

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia v. Jamie Ray Criser

No. 17-0997 (W. Va. Nov. 16, 2018) · No. 17-0997 · Decided November 16, 2018

SUMMARY

The West Virginia Supreme Court of Appeals affirmed Jamie Ray Criser’s convictions for kidnapping and second-degree sexual assault and his consecutive sentences. The court held that challenges to evidence of prior domestic abuse and flight from police were either waived by inadequate objections or did not constitute reversible error. The court issued the opinion as a memorandum decision under Rule 21.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Margaret L. Workman; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice Evan H. Jenkins; Justice Paul T. Farrell sitting by temporary assignment
JURISDICTION	West Virginia
DECIDED	November 16, 2018
DOCKET	17-0997
DISPOSITION	affirmed
PROCEDURAL POSTURE	Criser appealed his jury convictions for kidnapping and second-degree sexual assault and his consecutive sentences from the Circuit Court of Fayette County. He challenged the admission of evidence of prior domestic abuse and flight from police under West Virginia Rule of Evidence 404(b), as well as related jury-instruction and prosecutorial-comment issues.
STANDARD OF REVIEW	Challenges to circuit-court rulings concerning a new trial and the existence of reversible error are reviewed for abuse of discretion; underlying factual findings are reviewed for clear error; and questions of law are reviewed de novo.
PRECEDENTIAL VALUE	Memorandum decision; no substantial question of law presented. Treat as nonprecedential unless otherwise provided by West Virginia law.
PARTIES	Jamie Ray Criser v. State of West Virginia

TOPICS

evidence

criminal procedure

preservation of error

appellate procedure

hearsay

PRACTICE AREAS

criminal procedure

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appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred by admitting evidence of Criser's prior physical abuse of the victim and prior guilty plea to domestic battery without a proper Rule 404(b) objection and McGinnis in-camera hearing.
2. Whether the circuit court erred by admitting evidence that Criser fled from police without conducting the in-camera hearing required by State v. Payne.
3. Whether the circuit court erred by failing to give a jury instruction concerning the use of the prior-act evidence.
4. Whether the State's closing remarks referring to Criser as a user and abuser constituted reversible error.

HOLDINGS

1. A Rule 404(b) evidentiary claim is not available on appellate review when the defendant failed to make a timely, specific objection identifying Rule 404(b) as the ground for exclusion and failed to request the required McGinnis in-camera hearing.
2. Evidence of a defendant's flight may be admitted when, under the circumstances, it is relevant to consciousness of guilt or knowledge, provided the defendant requests an in-camera hearing and the court determines that the evidence's probative value outweighs its prejudicial effect.
3. Claims concerning the absence of a cautionary jury instruction and improper prosecutorial comments are waived when the defendant neither requested the instruction nor timely objected to the comments.

KEY QUOTATIONS

"claim of error under Rule 404(b) is precluded from appellate review based on [a] failure to state this authority as ground for [an] objection before the trial court." (at 3)

"In certain circumstances evidence of the flight of the defendant will be admissible in a criminal trial as evidence of the defendant's guilty conscience or knowledge." (at 4)

"Given these facts, we cannot conclude that the circuit court committed reversible error in admitting evidence of petitioner's flight from police." (at 5)

FACTUAL BACKGROUND

The victim, Criser's former girlfriend, drove him to a friend's house with their sleeping child in the backseat. After she refused his request for sex, Criser threatened to hurt and kill her, forced her into the passenger seat, and raped her; she then drove away and called 911, and a medical examination confirmed intercourse. Criser claimed

the intercourse was consensual and denied threatening the victim. Shortly after the incident, Criser gave a false name to a deputy and fled, and another deputy later testified that Criser appeared to retreat from a residence window when officers arrived looking for him.

PROCEDURAL HISTORY

Criser was charged with kidnapping and second-degree sexual assault, convicted by a jury of both offenses, and sentenced by the Circuit Court of Fayette County to thirty years for kidnapping and ten to twenty-five years for second-degree sexual assault, with the sentences to run consecutively. He appealed the October 18, 2017 sentencing order. The Supreme Court of Appeals of West Virginia affirmed in a memorandum decision, finding no substantial question of law or prejudicial error.

DISPOSITION

affirmed

CASES CITED

- State v. Vance, 207 W. Va. 640, 535 S.E.2d 484 (2000)
- State v. McGinnis, 193 W. Va. 147, 455 S.E.2d 516 (1994)
- State v. Dolin, 176 W. Va. 688, 347 S.E.2d 208 (1986)
- State v. DeGraw, 196 W. Va. 261, 470 S.E.2d 215 (1996)
- State v. Payne, 167 W. Va. 252, 280 S.E.2d 72 (1981)
- State v. Rollins, 233 W. Va. 715, 760 S.E.2d 529 (2014)
- Page v. Columbia Nat. Res., Inc., 198 W. Va. 378, 480 S.E.2d 817 (1996)
- Maples v. West Virginia Department of Commerce, 197 W. Va. 318, 475 S.E.2d 410 (1996)
- Yuncke v. Welker, 128 W. Va. 299, 36 S.E.2d 410 (1945)