

Summary of SC89294, *State of Missouri v. Leonard S. Taylor*

Appeal from the St. Louis County circuit court, Judge James R. Hartenbach

Attorneys: Taylor was represented by Rosemary E. Percival of the public defender's office in Kansas City, (816) 889-7699, and the state was represented by Evan J. Buchheim and Shaun J. Mackelprang 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 four counts each of first-degree murder and armed criminal action challenges his convictions and sentences. In a unanimous decision written by Chief Justice William Ray Price Jr., the Supreme Court of Missouri affirms the judgment against the man. The trial court did not abuse its discretion in excluding certain statements as hearsay, in admitting the results of two scientific tests, in overruling the man's motion to exclude the test results based on the timing of their disclosure before trial, in admitting into evidence portions of a detective's interrogation of the man's brother, or in overruling the man's request for a mistrial when he was handcuffed and removed from the courtroom after the jury found him guilty. The man fails to show that the trial court violated his constitutional or statutory rights to a speedy trial, erred in striking a particular juror for cause or committed plain error in not intervening, on its own motion, in response to certain comments made during the state's closing argument. Further, this Court's independent proportionality review shows the imposition of the death penalty here meets the statutory requirements.

Facts: In December 2004, police found the bodies of Angela Rowe and her three children in their locked home. All three died from gunshot wounds, and the medical examiner determined they had been dead for two to three weeks before they were found. It is unclear when family or friends last talked with or saw Rowe or her children, although no telephone calls were made to or from Rowe's home or cell phones after Nov. 25, 2004, which was Thanksgiving day. Authorities arrested Leonard Taylor, who was dating Rowe at the time of her death although he also was married to a woman who lived in California. He was tried on four counts of first-degree murder and four counts of armed criminal action. The jury found him guilty as charged and, following the penalty phase of the trial, found five aggravating factors for each victim and recommended that Taylor be sentenced to death. The trial court entered judgment accordingly, and Taylor appeals.

AFFIRMED.

Court en banc holds: (1) The trial court did not abuse its discretion in excluding certain statements as hearsay. The exclusion of this evidence did not prejudice Taylor, because

the jury was able to consider certain related admissible evidence: that Rowe's sister talked with her on Nov. 28 (the day after Taylor left St. Louis for California), telephone records showing a telephone call on that day, and testimony that Taylor's brother left some belongings at Rowe's home. This evidence, however, pales in light of Taylor's confessions and other corroborating evidence.

(a) In her deposition, Rowe's sister Gerjuan testified that Rowe told her she was calling from a pay telephone on Nov. 28. Gerjuan did not testify at the trial. The existence of the telephone call on that date was admissible, and testimony about the call was admitted into evidence, but evidence that Rowe made the call from a pay telephone – offered to prove Rowe in fact was calling from a pay telephone – was hearsay and inadmissible. Neither Rowe nor Gerjuan was available for cross-examination as to this issue, and the statement is not admissible under any exception to the rule barring hearsay.

(b) In her deposition, Gerjuan testified about prior communications with Rowe and about notations Rowe made in her calendar. These matters were not admissible as they were offered – to prove that it was not unusual for Taylor not to see or talk with Rowe for periods of time. Neither Rowe nor Gerjuan was available for cross-examination, there is no corroborating evidence that Taylor was with Rowe or talked with her on certain days in dispute, and there is no evidence when Rowe told Gerjuan that Taylor might not see or talk with her for periods of time. Further, neither the testimony nor the calendar notations were admissible under any exception to the rule barring hearsay.

(c) During trial, Taylor wanted the jury to see Rowe's checkbook, which contained a carbon copy of a check dated Nov. 27 that was not made out to any individual or entity. The checkbook and "check," however, were not admissible as they were offered – to prove that Rowe still was alive one day after Taylor left St. Louis for California. There is no evidence of when or under what circumstances Rowe wrote the check or that anyone received it, and no exception to the rule barring hearsay applies.

