

**Summary of SC92720, *State of Missouri v. Christopher L. Collings***

Appeal from the Phelps County circuit court, Judge Mary Sheffield

Argued and submitted January 8, 2014; opinion issued August 19, 2014

**Attorneys:** Collings was represented by Rosemary M. Percival of the public defender's office in Kansas City, (816) 889-7699, and the state was represented by Richard A. Starnes 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 appeals from the trial court's judgment after a jury convicted him of first-degree murder for the death of a 9-year-old girl and he was sentenced to death. In a decision written by Judge George W. Draper III and joined by five other judges, the Supreme Court of Missouri affirms the judgment. The trial court did not clearly err in not suppressing the man's confession, given voluntarily after being advised of his *Miranda* rights, and did not abuse its discretion or make inconsistent rulings regarding evidence presented during the suppression hearing. The court did not plainly err in admitting certain physical evidence or abuse its discretion in admitting certain crime scene and autopsy photographs. The trial court did not err in overruling the man's motion for judgment of acquittal at the close of all evidence, as the evidence amply supported the finding that the man deliberated in killing the girl. It did not abuse its discretion in allowing the prosecutor's demonstration, during the guilt-phase closing arguments, of how and how long the man strangled the girl. It also did not plainly err in failing to intercede, on its own motion, to prevent the prosecutor's penalty-phase closing argument regarding evidence about the potential involvement of the girl's stepfather in her murder. The man failed to demonstrate that an isolated comment his father made about the death penalty affected the outcome of the penalty phase of the trial. As to jury instructions and the state's alleged failure to plead aggravating circumstances, this Court has rejected prior similar challenges, and the man did not provide a meritorious reason why this Court should reconsider the holdings in those cases. Finally, the death sentence imposed here meets the statutory requirements and is not disproportionate to the punishment imposed in other similar cases.

Judge Zel M. Fischer wrote a concurring opinion. He concurs in affirming the judgment but does not believe the Court should have exercised its discretion to afford plain error review of three claims the man failed to preserve because none of these errors was so "evident, obvious and clear" that the circuit court should have identified and corrected the error on its own motion.

**Facts:** For several months, Christopher Collings lived in the basement of the Newton County home of his longtime friend David Spears, where Spears lived with his wife and 9-year-old stepdaughter. He moved to his own trailer in late October 2007. One evening shortly thereafter, Collings, Spears and another mutual friend were drinking at Spears' home. The mother left for work, leaving her daughter in Spears' care. Later that evening, all three men left to take Collings home, leaving the sleeping girl home alone. The men continued to drink and smoke marijuana at Collings' trailer. An hour later, Spears and the friend left, planning to take back roads to Spears' home to avoid getting stopped for driving while intoxicated. When the mother returned home

from work around 9 a.m. the next day, she could not find her daughter. Spears told her the girl was staying with a friend he could not identify. When the girl did not return that afternoon, her mother reported her missing to local authorities, who launched a large-scale search for her. In the following days, Collings spoke with sheriff's deputies and FBI agents, telling them he went to sleep after Spears and the friend left. During some of these conversations, Collings was read his rights to an attorney and against self-incrimination pursuant to *Miranda v. Arizona*. He said he understood his rights and waived them, also agreeing to take a polygraph test and a computer voice stress analysis test. Collings insisted he knew nothing about the girl's disappearance and offered to help in the search. Collings then sought out a local police chief who was a family friend and with whom he had a relationship spanning 17 years, since Collings was a child. Over the next few days, Collings had several conversations with the police chief and interviews with other law enforcement officials. Ultimately, authorities found the girl's body – which showed signs of rape and ligature strangulation – at the bottom of a sinkhole known as Fox Cave. During a subsequent conversation with the police chief, who again gave Collings the *Miranda* warnings, Collings confessed what really had happened the night the girl disappeared. He said that, after Spears and the friend left his trailer, he went to the Spears home using the highway, which was the “quickest route” back to Spears' house. He carried the still-sleeping girl out of her house and into his truck, driving her back to his trailer, where he raped her. Although he said he intended to return her home, when he took her outside, she was able to identify him in the moonlight, and he “freaked out.” He said he put rope around her neck, pulling until she stopped moving, then took her body to Fox Cave, throwing her body into the sinkhole and attempting to cover the sinkhole entrance with branches and limbs. He said he then went home and burned his clothes, the girl's clothes and the rope he used to strangle her in a wood stove and then burned the mattress in a 55-gallon drum. Collings later was given *Miranda* warnings by sheriff's deputies and FBI agents, and he repeated his confession and executed a consent form allowing a search of his property. The state charged Collings with first-degree murder, and after a change of venue to Phelps County, a jury from Platte County found him guilty and recommended the death penalty. The court entered judgment accordingly. Collings appeals.

