

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State v. Poore, 226 W. Va. 727

704 S.E.2d 727 (2010) · No. No. 35271 · Decided November 19, 2010

SUMMARY

The Supreme Court of Appeals of West Virginia reversed Richard Alan Poore's first-degree murder conviction and life sentence without mercy. The court held that improper prosecutorial comments constituted plain error and that the circuit court plainly erred by failing to conduct a hearing concerning the more than 25-year pre-indictment delay. The court also directed that any retrial address the admissibility and required findings for prior-acts evidence under West Virginia Rule of Evidence 404(b).

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam
JURISDICTION	West Virginia
DECIDED	November 19, 2010
DOCKET	No. 35271
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Direct appeal from a conviction for first-degree murder and a sentence of life imprisonment without mercy.
STANDARD OF REVIEW	Plain-error review for unpreserved claims; the Court stated that the specific standard applicable to each alleged error would be set forth at the beginning of the relevant discussion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Richard Alan Poore v. State of West Virginia

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the prosecutor's opening statement and closing argument contained unpreserved improper comments that constituted plain error requiring reversal.
2. Whether the circuit court committed plain error by failing to conduct an evidentiary hearing concerning whether the more-than-twenty-five-year pre-indictment delay violated Poore's due process rights.
3. What procedures the circuit court must follow on retrial in determining the admissibility of Rule 404(b) evidence.

HOLDINGS

1. The prosecutor's extensive comments concerning the decedent's obituary, funeral, gravesite, and the defendant's abusive character constituted clear error and were sufficiently prejudicial to satisfy the plain-error standard and require reversal of the murder conviction.
2. The circuit court committed plain error by failing to conduct an evidentiary hearing to determine whether the substantial pre-indictment delay violated Poore's due process rights.
3. Although the Court did not decide the admissibility of the Rule 404(b) evidence because it reversed on other grounds, it directed that any retrial include a full hearing and the findings required by *State v. McGinnis*.

KEY QUOTATIONS

*“To trigger application of the ‘plain error’ doctrine, there must be (1) an error; (2) that is plain; (3) that affects substantial rights; and (4) seriously affects the fairness, integrity, or public reputation of the judicial proceedings.” (*733)*

*“Four factors are taken into account in determining whether improper prosecutorial comment is so damaging as to require reversal: (1) the degree to which the prosecutor's remarks have a tendency to mislead the jury and to prejudice the accused; (2) whether the remarks were isolated or extensive; (3) absent the remarks, the strength of competent proof introduced to establish the guilt of the accused; and (4) whether the comments were deliberately placed before the jury to divert attention to extraneous matters.” (*734)*

*“To maintain a claim that preindictment delay violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution and Article III, Section 10 of the West Virginia Constitution, the defendant must show actual prejudice.” (*735)*

*“Once that showing has been made, the trial court must then balance the resulting prejudice against the reasonableness of the delay.” (*735)*

FACTUAL BACKGROUND

In April 1981, Richard Alan Poore's nearly three-month-old son stopped breathing in the family's trailer and died two days later after hospitalization. More than twenty-five years later, Poore was indicted and tried for murder. The State relied substantially on medical testimony attributing the death to shaken baby syndrome and testimony from family members concerning Poore's abusive conduct, while the defense presented competing medical testimony and evidence questioning whether the death was homicide.

PROCEDURAL HISTORY

Poore was indicted in September 2006 for the 1981 death of his infant son. Following a June 2008 jury trial in the Circuit Court of Pleasants County, he was convicted of first-degree murder and sentenced to life in prison without mercy. The Supreme Court of Appeals of West Virginia reversed the conviction and remanded for further proceedings, finding plain error in the prosecutor's comments and in the circuit court's failure to conduct a pre-indictment-delay hearing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

If Poore is retried, the circuit court must conduct an evidentiary hearing concerning whether the pre-indictment delay violated due process, applying the standards in *State ex rel. Knotts v. Facemire*. The court must also conduct a full Rule 404(b) admissibility hearing and make the findings required by *State v. McGinnis*.

CASES CITED

- *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)
- *State v. Kennedy*, 162 W. Va. 244, 249 S.E.2d 188 (1978)
- *State v. McCracken*, 218 W. Va. 190, 624 S.E.2d 537 (2005)
- *State v. Sugg*, 193 W. Va. 388, 456 S.E.2d 469 (1995)
- *State ex rel. Knotts v. Facemire*, 223 W. Va. 594, 678 S.E.2d 847 (2009)
- *State ex rel. Leonard v. Hey*, 269 S.E.2d 394 (W. Va. 1980)
- *Hundley v. Ashworth*, 181 W. Va. 379, 382 S.E.2d 573 (1989)
- *State v. Dolin*, 176 W. Va. 688, 347 S.E.2d 208 (1986)
- *State v. McGinnis*, 193 W. Va. 147, 455 S.E.2d 516 (1994)
- *State v. Myers*, 204 W. Va. 449, 513 S.E.2d 676 (1998)
- *State v. England*, 180 W. Va. 342, 376 S.E.2d 548 (1988)
- *State v. Thompson*, 220 W. Va. 398, 647 S.E.2d 834 (2007)
- *State v. Hottinger*, 194 W. Va. 716, 461 S.E.2d 462 (1995)
- *Sands v. Security Trust Co.*, 143 W. Va. 522, 102 S.E.2d 733 (1958)
- *Vandevender v. Sheetz, Inc.*, 200 W. Va. 591, 490 S.E.2d 678 (1997)
- *State v. Triplett*, 187 W. Va. 760, 421 S.E.2d 511 (1992)