

Summary of SC90286, *State of Missouri v. Lance C. Shockley*

Appeal from the Carter County circuit court, Judge David P. Evans

Argued and submitted April 30, 2013; opinion issued August 13, 2013

Attorneys: Shockley was represented during arguments by Michael A. Gross, of Sher Corwin LLC in St. Louis, (314) 721-5200; and the state was represented by Missouri Attorney General Chris Koster and Daniel N. McPherson of the attorney general's office in Jefferson City, (314) 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 first-degree murder and sentenced to death appeals his conviction. He alleges that there were errors in preparing the trial transcript, there were evidentiary and instructional errors, that a statute is unconstitutional, a juror tainted deliberations and the sentence is disproportionate to the evidence. In a unanimous decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri affirms the judgment.

Facts: Lance Shockley was being investigated by Highway Patrol Sergeant Carl DeWayne Graham Jr. as a suspect in a car crash, which killed the passenger of the vehicle. Sergeant Graham was shot to death outside of his house while the investigation was still pending. Shockley was arrested and charged with first-degree murder and armed criminal action for the shooting death of Sergeant Graham. At trial, Shockley was convicted of both crimes and sentenced to death for first-degree murder. The jury found four of the state's statutory aggravators (facts increasing the degree of criminal liability) were proven beyond a reasonable doubt and that the circumstances in mitigation did not outweigh those in aggravation, but was unable to agree on a sentence, so the issue of punishment went to the trial court for decision. The court imposed a death sentence. Shockley appeals, alleging multiple trial court errors.

AFFIRMED.

Court en banc holds: The Court finds no reversible error and concludes that the sentence imposed is not disproportionate to the crime, the strength of the evidence or the defendant. The judgment of the trial court is affirmed.

1) Shockley's claim alleging defects in the transcript caused him undue prejudice fails. Initial difficulties with the transcript were corrected with due diligence and the remaining omission of a single off-the-record conference does not impede this court's review and did not prejudice Shockley.

2) A comment made by the state that someone knew why Shockley's grandmother's car, which he had borrowed, was parked near the crime scene, was not a direct comment on his failure to testify. This court need not determine whether it was an indirect comment on the failure to testify, as even if so interpreted there is no basis to find it was made with the intent to poison the minds of the jurors. Further, it was an isolated, off-the-cuff statement any prejudice from which

could have been cured by an instruction to the jury to disregard the comment, if Shockley had objected. He did not, and the trial court did not commit plain error in failing to declare a mistrial due to the comment.

3) Shockley's objection at trial that a comment that he had a "violent history" was improper character evidence did not preserve the different argument now made on appeal, that the comment constituted improper evidence of his propensity to commit an uncharged crime. Character evidence goes to one's character generally while propensity evidence concerns specific prior incidences of conduct. Here the comment was as to character generally, not propensity. Further, it is evident from the transcript that the comment on Shockley's violent history was made not to impugn his character but to explain why police acted as they did and was offered only in response to Shockley's attempt to suggest that there was no good reason for so many police to be sent to his home. Finally, there was other evidence of Shockley's violent character.

4) Shockley did not preserve his claim that the cumulative effect of the comment on his violent history combined with three other matters caused him prejudice and he has not separately appealed the trial court's rulings as to any of these other matters. Moreover, Shockley did not affirmatively use the alleged improper comments to support his theory of police bias, waiving plain error review.

5) Shockley's argument that the state statutorily had the burden to prove the aggravating circumstances equaled or outweighed the mitigating circumstances fails as the relevant statutes do not impose such a burden.

6) There is no merit to Shockley's arguments that a jury instruction which informed the jury that the court would decide punishment if the jury found that a statutory aggravator was proved beyond a reasonable doubt and that circumstances in mitigation did not outweigh those in aggravation, but was then unable to agree on punishment. The case cited by Shockley said it was improper to assure the jury that a higher court would review its decision if it decided to impose death; here the jury was told that imposing death was its responsibility and the court would act only if it failed to agree on punishment.

7) Shockley's argument that it is unconstitutional to allow the judge to consider whether the relevant statutory factors are proved and then impose punishment where the jury is unable to agree on punishment is without merit where, as here, the judge did so only after the jury made the factual findings required to support a death sentence before reaching a deadlock.

8) Shockley declined the trial court's invitation to try to make a record to support his assertion that a juror exerted improper influence on other jurors by sharing with them the facts of a novel he authored or that the nature of the novel revealed that he himself was unable to be fair and neutral. This Court does not find the mere existence of the novel, which the jury voluntarily disclosed during voir dire, allows this court to presume prejudice, in the absence of a record.

9) Shockley's argument that his death sentence is disproportionate because it is based solely on circumstantial evidence fails. This Court has upheld death sentences in similar cases. This court

also has independently examined the crime and the defendant and compared it to other cases in which the death penalty was sought and does not find it disproportionate.