#### **AFFIRMED.**

**Court en banc holds:** (1) The circuit court did not clearly err in overruling Collings' motion to suppress his final confession because his statements were given voluntarily after being advised of his *Miranda* rights. Law enforcement officers did not exploit impermissibly Collings' close friendship with the police chief. The evidence demonstrates the officers focused the entire investigation on Spears as the primary suspect. While they believed Collings would be more amenable talking with the chief because of their friendship, they also believed Collings only had information about Spears' involvement, not that Collings was responsible for the girl's disappearance. Collings initiated every contact with the police chief and admitted he wanted to confess to the chief earlier but chose not to. The circumstances demonstrate Collings' state of mind that the police chief, while someone he could trust and confide in, was acting as a member of law enforcement investigating the girl's disappearance, not as a “false friend” attempting to extract a confession from Collings. In addition, the record refutes Collings' claim that, the day he confessed to the police chief, the chief engaged in an improper “two-step interrogation” to elicit a confession without first giving *Miranda* warnings to Collings. After hearing conflicting testimony from the police chief and Collings, the trial court determined the chief advised

Collings of his *Miranda* rights before they left to talk and before the chief asked any questions about Collings' involvement in the girl's disappearance, even though Collings was not in custody at that time. Further, despite Collings' fears stemming from the community's purported need for vigilante justice, law enforcement officials were not the source of any coercion or pressure for Collings to confess, and Collings repeatedly stated during recorded interviews that his statements were not coerced due to threats of any nature. Finally, Collings voluntarily subjected himself to repeated questioning and testing and consented to searches throughout the week after being advised of his rights. He repeatedly asserted during videotaped interviews that he was not threatened, that no promises were made to him, that he signed the *Miranda* waiver of his own free will, and that he understood his rights after having heard them several times that week.

(2) The circuit court did not abuse its discretion or make inconsistent rulings regarding evidence presented during the suppression hearing, and Collings failed to demonstrate any error in any of these evidentiary rulings. Although the police chief violated Collings' constitutional rights during a videotaped interview after Collings was arrested, appointed counsel and arraigned, the circuit court found the videotape did not invalidate Collings' voluntary statements he gave during his pre-arrest confessions. That the court found the videotape unavailing does not mean it barred Collings from presenting the evidence. That Collings repeatedly invoked his rights and withstood the police chief's repeated barrage of inappropriate and illegal questioning undercuts his argument that he was coerced, and he never indicated the chief threatened, pressured or coerced him into speaking during any of the times he sought out the chief to talk. The circuit court did not hinder Collings from developing evidence or exclude any evidence he wished to present about law enforcement officers using a friend of Spears to wear a wire to record any incriminating statements Spears made or from drawing comparisons between Spears and his friend and Collings and the police chief. The court's rulings regarding the inadmissibility of some evidence are inconsistent with other rulings allowing the state to admit otherwise inadmissible evidence, including evidence of the polygraph examination, the voice stress test and uncharged bad acts. The state used this evidence, however, to show Collings consented to take the tests, not what the tests were for or what their results were or to impeach Collings.

(3) The circuit court did not err in overruling Collings' motion for judgment of acquittal at the close of all evidence, as the evidence amply supported the finding that Collings deliberated in killing the girl. "Deliberation" is "cool reflection for any length of time no matter how brief." Collings' actions before, during and after the girl's murder support a reasonable inference that he coolly reflected when causing her death. He took the "quickest route" to get to her house before her stepfather, kidnapped her for sexual purposes, took her to his secluded trailer, raped her while she resisted, took steps to ensure the girl could not recognize him and took a few minutes to strangle her to death after she was able to recognize him in the moonlight.

