

Summary of SC94658, *State of Missouri v. Chadwick Leland Walter*

Appeal from the Clay County circuit court, Judge Larry D. Harman

Argued and submitted September 1, 2015; opinion issued January 26, 2016

Attorneys: Walter was represented by Damien De Loyola and Greg Doty of the public defender's office in Kansas City, (816) 889-7699, and the state was represented by P. Benjamin Cox of the attorney general's office in Kansas 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 appeals a trial court's judgment in his criminal trial, alleging in part that an altered photograph used during the state's closing argument was improper and prejudicial. In a decision written by Judge George W. Draper III, the Supreme Court of Missouri vacates the judgment and remands (sends back) the case to the trial court. Six judges agree that, because the man failed to object to the photograph during closing arguments, this Court can review only for plain error. Four judges agree the man was prejudiced by the trial court's failure to grant him a new trial based on the state's use of the altered photograph. This use impinged on the presumption of innocence and the fairness of the fact-finding process.

Judge Paul C. Wilson dissents. He would hold that the proper standard of review is for abuse of discretion and that, given the overwhelming evidence of the man's guilt, the trial court did not abuse its discretion in overruling his motion for a new trial.

In an opinion joined by one other judge, Judge Mary R. Russell also dissents. She would find that the proper standard of review is plain error but that, in light of overwhelming evidence of his guilt, the man failed to prove the prosecutor's use of the altered photograph during closing arguments had a decisive effect on the outcome of the trial or resulted in a manifest injustice.

Facts: The state charged Chadwick Leland Walter with one count of attempted manufacture of methamphetamine and one count of maintaining a public nuisance. During closing arguments, the state used a visual presentation with various diagrams, lists and photographs. The final photograph used in the slideshow was an enlarged color photograph of Walter, wearing what appears to be an orange prison jumpsuit, with the word "GUILTY" superimposed in large, block red letters running diagonally across Walter's face and filling the frame of the photograph. The court instructed the jury, and it retired to deliberate. At some point during the jury's deliberations, defense counsel apparently became aware of the state's closing argument slideshow. The record does not indicate whether either defense counsel or the trial court saw the photograph of Walter with the word "GUILTY" across it. After the jury found Walter guilty and was discharged, defense counsel objected to the photograph displayed to the jury during the state's closing argument, alleging it was improper and prejudicial. Defense counsel stated he did not object during closing arguments because he did not see the photograph at the time it was displayed, and the trial court stated it also did not see the photograph during closing argument. The state responded that Walter's booking photograph, without the superimposed text, was included in the state's exhibits. The trial court deferred ruling until Walter filed his motion for a new trial. During the hearing on that motion, defense counsel explained he did not see the photograph because he was watching the prosecutor address the jury, and the screen displaying the images was on the opposite side of the room. The trial court overruled Walter's motion for a new trial and imposed sentence. Walter appeals.

VACATED AND REMANDED.

Court en banc holds: (1) Because Walter did not object to the state's use of the altered photograph in the closing argument slideshow presentation until after the jury had returned its verdict, he failed to preserve the issue for appeal. To preserve such an error, a defendant must object at the time the allegedly improper argument is made to the jury. Further, when the objection could be made during trial, raising it for the first time in a motion for a new trial is insufficient to preserve the error. Raising the issue in the motion for a new trial preserves nothing other than the opportunity for an appellate court to engage in plain error review. Had Walter preserved the error, the Court could have reviewed for an abuse of discretion of the trial court. Because he did not, this Court reviews the issue for plain error only.

(2) The state's use of the altered photograph was improper. While the state, during closing arguments, is permitted to argue the evidence and all reasonable inferences from the evidence, arguments must not go beyond the evidence presented, and courts should exclude statements that misrepresent the evidence or the law, introduce irrelevant prejudicial matters, or otherwise tend to confuse the jury. The state also may not suggest special or personal knowledge or make ad hominem attacks designed to inflame the jury. Using visual aids in explaining a case to a jury is acceptable, but the visual aid must contain admissible evidence. Parties may not present altered versions of admitted evidence to support a theory of the case. By superimposing the word "GUILTY" in large red block letters across Walter's booking photograph, the state clearly altered the form of admitted evidence. As altered, the photograph would have been inadmissible, resulting in error.

(3) Walter was prejudiced. It is clear the state made a submissible case against Walter, but the relevant inquiry is not whether a submissible case was made but rather whether the state's use of Walter's altered photograph had an effect on the jury's deliberations to the point that it contributed to the guilty verdict. Looking at the entirety of the record, there was not overwhelming evidence to support only a guilty verdict. Walter contested the state's evidence and offered his own version of the events, which, if believed, would serve as the basis for acquittal. The only rational reason for the state to present the altered photograph of Walter was to influence the jury's determination of his guilt. The state's obligation in a criminal prosecution is not to win the case but to do justice. While Walter was not forced to appear during his trial in prison attire (which this Court recognizes undermines the presumption of innocence and the fairness of the fact-finding process), the altered photograph presented to the jury during closing arguments compelled the same de facto influence upon the jury. Accordingly, Walter was prejudiced by the trial court's error in failing to grant Walter a new trial based on the state's use of the altered photograph during closing argument.

Dissenting opinion by Judge Wilson: The author would hold the Court should review the trial court's denial of Walter's claim of plain error for abuse of discretion. The only claim Walter could (and did) raise was that the trial court should grant a new trial because it "plainly erred" under Rule 29.12(b) when it failed to inject itself, on its own motion, into the closing argument to admonish the state or grant a mistrial on the basis of a slide Walter concedes the trial court did not see and to which Walter did not object. Rule 29.12(b) gave the trial court discretion to grant or deny Walter's plain error claim, and so this Court only can review Walter's claim for an abuse of that discretion. Given the overwhelming weight of evidence against Walter, the author would hold that the trial court did not abuse its discretion in denying Walter relief on his plain error claim.

Dissenting opinion by Judge Russell: (1) The author would hold that, because Walter failed to raise an objection during closing argument, his claim is reviewable only for plain error under Rule 30.20.

But even if there is plain error, the Court must determine whether the claimed error resulted in manifest injustice or a miscarriage of justice. Plain error in closing argument is grounds for reversal of a conviction only when it is established that the argument had a decisive effect on the outcome of the trial and amounts to a manifest injustice.

(2) Even assuming the prosecutor's argument was improper, the author would find Walter failed to prove the prosecutor's use of the altered photograph during closing arguments had a decisive effect on the outcome of the trial or resulted in a manifest injustice in light of the overwhelming evidence of his guilt. It is not clear from the photograph whether Walter was wearing a prison jumpsuit, and although showing Walter's color mugshot with the word "GUILTY" digitally imposed across it in bold red letters was disrespectful of his presumption of innocence, it does not rise to the level of a constitutional violation, and it is difficult to see how it could have misled the jury. Further, the prosecutor is allowed to give his personal opinion that, based on the facts in evidence, Walter was guilty. Taken as a whole, the evidence of Walter's guilt was overwhelming, and the altered photograph did not cause manifest injustice or a miscarriage of justice.