

Summary of SC90347, *State of Missouri v. Robert R. Brooks*

Appeal from the Jefferson County circuit court, Judge M. Edward Williams
Argued and submitted Dec. 16, 2009; opinion issued Feb. 23, 2010

Attorneys: Brooks was represented by Joseph F. Yeckel of the Law Offices of Joseph F. Yeckel LLC in St. Louis, (314) 227-2430, and Michael A. Gross of the Law Offices of Michael A. Gross in St. Louis, (314) 727-4910; and the state was represented by 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 killing his girlfriend challenges the trial court's decision to allow repeated comments and testimony from the state referencing his silence, during a police interview, after being advised he had the right to remain silent. In a unanimous decision written by Judge Zel M. Fischer, the Supreme Court of Missouri reverses the trial court's judgment and remands (sends back) the case for a new trial. The state's repeated, improper references to the man's silence violated his constitutional rights, and the state failed to meet its burden to show these constitutional violations were harmless beyond a reasonable doubt.

Facts: Calverton Park police officer Robert Brooks lived in Crystal City with his girlfriend, Normandy police officer Amanda Cates and Cates' 14-year-old daughter. In August 2006, he became angry after a city council voted not to hire a female officer he had trained, and he and the officer went to a bar. He drank seven or eight beers there, unsuccessfully tried to get the officer to get a hotel room with him, called a woman named "Michelle" on his cell phone, and drank another three beers on his way home. Throughout the evening, he exchanged multiple telephone calls with Cates, who was upset he was not home. After Brooks arrived home at approximately 12:15 a.m., Brooks and Cates had an altercation, and Cates died of a gunshot wound. Brooks agreed to go to the Crystal City police station for an interview. He was advised he had the right to remain silent, pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966); during questioning, he repeatedly avoided answering, saying "I don't have nothing to hide" and "I didn't do nothing at all." He did not give an account of the struggle or shooting during the interview, after which he was arrested. During his trial, Brooks testified that he and Cates argued when he returned home; that she looked at his cell phone and discovered he had called "Michelle;" that Cates attacked him and threw things at him; that when he tried to leave, Cates pointed a gun at him; and that they struggled over the gun, which discharged, killing Cates. The state repeatedly told the jury, or elicited testimony from various witnesses, that, after being read his *Miranda* warnings, Brooks failed to explain what had happened the night Cates died. Brooks' trial counsel objected to some of these statements, and the court once told the jury to disregard the statements. The jury found Brooks guilty of second-degree murder and armed criminal action and recommended sentences of life imprisonment and 75 years. The court sentenced Brooks accordingly, ordering the sentences to run concurrently. Brooks appeals.

REVERSED AND REMANDED.

Court en banc holds: (1) The state's repeated, improper references to Brooks' post-*Miranda* silence violated his constitutional rights. The mandatory procedures set out in *Miranda* – including the requirement that a person in police custody be advised that he has the right to remain silent and that anything he says may be used against him – safeguard a person's privilege against self-incrimination that is guaranteed by the Fifth Amendment to the United States Constitution. Under *Doyle v. Ohio*, 426 U.S. 610, 619 (1976), the silence of defendant, after being advised of his rights pursuant to *Miranda*, may not be used to impeach the defendant at trial. This holding rests on the view that it is fundamentally unfair to assure a person implicitly that his silence will not be used against him and then breach that promise by using that silence against him. *Wainwright v. Greenfield*, 474 U.S. 284, 291 (1986). Relying on *Doyle*'s notion of fundamental unfairness, Missouri cases have held that post-*Miranda* silence cannot be used as evidence to incriminate a defendant or to impeach a defendant's testimony. For a defendant to waive his *Doyle* claims, his statements to the police must be substantive. A general denial of culpability, such as "I didn't do nothing at all," does not constitute such a waiver. As such, Brooks' Fifth Amendment right was violated, and he did not waive his *Doyle* claims.

(2) The state failed to meet its burden to show the constitutional violations were harmless beyond a reasonable doubt. Once a *Doyle* violation has been found, this Court has discretion to review the violation in the context of the entire record, and the state bears the burden of proving no reasonable doubt exists that the evidence admitted in violation of the federal constitution failed to contribute to the jury's verdict. To determine the effect of a *Doyle* violation on the jury's verdict, this Court examines whether the government made repeated *Doyle* violations, whether the trial court made any effort to cure the violation, whether the defendant's exculpatory evidence is transparently frivolous and whether the other evidence of the defendant's guilt is otherwise overwhelming. *State v. Dexter*, 954 S.W.2d 332, 340 n.1 (Mo. banc 1997). Here, whether purposeful or not, the state developed a theme that carried throughout the trial that if Brooks was innocent, he would have made an exculpatory statement during the police interview. Although the court undertook some action to cure the effect of the errors, these efforts had little effect. The court told the jury, during opening statements, to disregard the prosecutor's comment about Brooks' silence. After a police witness commented about Brooks' right to remain silent, the trial court ordered the prosecutor to rephrase the question but erroneously did not instruct the jury to disregard the comment. The court's efforts had little effect as the trial progressed because the jury already had entertained the state's suggestion that if Brooks were innocent, he would have explained his struggle with Cates and his self-defense theory. Moreover, notwithstanding the trial court's rulings, the state continued to call attention to Brooks' post-*Miranda* silence. Not only was Brooks' exculpatory evidence – that the gun discharged when he was struggling with Cates in self-defense – not transparently frivolous, the trial court implicitly found there was substantial evidence to support the defense, as it gave Brooks' offered self-defense instruction to the jury. Evidence of Brooks' guilt is substantial but not otherwise overwhelming. To be "overwhelming," there must be no reasonable doubt that the defendant committed the crime, and the degree of prejudice resulting from the inadmissible references to the defendant's post-*Miranda* silence must be insubstantial. Here, the cumulative effect of the state's multiple references to Brooks' silence was not insubstantial. The record reflects that the more persuasive evidence of Brooks' guilt was his inconsistent pre-*Miranda* statements, about which the state chose not to cross-examine him, instead impermissibly focusing on Brooks' post-*Miranda* silence, which undermined his credibility, on which the success of his self-defense theory rested.