(4) The circuit court did not abuse its discretion or plainly err in admitting certain evidence over Collings' objection, and he did not demonstrate prejudice from any of these rulings. The presence of a burnt string or cord at the crime scene – even if it later was determined not to be the murder weapon – was probative given his statement that he used a rope or cord to strangle the girl, and he suffered no prejudice. Ashes retrieved from the wood stove corroborated Collings' confession that he burned items to destroy evidence and showed the condition of the crime scene. Collings' argument regarding testimony about a partial DNA profile developed

from a hair found in the bed of Collings' truck went more to the credibility of witnesses and the weight of the evidence, not the evidence's admissibility, and Collings admitted he put the girl's body in the bed of his truck after he strangled her. Evidence about pubic hairs found on the girl's body was not improperly admitted in light of overwhelming evidence of Collings' guilt. He was adamant he was alone with the girl and was the only individual who had intercourse with her.

(5) The circuit court did not abuse its discretion in admitting certain photographs depicting the girl's body as it was found and her autopsy photographs. The court heard extensive argument outside the hearing of the jury regarding the relevance and potential prejudicial effect of the photographs, explained its ruling before admitting each photograph, and excluded photographs it deemed duplicative. The crime scene photographs depicted relevant facts and demonstrated how the body was examined in the sinkhole and handled after removal. While gruesome, the autopsy photographs aided the pathologist in explaining the autopsy findings, showed the nature and location of the girl's wound, and helped establish Collings' motive for murdering the girl.

(6) The circuit court did not abuse its discretion in overruling Collings' objections and request for a mistrial based on the prosecutor's demonstration, during the guilt-phase closing arguments, of how Collings strangled the girl. The prosecutor was entitled to rebut Collings' argument that he did not reflect coolly on the girl's murder with a demonstration of how long it took to strangle her. The court also did not plainly err in failing to intercede, on its own motion, to prevent the prosecutors' penalty-phase closing argument regarding Collings' evidence about Spears' potential involvement in the girl's murder. The comments did not disparage defense counsel, nor did they prevent the jury from considering mitigating evidence in Collings' favor.

(7) Collings failed to demonstrate that a comment his father made about the death penalty, if erroneously admitted, affected the outcome of the penalty phase of the trial. Although admission of family members' characterizations and opinions about the appropriate sentence are inadmissible, the isolated question the prosecutor posed of Collings' father did not seek to elicit his opinion about the appropriate sentence for Collings.

(8) This Court has rejected prior challenges similar to the one Collings makes regarding a jury instruction for sentencing, and Collings has not offered a meritorious reason why this Court should reconsider the holdings in those cases.

(9) This Court also has rejected prior claims identical to the one Collings makes that the state failed to plead aggravating circumstances, and Collings has not set forth a meritorious reason why this Court should reconsider the holdings in those cases.

(10) In its independent proportionality review, the Court finds that the death sentence imposed against Collings was not imposed under the influence of passion, prejudice or any arbitrary factor; the evidence supports the jury's findings of the aggravating circumstances that the girl's murder involved torture and that she was murdered because she was a potential witness against Collings for rape; the mitigating factors do not outweigh the aggravating circumstances; and the death sentence is consistent with the punishment imposed in other cases in which the defendant abducted a young victim, whom the defendant then sexually abused and murdered.

**Concurring opinion by Judge Fischer:** The author concurs in affirming Collings' conviction and sentence but writes separately to discuss why he does not believe the Court should have engaged in plain error review of certain claims Collings failed to preserve. Generally, this Court only reviews an unpreserved claim if it involves a "plain error" that would result in manifest injustice or miscarriage of justice that is so evident, obvious and clear that the circuit court should have recognized and corrected the error on its own. Collings requests such review for three issues: the exclusion during the suppression hearing of evidence Collings offered while admitting evidence the state offered; the admission of evidence of a partial DNA profile from a hair found in Collings' truck; and the prosecutor's argument, during closing arguments, about the defense's reference to Spears. None of these errors, however, is so "evident, obvious and clear" that the circuit court should have identified and corrected the error on its own motion, and the author does not believe this Court should engage in plain error review of them.