of a probable sexual assault. The fact that an expert does not testify that her opinion is to a "reasonable degree of scientific certainty" does not render the testimony inadmissible. It is sufficient that the expert establishes that her opinion was based on reasonable certainty and not on speculation. Here, the medical examiner testified that Rumfelt was likely the victim of a probable sexual assault because of the location and manner in which her body was found. She testified that, in her experience as a forensic pathologist, these are indicators of sexual assault, thereby assisting the jurors in their deliberations by addressing a subject about which they lacked experience or knowledge.

(7) In the penalty phase, the trial court erred in allowing the state to introduce excessive victim impact evidence. Over Bowman's objection, the court allowed the state to present evidence that Bowman was convicted of the Illinois murders, even though those murder convictions were reversed and vacated prior to this trial. In *Johnson v. Mississippi*, 486 U.S. 578 (1988), the United States Supreme Court held that the reversal of a prior conviction that the jury considered in imposing the death penalty undermines the validity of the death sentence. And in *State v. McFadden*, 216 S.W.3d 673 (Mo. banc 2007), this Court reversed a death sentence where two of the six aggravating factors the jury found consisted of a vacated murder conviction and death

sentence in an unrelated case. It held that, even if the state's evidence regarding the underlying facts of the vacated conviction and sentence were properly admissible as non-statutory aggravating prior bad acts, the Court could not assume that the jury's process in weighing what penalty to recommend was unaffected by its knowledge that the defendant already had been sentenced to death. Similarly, the jury here found six aggravating factors, two of which relate to Bowman's vacated convictions for the Illinois murders. As such, the sentence rests on invalid sentencing factors and is invalid.

Opinion concurring in part and dissenting in part by Judge Wolff: The author agrees that Bowman's death sentence rests on invalid sentencing factors – the Illinois convictions that have been vacated – and he agrees the evidence is sufficient to convict Bowman of Rumfelt's murder, but the author would find that evidence is meager and not of the compelling enough to support a death sentence.

(1) This Court has a duty to review the strength of the evidence against Bowman. Section 565.035, RSMo, now requires this Court to conduct an independent review of every case in which the death penalty is imposed to determine whether the death sentence is excessive or disproportionate to the penalty imposed in similar cases, considering the crime, the strength of the evidence and the defendant. Although the version of the statute in effect at the time Rumfelt was killed in June 1977 required this Court to consider "the crime and the defendant," it does not prevent this Court from also considering the strength of the evidence supporting the jury's conclusion that Bowman murdered Rumfelt. Choosing not to review the strength of the evidence for offenses that occurred before that requirement was added in 1984 may allow wrongful convictions to proceed and innocent persons to be executed. In addition, failure to review the strength of the evidence in convictions before 1984 would result in a review regimen that is arbitrary and capricious and that would not survive an Eighth Amendment challenge.

(2) While the presence of Bowman's DNA profile in what was alleged to be Rumfelt's underwear may be sufficient to sustain his conviction, it is insufficient to sustain a sentence of death. Courts must assure that proponents of DNA evidence properly have preserved the evidentiary material and followed correct procedures in testing it. Here, the evidence in Rumfelt's murder was placed in a "sealed" box in 1977 and allegedly stored for more than 30 years before it was compared with Bowman's DNA profile. For at least part of those years, the box was stored in a facility that was flooded. It is unclear what effect this had on the contents of the box, but it is clear that five hair samples taken from Rumfelt's body and a slide with semen specimens from Rumfelt's autopsy should have been in the box but now are missing. In addition, two unidentified slides that were labeled with case numbers unrelated to Rumfelt's case, that were labeled with names the medical examiner did not recognize, and that did not contain the DNA of either Rumfelt or Bowman were found in the box. This raises a serious question as to whether the box truly was "sealed" as well as to whether, purposely or inadvertently, someone had tampered with the box.

(3) An eyewitness's testimony used to bolster the case against Bowman also was problematic. A school classmate of Rumfelt identified Bowman in 2007 as a person the witness had seen Rumfelt with shortly before her death 30 years earlier. At the time of the murder, the witness described the man with Rumfelt as a white male, approximately 20 years old and 6 feet tall, with

a slender build and shoulder-length blond hair. After the DNA match to Bowman in 1977, police showed the witness a photograph of a 1977 lineup in which Bowman appears with five other young white men. The witness initially noted that one man's hair seemed to look like the man she remembered, but then she changed her mind and noted that Bowman's face "stuck out" in her memory. And because Bowman's build was very slender, she assumed he was the person she had seen 30 years earlier.

(4) Evidence implicating an alternative perpetrator in Rumsfelt's murder is especially strong considering how little evidence the state had to connect Bowman with Rumsfelt's murder. The other man matched the description of the eyewitness who saw Rumsfelt walking with a man hours before she was murdered; he had the motive and opportunity to commit the crime and was familiar with the area where Rumsfelt's body was found; he collected keys, and the only item missing from Rumsfelt's person was a key ring; and a knife that could have been the murder weapon was missing from his girlfriend's apartment.