

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia v. Douglas N.

No. 18-0380 (Cabell County 15-F-371) · No. No. 18-0380 (Cabell County 15-F-371) · Decided November 8, 2019

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the Circuit Court of Cabell County’s order resentencing Douglas N. to a cumulative term of 65 to 210 years for multiple sexual offenses. The court rejected claims involving alleged Brady violations, admission of text messages, and sentencing without a completed presentence investigation report. The court held that the medical records were properly handled through in camera review, the text-message claims were waived or lacked merit, and any error at the initial sentencing hearing was rendered moot by the later reconsideration hearing.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Elizabeth D. Walker; Justice Margaret L. Workman; Justice Tim Armstead; Justice Evan H. Jenkins; Justice John A. Hutchison
JURISDICTION	West Virginia
DECIDED	November 8, 2019
DOCKET	No. 18-0380 (Cabell County 15-F-371)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Douglas N. appealed the Circuit Court of Cabell County's April 5, 2018, resentencing order following his convictions on six sexual-offense counts. He challenged alleged Brady violations, admission of text messages, and sentencing without a completed presentence investigation report.
STANDARD OF REVIEW	Brady claims were evaluated under the constitutional three-part test requiring favorable evidence, suppression by the State, and materiality. Evidentiary and procedural rulings were reviewed for abuse of discretion. Unpreserved Rule 106 and jury-instruction claims were subject to waiver principles, and the sentencing challenge was analyzed for mootness.
PRECEDENTIAL VALUE	nonprecedential memorandum decision

PARTIES

Douglas N. v. State of West Virginia

TOPICS

criminal procedure

evidence

preservation of error

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the State violated *Brady v. Maryland* by failing to disclose or provide access to the victim's mental-health records.
2. Whether the State violated *Brady* or Rule 26.2 by failing to obtain and disclose text messages between the victim and her best friend.
3. Whether the circuit court improperly admitted text messages between Douglas's daughter and grandmother under Rules 106 and 403 of the West Virginia Rules of Evidence.
4. Whether the circuit court erred by giving or failing to give an *Osakalumi* jury instruction concerning the text messages.
5. Whether the circuit court erred by imposing the initial sentence before completion of a presentence investigation report and without first allowing Douglas to address the court.

HOLDINGS

1. No *Brady* violation occurred because the State obtained the records, provided them to the circuit court for in camera review, and allowed defense counsel to inspect them; the court's determination that the records were irrelevant was an evidentiary ruling rather than a *Brady* violation.
2. Douglas was not entitled to relief because *State v. Dudick* did not apply where the witness did not use notes to refresh her recollection, and Rule 26.2 requires a motion for production after the witness testifies; Douglas identified no such motion in the record.
3. The circuit court did not abuse its discretion by admitting the text message concerning the witness's truthfulness. Douglas waived any Rule 106 challenge by failing to request admission of additional text messages, and the evidence was not unfairly prejudicial under Rule 403 because the State was entitled to inquire into the witness's character for truthfulness and defense counsel clarified the context on redirect.
4. Any argument concerning an *Osakalumi* instruction was waived because defense counsel expressly stated that there were no objections to the jury instructions and waived related appeal rights.
5. Any error in imposing the initial sentence before completion of a presentence investigation report and before allowing Douglas to address the court was moot because the circuit court later completed a postsentence investigation, held a full reconsideration hearing, allowed Douglas to address the court, and reimposed the same sentence.

KEY QUOTATIONS

“There are three components of a constitutional due process violation under Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), and State v. Hatfield, 169 W.Va. 191, 286 S.E.2d 402 (1982): (1) the evidence at issue must be favorable to the defendant as exculpatory or impeachment evidence; (2) the evidence must have been suppressed by the State, either willfully or inadvertently; and (3) the evidence must have been material, i.e., it must have prejudiced the defense at trial.” (at 3)

“Moot questions or abstract propositions, the decision of which would avail nothing in the determination of controverted rights of persons or of property, are not properly cognizable by a court.” (at 7)

FACTUAL BACKGROUND

In 2007, when the victim was ten years old, Douglas N. sexually abused her during a drive to his ex-wife's home and instructed her not to tell her parents. The victim disclosed the abuse in 2015 to a friend by text message and later to her parents, leading to a police investigation and Douglas's indictment. At trial, the State introduced testimony and a recorded forensic interview, while the defense presented testimony from Douglas's children concerning the victim's continued interactions with Douglas. The State also questioned one of Douglas's daughters about a text message concerning whether she had lied during an unrelated Child Protective Services investigation.

PROCEDURAL HISTORY

Douglas N. was indicted in 2015 on one count of first-degree sexual assault, two counts of first-degree sexual abuse, and three counts of sexual abuse by a parent, guardian, or custodian. After a jury convicted him on all six counts, the circuit court initially sentenced him in August 2016 before receiving a presentence investigation report, but scheduled reconsideration of the sentence. After a postsentence investigation report was completed, the court held a reconsideration hearing in December 2016 and imposed the same consecutive sentences. The court re-entered the sentencing order in April 2018 for purposes of appeal, and the Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- In re K.H., 235 W. Va. 254, 773 S.E.2d 20 (2015)
- Melinda H. v. William R. II, 230 W. Va. 731, 742 S.E.2d 419 (2013)
- State v. Brandon B., 218 W. Va. 324, 624 S.E.2d 761 (2005)
- State v. Edward Charles L., 183 W. Va. 641, 398 S.E.2d 123 (1990)
- Brady v. Maryland, 373 U.S. 83 (1963)
- State v. Hatfield, 169 W. Va. 191, 286 S.E.2d 402 (1982)
- State v. Youngblood, 221 W. Va. 20, 650 S.E.2d 119 (2007)
- State v. Roy, 194 W. Va. 276, 460 S.E.2d 277 (1995)

- State v. Dudick, 158 W. Va. 629, 213 S.E.2d 458 (1975)
- State v. Osakalumi, 194 W. Va. 758, 461 S.E.2d 504 (1995)
- State v. Byers, 159 W. Va. 596, 224 S.E.2d 726 (1976)
- McDougal v. McCammon, 193 W. Va. 229, 455 S.E.2d 788 (1995)
- State v. Gray, 204 W. Va. 248, 511 S.E.2d 873 (1998)
- State ex rel. McCabe v. Seifert, 220 W. Va. 79, 640 S.E.2d 142 (2006)
- State v. Brown, 210 W. Va. 14, 552 S.E.2d 390 (2001)

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