(d) In her deposition, Gerjuan testified that Rowe told her that someone – either Taylor's brother or cousin – was living in the basement of Rowe's home. There was no evidence Gerjuan ever visited Rowe at her home, and Gerjuan did not testify at trial. Gerjuan's deposition testimony was not admissible as it was offered – to prove that someone other than Taylor had access to Rowe's house. Although there was testimony at trial that Taylor's brother, Perry, allowed Rowe to use his vehicle when he was gone and that he kept some belongings at Rowe's home, there was no evidence that Perry or the cousin lived at Rowe's home, police testified they found the home locked, and Gerjuan's deposition statements do not fall within any exception to the rule barring hearsay.

(2) The trial court did not abuse its discretion in admitting the results of a phenolphthalein test and a DNA test, both conducted on a small sample of a substance taken from Taylor's sunglasses, which were taken into evidence when he was arrested. The phenolphthalein test, conducted first, is a presumptive test used to determine whether blood might be present. Here, the results were relevant and admissible and were not misleading. Before admitting the results, the court conducted a hearing pursuant to *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), about the admissibility of the test results. Once the court determined the results were admissible, scientific testimony at trial informed the jury that the phenolphthalein test only was presumptive, indicating only the possible presence of blood, and that no confirmatory test had been performed because the sample was too small. Further, the positive presumptive test for blood was consistent with the DNA test, conducted second, which resulted in a partial DNA profile that eliminated Rowe's children as contributors but that could not eliminate Rowe as a contributor.

(3) The trial court also did not abuse its discretion in overruling Taylor's motions to exclude these test results based on the timing of their disclosure before trial. The sunglasses from which the sample of a substance was taken were recovered in December 2004, when police arrested Taylor. The state did not take possession of the sunglasses from the police until August 2006, three months after Taylor requested that they be returned to him. The phenolphthalein test was conducted in November 2006, and the DNA tests were performed from December 2006 to January 2007. Taylor received the results of the phenolphthalein test in March 2007 and the report from the DNA testing in April 2007, when he moved to exclude evidence of both tests from trial or, alternatively, a continuance in the trial, which was scheduled to begin May 30, 2007. Following a hearing, the court overruled Taylor's motion to exclude the evidence and granted him a continuance of the trial until February 2008. The record shows that the tests were not conducted until shortly before trial and that the state disclosed the test results as soon as they were completed, and there is no evidence in the record of bad faith on the part of the state. As a result of this late disclosure, the court gave Taylor additional time for discovery and to prepare for trial. Moreover, because trials are truth-seeking procedures, excluding relevant evidence is not favored.

(4) Taylor fails to show the trial court violated either his constitutional or statutory right to a speedy trial.

The state arrested and initially charged Taylor in December 2004. Those charges were superseded by an indictment filed in March 2005. The next month, he began serving a 100-year prison sentence for an unrelated conviction. Taylor first sought disposition of the pending murder and armed criminal action charges in July 2005 and objected to his public defender's request, made during a September 2005 hearing, that the case be continued due to the complexity of the case and caseload obligations. After the court

granted the public defender's request – continuing the trial to October 2006 – the state asked the court to reconsider, noting Taylor properly had filed his motion for a speedy trial and expressing concern with whether counsel's caseload was sufficient good cause to continue the trial. After a hearing, the court overruled the state's request. In September 2006, the case was transferred to a different judge. The next month, Taylor moved to dismiss the case for violating the Uniform Mandatory Disposition of Detainers Law (UMDDL, in chapter 217, RSMo), which the court overruled. After Taylor filed a consent to his counsel's second request to continue the case – which counsel had made in July 2006 – the court continued the trial to May 2007. In April 2007, Taylor's counsel requested another continuance as a result of the state's late disclosure of the phenolphthalein and DNA test results, and Taylor moved to dismiss the case for violating the UMDDL. The court overruled Taylor's motion and granted his counsel's motion for a continuance. The trial ultimately began in February 2008.

