

SUPREME COURT OF INDIANA

Everling v. State

929 N.E.2d 1281 (Ind. 2010) · No. No. 48S05-0911-CR-506 · Decided July 8, 2010

SUMMARY

The Indiana Supreme Court reviewed Steven W. Everling’s convictions for child molesting and sexual misconduct with a minor after granting transfer from the Court of Appeals. The court held that the trial judge’s cumulative comments, courtroom conduct, and procedural rulings demonstrated partiality and deprived Everling of a fair trial. The convictions were reversed and the case was remanded for a new trial.

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Shepard, Chief Justice; Dickson, Justice; Sullivan, Justice; Boehm, Justice; Rucker, Justice
JURISDICTION	Indiana
DECIDED	July 8, 2010
DOCKET	No. 48S05-0911-CR-506
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	After a jury convicted Everling of three counts of child molesting and two counts of sexual misconduct with a minor, the Indiana Court of Appeals affirmed the convictions but remanded for clarification of whether the aggregate sentence was fifty-five or 110 years. The Indiana Supreme Court granted transfer and addressed whether the trial judge's conduct deprived Everling of a fair trial before an impartial judge.
STANDARD OF REVIEW	Indiana law presumes that a judge is unbiased and unprejudiced. The defendant must establish from the judge's conduct actual bias or prejudice placing the defendant in jeopardy. In assessing partiality, the court examines the judge's actions and demeanor while allowing latitude to manage the courtroom and maintain discipline. Evidentiary and procedural rulings are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Steven W. Everling v. State of Indiana

TOPICS

due process criminal procedure evidence jury selection

PRACTICE AREAS

criminal law criminal procedure constitutional law evidence

QUESTIONS PRESENTED

1. Whether the trial judge's comments, demeanor, evidentiary rulings, and procedural rulings, considered cumulatively, deprived Everling of a fair trial before an impartial judge.
2. Whether exclusion of defense witnesses, including witnesses concerning the alleged victim's truthfulness and a medical expert who would challenge the State's physical-evidence theory, was prejudicial and constituted an abuse of discretion.
3. Whether the convictions should be reversed and the matter remanded for a new trial.

HOLDINGS

1. The cumulative effect of the trial judge's disparaging comments, adversarial demeanor, one-sided interventions, mistaken commentary, and procedural rulings demonstrated partiality and deprived Everling of a fair trial before an impartial judge.
2. Exclusion of the witnesses who would testify about the alleged victim's reputation for untruthfulness was prejudicial because credibility was central to the defense theory.
3. Excluding Dr. Merk's testimony was an abuse of discretion because his testimony offered an important alternative explanation for the physical evidence, the State had not yet begun its case-in-chief, and a short continuance could have cured any surprise.

KEY QUOTATIONS

"A trial before an impartial judge is an essential element of due process." (929 N.E.2d at 1287)

"Wishing that it were otherwise, we conclude that taken together, Judge Spencer's comments and procedural rulings demonstrate a lack of impartiality." (929 N.E.2d at 1290)

"We cannot ignore the cumulative effect of disparaging comments throughout the course of proceedings, both in front of and away from the jury, simply because each of them would otherwise not suffice to reverse." (929 N.E.2d at 1290)

"The cumulative result of Judge Spencer's comments, exclusions, and general demeanor toward the defense was a trial below the standard towards which Indiana strives." (929 N.E.2d at 1291)

FACTUAL BACKGROUND

Everling was tried for sexually molesting and engaging in sexual misconduct with his stepdaughter. During the proceedings, the trial judge made repeated disparaging and adversarial comments about defense counsel, sometimes in front of the jury, and at times assisted the prosecution or prevented the defense from responding.

The court also excluded numerous defense witnesses, including reputation and medical witnesses, while permitting the prosecution greater latitude regarding late filings and disclosures. The jury convicted Everling on all five counts, and the court imposed consecutive sentences that produced an unresolved discrepancy between fifty-five and 110 years.

PROCEDURAL HISTORY

Everling was charged, tried, and convicted in the trial court. He challenged his convictions and sentence on ineffective-assistance, judicial-bias, and sentencing grounds. The Court of Appeals affirmed the substantive rulings but remanded for clarification of the sentence. The Indiana Supreme Court granted transfer, reversed the convictions, and remanded for a new trial based on the cumulative effect of the trial judge's partiality, comments, procedural rulings, and treatment of the defense.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse Everling's convictions and remand for a new trial.

CASES CITED

- Everling v. State, No. 48A05-0903-CR-153, 2009 WL 2461078 (Ind. Ct. App. Aug. 12, 2009)
- Everling v. State, 919 N.E.2d 556 (Ind. 2009) (table)
- Garland v. State, 788 N.E.2d 425, 433 (Ind. 2003)
- Smith v. State, 770 N.E.2d 818 (Ind. 2002)
- Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 129 S. Ct. 2252, 173 L. Ed. 2d 1208 (2009)
- In re Murchison, 349 U.S. 133, 136, 75 S. Ct. 623, 99 L. Ed. 942 (1955)
- Marcum v. State, 725 N.E.2d 852 (Ind. 2000)
- Cook v. State, 734 N.E.2d 563 (Ind. 2000)
- Kennedy v. State, 258 Ind. 211, 280 N.E.2d 611 (1972)
- Timberlake v. State, 690 N.E.2d 243, 256 (Ind. 1997)
- Rowe v. State, 539 N.E.2d 474, 476 (Ind. 1989)
- Resnoyer v. State, 507 N.E.2d 1382, 1391 (Ind. 1987)
- Voss v. State, 856 N.E.2d 1211 (Ind. 2006)
- Brannum v. State, 267 Ind. 51, 366 N.E.2d 1180 (1977)
- Dewey v. State, 264 Ind. 403, 345 N.E.2d 842 (1976)
- Abernathy v. State, 524 N.E.2d 12 (Ind. 1988)
- In re Appointment of Special Judge in the Wabash Cir. Ct., 500 N.E.2d 751, 752 (Ind. 1986)