

SUPREME COURT OF NORTH DAKOTA

Syvertson v. State

699 N.W.2d 855 (N.D. 2005) · No. No. 20050016 · Decided July 13, 2005

SUMMARY

The Supreme Court of North Dakota affirmed the denial of Charles E. Syvertson's application for post-conviction relief. The court held that Syvertson failed to establish a Brady violation because knowledge of Dr. Kottke's misconduct held by the North Dakota State Hospital could not be imputed to the prosecution. The court also concluded that the evidence was not newly discovered because information about Dr. Kottke had been publicly available before trial, and rejected Syvertson's claim of outrageous government conduct.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Vande Walle, Chief Justice; Dale V. Sandstrom, Justice; Carol Ronning Kapsner, Justice; Mary Muehlen Maring, Justice
JURISDICTION	North Dakota
DECIDED	July 13, 2005
DOCKET	No. 20050016
DISPOSITION	affirmed
PROCEDURAL POSTURE	Syvertson appealed from a district court judgment denying his application for post-conviction relief.
STANDARD OF REVIEW	In post-conviction proceedings, factual findings are reviewed for clear error under N.D.R.Civ.P. 52(a), while questions of law are fully reviewable. The denial of relief based on newly discovered evidence is reviewed under the abuse-of-discretion standard applicable to denial of a new-trial motion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Charles E. Syvertson v. State of North Dakota

TOPICS

- state post-conviction relief
- due process
- evidence
- criminal procedure
- appellate procedure

PRACTICE AREAS

Post-conviction relief

Criminal procedure

Constitutional law

Evidence

Appellate procedure

QUESTIONS PRESENTED

1. Whether the State violated *Brady v. Maryland* by failing to discover and disclose information concerning Dr. Kottke's medical-license disciplinary history.
2. Whether the information concerning Dr. Kottke constituted newly discovered evidence warranting post-conviction relief or a new trial.
3. Whether the State's conduct was so outrageous under Fourteenth Amendment due process principles that the State should be barred from invoking the judicial process to obtain a conviction.

HOLDINGS

1. Syvertson failed to establish the first element of a *Brady* violation because the knowledge of the North Dakota State Hospital could not be imputed to the Cass County State's Attorney's Office. The State therefore did not violate *Brady* on this record.
2. Syvertson was not entitled to post-conviction relief based on newly discovered evidence because he failed to show that his failure to learn of the evidence at trial was not the result of a lack of diligence.
3. Syvertson failed to establish that the State's conduct was sufficiently outrageous to bar the State from invoking the judicial process to obtain a conviction.

KEY QUOTATIONS

"In Brady, the United States Supreme Court held that suppression by the prosecution of evidence favorable to an accused violates due process if the evidence is material to guilt or punishment." (699 N.W.2d at 856)

"To establish a Brady violation, the defendant must prove: "(1) the government possessed evidence favorable to the defendant; (2) the defendant did not possess the evidence and could not have obtained it with reasonable diligence; (3) the prosecution suppressed the evidence; and (4) a reasonable probability exists that the outcome of the proceedings would have been different if the evidence had been disclosed." (699 N.W.2d at 856-857)

"The State Hospital is one component of the North Dakota mental health delivery system serving the specialized populations of the mentally ill, N.D.C.C. § 25-02-03, and is not an arm of the criminal justice system." (699 N.W.2d at 857)

FACTUAL BACKGROUND

Dr. Kottke, a North Dakota State Hospital physician, conducted Syvertson's initial psychiatric evaluation in 1997. Syvertson later learned that Kottke had been disciplined in Minnesota and North Dakota for improper sexual conduct with female patients, nurses, and staff. Kottke had been subpoenaed as a potential rebuttal witness concerning Syvertson's mental competency defense, but Syvertson withdrew that defense and Kottke never testified. The disciplinary information had been publicly disseminated in a 1993 St. Paul Pioneer Press article.

PROCEDURAL HISTORY

Syvertson had previously been convicted of two counts of gross sexual imposition and later entered a conditional guilty plea to gross sexual imposition and kidnapping. The North Dakota Supreme Court affirmed the underlying criminal judgments and an earlier denial of post-conviction relief. In this proceeding, Syvertson sought relief based on information concerning Dr. Kottke's disciplinary history, asserting Brady, newly discovered evidence, and outrageous-government-conduct claims. The district court denied relief, and the Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Syvertson, 1999 ND 137, 597 N.W.2d 644
- State v. Syvertson, 1999 ND 134, 597 N.W.2d 652
- Syvertson v. State, 2000 ND 185, 620 N.W.2d 362
- Greywind v. State, 2004 ND 213, ¶ 5, 689 N.W.2d 390
- Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)
- City of Grand Forks v. Ramstad, 2003 ND 41, ¶ 9, 658 N.W.2d 731
- State v. Sievers, 543 N.W.2d 491, 495-96 (N.D. 1996)
- United States v. Bagley, 473 U.S. 667, 676, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985)
- State v. Goulet, 1999 ND 80, ¶ 15, 593 N.W.2d 345
- In re Steele, 32 Cal. 4th 682, 85 P.3d 444, 453 (Cal. 2004)
- In re C.J., 166 Ill. 2d 264, 652 N.E.2d 315, 318 (Ill. 1995)
- Ohio v. Mosley, No. 00CA2739, 2001 WL 888376, at *2, 2001 Ohio App. LEXIS 3332, at **6-7 (Ohio Ct. App. July 18, 2001)
- Greywind v. State, 2004 ND 213, ¶ 18, 689 N.W.2d 390
- State v. VanNatta, 506 N.W.2d 63, 70 (N.D. 1993)
- State v. Garcia, 462 N.W.2d 123, 124 (N.D. 1990)
- State v. Steinbach, 1998 ND 18, ¶ 22, 575 N.W.2d 193