Section 217.460, RSMo 2000 – provides that a defendant who is confined in a state correctional facility may request a final disposition of an untried indictment within 180 days, although the trial court has discretion to allow a continuance for good cause. Here, the court had good cause to grant the continuances, even though they were sought over Taylor's objection. Given the complexity of the trial and the amount of preparation and investigation required, counsel established sufficient grounds for good cause for the delays – sought to prepare for trial after the public defender was appointed and to respond to newly discovered evidence before trial – and the additional time ensured Taylor received effective assistance of counsel. Further, although it is undisputed here that the delay was lengthy and that Taylor effectively asserted his constitutional rights to a speedy trial, the reason for a substantial portion of the delay was to give counsel more time to prepare for trial, which essentially protected Taylor's right to effective assistance of counsel. The delay did not prejudice Taylor, who already was serving a 100-year sentence for unrelated charges.

(5) The trial court did not abuse its discretion in admitting into evidence portions of a detective's interrogation of Taylor's brother, Perry. During the interrogation, Perry told the detectives that Taylor had called him and admitted to murdering Rowe and her children. When questioned at trial about his previous statements to detectives, Perry said he did not recall the events. The state ultimately read into evidence portions of Perry's statement to the detectives, both during Perry's testimony and during the testimony of the detective. Portions of the statement read into evidence included statements by the detective of "right" and "I think you're right." Given that the detective made the statements during an interrogation, it is reasonable to assume the words and phrases simply acknowledged what Perry said and indicated that Perry should continue answering the detective's questions. They were merely a pattern of speech, not statements expressing any opinion about Perry's credibility or innocence. Further, they were offered not for the detective's statements but for Perry's statements to the detective.

(6) Taylor fails to show the trial court abused its discretion or erred in striking a particular juror for cause. The trial court that observed the prospective juror had broad discretion in determining whether she was qualified to serve as a juror. During the questioning of potential jurors, one woman offered conflicting statements as to whether she could consider the death penalty. In response to questions from the state, she said she would have “difficulty” considering the death penalty and was not certain whether she could consider the full range of punishment. Later, in response to questions from defense counsel, she said she could be “fair and firm” but never directly answered whether she could consider the full range of punishment.

(7) Taylor fails to show the court committed plain error in not intervening – on its own motion, given that Taylor did not object at the time or raise the issue in his motion for a new trial – in response to two comments the prosecution made during the state’s closing arguments. As to one comment – about the Nov. 28 telephone call between Rowe and her sister Gerjuan – the state did not refer to the inadmissible statement in Gerjuan’s deposition testimony that Rowe said she was calling from a pay telephone. Instead, its comments were limited to the admissible evidence that Gerjuan’s testimony and telephone records showed the two talked on Nov. 28. The other comment referred to a discrepancy in the medical examiner’s testimony during deposition and at trial as to how long Rowe and her children had been dead before they were found. During cross-examination, the medical examiner explained that, during his deposition, he did not know the air conditioner was turned to 50 degrees, which affected the temperature in the house and, therefore, his assessment as to the time of death. It was permissible during closing arguments for the state to respond to Taylor’s argument about the credibility of the medical examiner’s testimony by commenting that Taylor could have – but failed to – call another witness to testify about the date of death.

(8) The trial court did not abuse its discretion in overruling Taylor’s request for a mistrial when he was handcuffed and removed from the courtroom after the jury announced its guilty verdicts. The only time Taylor visibly was handcuffed in front of the jury was when he was escorted out of the courtroom *after* the jury just found him guilty of four counts of first-degree murder. As such, he was not prejudiced.

(9) In reviewing the proportionality of Taylor’s death sentences pursuant to section 565.035.3, RSMo 2000, the record does not support a finding that passion, prejudice or arbitrary factors influenced the death sentences. The evidence further supports the jury’s findings of the same five aggravating factors for each of the four victims, and the death sentences assessed here are neither excessive nor disproportionate in comparison with other cases in which more than one person was killed, in which possible witnesses were killed and in which the defendant had an assaultive criminal history.