

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia v. Alexander Paul Delorenzo

Delorenzo · No. No. 21-0456 · Decided November 18, 2022

SUMMARY

This document is a dissenting opinion in State of West Virginia v. Alexander Paul Delorenzo, concerning the exclusion of defense expert testimony about the defendant’s Asperger’s Syndrome Disorder and its relevance to his lack-of-intent defense. Justice Wooton argued that excluding the testimony violated the defendant’s constitutional right to present a defense and criticized the majority’s approval of the trial court’s admonishments during the defendant’s testimony.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Wooton
JURISDICTION	West Virginia
DECIDED	November 18, 2022
DOCKET	No. 21-0456
DISPOSITION	other
PROCEDURAL POSTURE	Criminal appeal concerning the exclusion of defense expert testimony regarding Asperger's Syndrome Disorder and the trial court's admonishments during the defendant's testimony.
STANDARD OF REVIEW	Evidentiary rulings are ordinarily reviewed for abuse of discretion; when an evidentiary ruling deprives a criminal defendant of the constitutional right to present a defense, the ruling may constitute reversible error. Under the Guthrie test, reversal is warranted for a clear abuse of discretion.
PRECEDENTIAL VALUE	Separate dissenting opinion; nonbinding.
PARTIES	State of West Virginia v. Alexander Paul Delorenzo

TOPICS

- evidence
- expert testimony
- mens rea
- due process
- criminal procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether excluding expert testimony concerning the defendant's Asperger's Syndrome Disorder and related conditions violated his due process right to present a defense.
2. Whether the proposed expert testimony was relevant and admissible to support the defendant's claim that he lacked the intent required by the charged offenses, rather than to establish diminished capacity.
3. Whether the circuit court's admonishments during the defendant's testimony improperly influenced the jury or otherwise deprived the defendant of a fair trial.

HOLDINGS

1. The dissent would hold that the circuit court abused its discretion by excluding the defense expert's testimony because the testimony was relevant and critical to the defendant's sole lack-of-intent defense, its probative value outweighed any asserted prejudice, and the State had no compelling interest in excluding it.
2. The dissent agreed with the majority that the circuit court's admonishments, standing alone, did not unduly influence the jurors, but criticized the majority's new syllabus point stating that a trial court has a duty to supervise direct and cross-examination.

KEY QUOTATIONS

“The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present the defendant’s version of the facts as well as the prosecution’s to the jury so it may decide where the truth lies.” (at 1)

“Lack of intent was the entirety of the petitioner’s defense, and in the absence of Dr. Marshall’s testimony there was nothing to support what may have seemed, to a lay jury, to be a fanciful explanation of just what the petitioner was doing at his computer.” (at 14)

FACTUAL BACKGROUND

Delorenzo was prosecuted for allegedly knowingly and willfully possessing, accessing, or viewing material visually portraying a minor engaged in sexually explicit conduct. He maintained that he lacked the requisite intent, asserting that his investigation of the dark web was motivated by a desire to understand it rather than to find and view pornography. He had Asperger's Syndrome Disorder, obsessive-compulsive disorder, depression, anxiety, and panic disorder, and sought to present expert testimony explaining how those conditions affected his perceptions, behavior, and credibility. The circuit court excluded the expert testimony after interpreting language in the expert's report as supporting a diminished-capacity defense.

PROCEDURAL HISTORY

Delorenzo was charged with two felony violations of West Virginia Code section 61-8C-3(a). At trial, the circuit court excluded proposed expert testimony concerning Delorenzo's Asperger's Syndrome Disorder and related

conditions, while permitting limited lay testimony regarding those conditions. The dissent would have concluded that the exclusion deprived Delorenzo of a fair trial because lack of intent was his sole defense.

DISPOSITION

other

REMAND INSTRUCTIONS

The dissent would reverse the conviction and remand for a new trial at which the defense expert's testimony could be presented.

CASES CITED

- State v. Jenkins, 195 W. Va. 620, 466 S.E.2d 471 (1995)
- State v. Whitt, 220 W. Va. 685, 649 S.E.2d 258 (2007)
- State v. Herbert, 234 W. Va. 576, 767 S.E.2d 471 (2014)
- State v. Guthrie, 205 W. Va. 326, 518 S.E.2d 83 (1999)
- State ex rel. Harvey v. Yoder, 239 W. Va. 781, 806 S.E.2d 437 (2017)
- State v. Timothy C., 237 W. Va. 435, 787 S.E.2d 888 (2016)
- Washington v. Texas, 388 U.S. 14 (1967)
- Gentry v. Mangum, 195 W. Va. 512, 466 S.E.2d 171 (1995)
- Nicholas v. Sammons, 178 W. Va. 631, 363 S.E.2d 516 (1987)
- Berger v. United States, 295 U.S. 78 (1935)
- State v. Joseph, 214 W. Va. 525, 590 S.E.2d 718 (2003)
- State v. Burr, 921 A.2d 1135 (N.J. Super. Ct. App. Div. 2007)
- State v. Burr, 948 A.2d 627 (N.J. 2008)
- State v. Stewart, 228 W. Va. 406, 719 S.E.2d 876 (2011)
- State v. Harden, 223 W. Va. 796, 679 S.E.2d 628 (2009)
- State v. Ferguson, 222 W. Va. 73, 662 S.E.2d 515 (2008)
- State v. Lockhart, 208 W. Va. 622, 542 S.E.2d 443 (2000)
- State v. McCoy, 179 W. Va. 223, 366 S.E.2d 731 (1988)
- People v. Larsen, 205 Cal. Rptr. 3d 762 (Cal. Ct. App. 2012)
- State v. Boyd, 143 S.W.3d 36 (Mo. Ct. App. 2004)
- State ex rel. Jones v. Recht, 221 W. Va. 380, 655 S.E.2d 126 (2007)
- Tanner v. Rite Aid of West Virginia, Inc., 194 W. Va. 643, 461 S.E.2d 149 (1995)
- In re Flood Litigation Coal River Watershed, 222 W. Va. 574, 668 S.E.2d 203 (2008)
- Arcoren v. United States, 929 F.2d 1235 (8th Cir. 1991)
- San Francisco v. Wendy's International, Inc., 221 W. Va. 734, 656 S.E.2d 485 (2007)
- Kannankeril v. Terminix International, Inc., 128 F.3d 802 (3d Cir. 1997)

- *Elsayed Mukhtar v. California State University, Hayward*, 299 F.3d 1053 (9th Cir. 2002)
- *United States v. Bacon*, 979 F.3d 766 (9th Cir. 2020)
- *State v. Rogers*, 215 W. Va. 499, 600 S.E.2d 211 (2004)
- *State v. Wotring*, 167 W. Va. 104, 279 S.E.2d 182 (1981)
- *State v. Staley*, 45 W. Va. 792, 32 S.E. 198 (1899)

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