

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia v. Matthew Bolen, 219 W. Va. 236

632 S.E.2d 922 (2006) · No. No. 32887 · Decided June 16, 2006

SUMMARY

The Supreme Court of Appeals of West Virginia held that the trial court committed plain error by admitting and allowing the State to emphasize evidence of the victim's religious beliefs to bolster credibility in a first-degree sexual assault prosecution. The court also found prosecutorial misconduct based on repeated religious references and credibility vouching, reversed the sentencing order, and remanded for a new trial. Justice Maynard dissented, arguing that plain error review was inappropriate because the defendant had not preserved the evidentiary issue.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam
JURISDICTION	West Virginia
DECIDED	June 16, 2006
DOCKET	No. 32887
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Direct appeal from an April 27, 2005 sentencing order entered after Appellant's convictions for two counts of first degree sexual assault.
STANDARD OF REVIEW	Evidentiary rulings are generally reviewed for abuse of discretion. Because Bolen did not object to the admissibility of the challenged evidence, the Court reviewed the issue for plain error. Prosecutorial-misconduct claims were evaluated under the four-factor test from State v. Sugg.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Matthew Bolen v. State of West Virginia

TOPICS

- evidence
- prosecutorial misconduct
- preservation of error
- appellate procedure
- criminal procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court committed plain error by allowing the State to introduce and comment on evidence of C.J.'s religious beliefs and affiliation to bolster his credibility in violation of West Virginia Rule of Evidence 610.
2. Whether the State committed prosecutorial misconduct by repeatedly referencing C.J.'s religious devotion and vouching for his credibility in opening statement and closing argument.

HOLDINGS

1. The trial court committed plain error by allowing the State to introduce and comment on the victim's religious beliefs and affiliation to bolster his credibility.
2. The State acted improperly by repeatedly invoking C.J.'s religious devotion and vouching for his credibility in opening and closing argument, particularly where the case lacked corroborating physical or eyewitness evidence.

KEY QUOTATIONS

“this Court finds that the circuit court committed plain error in allowing the State to offer evidence of the victim's religious beliefs in order to bolster the victim's credibility.” (219 W. Va. 239)

“Plain error review creates a limited exception to the general forfeiture policy pronounced in Rule 103(a)(1) of the West Virginia Rules of Evidence, in that where a circuit court's error seriously affects the fairness, integrity, and public reputation of the judicial process, an appellate court has the discretion to correct error despite the defendant's failure to object.” (219 W. Va. 241)

“For religious belief or affiliation evidence to be admissible, the trial court must make the following findings: (1) the evidence of religion is offered for a specific purpose other than to show generally that the witness's credibility is impaired or enhanced; (2) the evidence is relevant for that specific purpose; (3) the trial court makes an on-the-record determination under Rule 403 of the West Virginia Rules of Evidence that the probative value of the evidence was not substantially outweighed by its potential for unfair prejudice; and (4) the trial court, if requested, delivers an effective limiting instruction advising the jury of the specific purpose(s) for which the evidence may be used.” (219 W. Va. 241)

“Because we find that the court committed plain error in allowing evidence of a witness's religious affiliation and belief and because the State acted improperly in presenting said evidence and in vouching for the victim's credibility, we reverse the April 27, 2005, Order of the Circuit Court of Cabell County and remand this matter for a new trial” (219 W. Va. 243)

FACTUAL BACKGROUND

Bolen was sixteen and seventeen years old when the alleged sexual assaults occurred involving his seven- and eight-year-old neighbor, C.J., during the summers of 1992 and 1993. Approximately eight years later, C.J. disclosed the alleged abuse to friends and family after becoming upset during a church youth-group mission trip.

At trial, which was largely a credibility contest without physical evidence or eyewitness testimony, the State repeatedly emphasized C.J.'s religious devotion, church affiliation, missionary activities, and commitment to God, and used those matters to support his credibility.

PROCEDURAL HISTORY

Bolen was initially sentenced on September 23, 2002, but his appointed counsel failed to file an appeal. He was resentenced for purposes of pursuing an appeal, and the Circuit Court of Cabell County entered an April 27, 2005 order imposing two concurrent terms of fifteen to twenty-five years' imprisonment. The Supreme Court of Appeals reviewed the conviction and sentence, found plain error in the admission and use of evidence concerning the victim's religious beliefs, reversed, and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the April 27, 2005 sentencing order and remand for a new trial. If the State again seeks to offer evidence of the victim's religious convictions, the trial court must conduct a hearing concerning the factors outlined in *State v. Potter*.

CASES CITED

- *State v. Potter*, 197 W. Va. 734, 478 S.E.2d 742 (1996)
- *State v. Marple*, 197 W. Va. 47, 475 S.E.2d 47 (1996)
- *State v. Miller*, 194 W. Va. 3, 459 S.E.2d 114 (1995)
- *State v. LaRock*, 196 W. Va. 294, 470 S.E.2d 613 (1996)
- *United States v. Frady*, 456 U.S. 152, 163, 102 S. Ct. 1584, 71 L. Ed. 2d 816 (1982)
- *State v. Boyd*, 160 W. Va. 234, 233 S.E.2d 710 (1977)
- *State v. Sugg*, 193 W. Va. 388, 456 S.E.2d 469 (1995)
- *In the Matter of Jonathan P.*, 182 W. Va. 302, 387 S.E.2d 537 (1989)