

SUPREME COURT OF WYOMING

Warner v. State

28 P.3d 21 (Wyo. 2001) · No. No. 00-27 · Decided August 1, 2001

SUMMARY

The Wyoming Supreme Court affirmed Thomas Eugene Warner's convictions and consecutive sentences for second-degree sexual assault and indecent liberties with a minor. The court held that Warner was not denied his constitutional right to a speedy trial, and that prosecutorial misconduct and improperly admitted expert rebuttal testimony constituted harmless error under the circumstances.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Golden, Justice; Lehman, C.J.; Golden, J.; Hill, J.; Kite, J.
JURISDICTION	Wyoming
DECIDED	August 1, 2001
DOCKET	No. 00-27
DISPOSITION	affirmed
PROCEDURAL POSTURE	Warner appealed his convictions and consecutive sentences for two counts of second-degree sexual assault and two counts of immoral acts with a minor, challenging speedy-trial and fair-trial violations, prosecutorial misconduct, admission of rebuttal expert testimony, and sentencing discretion.
STANDARD OF REVIEW	The constitutional speedy-trial question is reviewed de novo, with underlying factual findings reviewed for clear error. Mistrial rulings based on alleged discovery violations are reviewed for abuse of discretion. Evidentiary errors are subject to harmless-error review. A sentence within statutory limits is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Wyoming Supreme Court opinion; precedential.
PARTIES	Thomas Eugene Warner, a/k/a Thomas Rodriguez v. The State of Wyoming

TOPICS

- speedy trial
- prosecutorial misconduct
- evidence
- harmless error
- sentencing

PRACTICE AREAS

criminal law

criminal procedure

evidence

constitutional law

appellate procedure

sentencing

QUESTIONS PRESENTED

1. Whether the 658-day delay between accusation and trial violated Warner's Sixth Amendment right to a speedy trial.
2. Whether the prosecutor committed reversible misconduct by referring to previously excluded uncharged misconduct and commenting on witness credibility.
3. Whether the trial court erred by admitting undisclosed expert rebuttal testimony and denying Warner's motion for a mistrial.
4. Whether the alleged prosecutorial misconduct and rebuttal evidence deprived Warner of a fair trial.
5. Whether the district court abused its discretion by imposing consecutive sentences.

HOLDINGS

1. The 658-day delay was presumptively prejudicial and required consideration of the Barker factors, but Warner was not denied his constitutional right to a speedy trial because he failed to demonstrate sufficient actual prejudice to his defense.
2. The prosecutor's repeated inquiries about uncharged misconduct that the trial court had ruled inadmissible were improper and constituted error, but the error was harmless beyond the required standard because the evidence against Warner was formidable and the inadmissible references did not reasonably affect the verdict.
3. The trial court erred by admitting the State's expert rebuttal testimony because the testimony did not rebut matters raised by the defense and the State had failed to provide required notice, but the error was harmless and did not warrant a mistrial or reversal.
4. Expert testimony may explain general symptoms and behaviors of sexual-assault victims and may incidentally support a victim's credibility, but an expert may not directly vouch for the victim's credibility; the testimony here did not constitute reversible vouching.
5. The district court did not abuse its discretion by imposing consecutive sentences within the statutory limits.

KEY QUOTATIONS

"None of these factors alone is sufficient to establish a speedy trial violation, "[r]ather they are related factors and must be considered together with such other circumstances as may be relevant."" (28 P.3d at 25)

"The defense did nothing that would permit this line of questioning, and we find that the trial court correctly ruled that the prosecutor's inquiries were improper and error." (28 P.3d at 28)

"The crucial thing is the impact of the thing done wrong on the minds of other men, not on one's own, in the total setting." (28 P.3d at 29)

“Rebuttal evidence would also be proper to explain the effect of the opponent's evidence; however, it is improperly admitted if rebuttal evidence concerns issues not raised by the opponent.” (28 P.3d at 30)

FACTUAL BACKGROUND

Warner lived with his half-sister and her three children during portions of 1978 through 1984. In 1997, he apologized to two of the children for molesting them and later admitted the molestations to an investigating officer. An arrest warrant issued in September 1997, and Warner was returned from Georgia in February 1999 after a traffic stop revealed the warrant. At trial, the prosecutor referred to previously excluded uncharged misconduct involving another child and presented a pediatrician as a rebuttal expert without prior notice.

PROCEDURAL HISTORY

Warner was charged in Wyoming after being returned from Georgia pursuant to an arrest warrant. The district court denied his motion to dismiss for lack of a speedy trial, denied motions for judgment of acquittal and mistrial, admitted rebuttal expert testimony over objection, and entered consecutive sentences after the jury convicted him. The Wyoming Supreme Court affirmed the judgment and sentence.

DISPOSITION

affirmed

CASES CITED

- Doggett v. United States, 505 U.S. 647 (1992)
- Jennings v. State, 4 P.3d 915, 921 (Wyo. 2000)
- Campbell v. State, 999 P.2d 649, 655-56 (Wyo. 2000)
- Barker v. Wingo, 407 U.S. 514, 522, 530, 533 (1972)
- Wehr v. State, 841 P.2d 104, 112 (Wyo. 1992)
- Earll v. State, 2001 WY 66, ¶¶ 9, 16, 29 P.3d 787 (Wyo. 2001)
- Valerio v. State, 527 P.2d 154, 156 (Wyo. 1974)
- Jones v. State, 580 P.2d 1150, 1154 (Wyo. 1978)
- Rubio v. State, 939 P.2d 238, 244 (Wyo. 1997)
- Espinoza v. State, 969 P.2d 542, 546 (Wyo. 1998), cert. denied, 528 U.S. 818 (1999)
- Kotteakos v. United States, 328 U.S. 750, 763-65 (1946)
- Brecht v. Abrahamson, 507 U.S. 619, 637 (1993)
- Sturgis v. State, 932 P.2d 199, 203 (Wyo. 1997)
- Seivewright v. State, 7 P.3d 24, 28 (Wyo. 2000)
- Lawson v. State, 994 P.2d 943, 946-47 (Wyo. 2000)
- Ramirez v. State, 739 P.2d 1214, 1220 (Wyo. 1987)
- Chapman v. State, 2001 WY 25, ¶¶ 12, 20, 18 P.3d 1164 (Wyo. 2001)
- State v. Alexander, 78 Wyo. 324, 345, 324 P.2d 831, 839 (1958), cert. denied, 363 U.S. 850 (1960)

- Ryan v. State, 988 P.2d 46, 52-54 (Wyo. 1999)
- Griswold v. State, 994 P.2d 920, 928 (Wyo. 1999)
- Metzger v. State, 4 P.3d 901, 905-06 (Wyo. 2000)
- Smith v. State, 922 P.2d 846, 848-49 (Wyo. 1996)
- Suval v. State, 6 P.3d 1272, 1274 (Wyo. 2000)

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