

# SUPREME COURT OF APPEALS OF WEST VIRGINIA

## State of West Virginia v. Karl Justin Dunn, III

No. 19-0619 (Jefferson County 19-F-4) · No. No. 19-0619 · Decided July 30, 2020

### SUMMARY

The Supreme Court of Appeals of West Virginia affirmed Karl Justin Dunn III's conviction for possession with intent to deliver heroin. The court declined to reach the merits of his challenges to the admission of cellphone text messages, concluding that any error involving Miranda warnings or the voluntariness of consent was harmless beyond a reasonable doubt in light of the other evidence.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                             |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                                                                                                                                                                   |
| WRITING FOR THE COURT | Per Curiam; Chief Justice Tim Armstead; Justice Elizabeth D. Walker; Justice Evan H. Jenkins; Justice John A. Hutchison                                                                                                                                                                                                                     |
| JURISDICTION          | West Virginia                                                                                                                                                                                                                                                                                                                               |
| DECIDED               | July 30, 2020                                                                                                                                                                                                                                                                                                                               |
| DOCKET                | No. 19-0619                                                                                                                                                                                                                                                                                                                                 |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                    |
| PROCEDURAL POSTURE    | Dunn appealed his jury conviction for possession with intent to deliver heroin, arguing that incriminating text messages from his cellphone were improperly admitted because he had not received Miranda warnings and did not voluntarily consent to the search.                                                                            |
| STANDARD OF REVIEW    | On review of a ruling on a motion to suppress, facts are construed in the light most favorable to the State, factual findings are reviewed for clear error, and particular deference is given to the circuit court's credibility and factual determinations. Constitutional errors are reviewed for harmlessness beyond a reasonable doubt. |
| PRECEDENTIAL VALUE    | Unpublished memorandum decision; no reporter citation appears in the source.                                                                                                                                                                                                                                                                |
| PARTIES               | Karl Justin Dunn, III v. State of West Virginia                                                                                                                                                                                                                                                                                             |

### TOPICS

suppression of evidence

miranda rights

search and seizure

harmless error

appellate procedure

## PRACTICE AREAS

criminal procedure

constitutional law

evidence

appellate procedure

## QUESTIONS PRESENTED

1. Whether the admission of incriminating cellphone text messages was reversible constitutional error because Dunn was not given Miranda warnings before consenting to the cellphone search.
2. Whether Dunn's consent to the cellphone search was involuntary.
3. Whether any error in admitting the cellphone text messages was harmless beyond a reasonable doubt.

## HOLDINGS

1. Any assumed error in admitting the incriminating cellphone text messages was harmless beyond a reasonable doubt because the undisputed evidence independently established Dunn's possession with intent to deliver heroin and there was no reasonable possibility that the text messages contributed to the conviction.
2. Suppression-related factual findings are reviewed for clear error, with facts construed in the light most favorable to the State and particular deference given to the circuit court's factual and credibility determinations.

## KEY QUOTATIONS

*“Errors involving deprivation of constitutional rights will be regarded as harmless only if there is no reasonable possibility that the violation contributed to the conviction.”* (4)

*“We find, therefore, that it is beyond cavil that the circuit court’s alleged error (if any) of admitting the incriminating text messages from petitioner’s cellphone into evidence at trial was harmless beyond a reasonable doubt.”* (5)

## FACTUAL BACKGROUND

Deputy G.W. Kilmer surveilled Dunn's residence after anonymous tips about heroin and MDMA sales and observed conduct he regarded as consistent with drug trafficking. During a traffic stop, officers found an MDMA pill in Dunn's vehicle, and Dunn admitted concealing heroin in his rectum; the heroin was recovered in three individually packaged bags weighing a total of 2.5 grams. While Dunn was being processed, he consented to a search of his cellphone, and officers found text messages that they believed indicated narcotics sales.

## PROCEDURAL HISTORY

The Jefferson County Circuit Court denied Dunn's motion to suppress cellphone evidence, concluding that his consent was voluntary and, alternatively, that the evidence would have been inevitably discovered. After trial, a jury convicted Dunn of possession with intent to deliver heroin and acquitted him of driving while in an impaired state. The circuit court sentenced him to one to fifteen years in prison, and the Supreme Court of Appeals affirmed in a memorandum decision.

## DISPOSITION

affirmed

#### CASES CITED

- State v. Lacy, 196 W. Va. 104, 468 S.E.2d 719 (1996)
- State v. Lilly, 194 W. Va. 595, 461 S.E.2d 101 (1995)
- State ex rel. Grob v. Blair, 158 W. Va. 647, 214 S.E.2d 330 (1975)
- State v. Jenkins, 195 W. Va. 620, 466 S.E.2d 471 (1995)
- State v. Thomas, 157 W. Va. 640, 203 S.E.2d 445 (1974)
- State v. Omechinski, 196 W. Va. 41, 468 S.E.2d 173 (1996)
- Sullivan v. Louisiana, 508 U.S. 275 (1993)
- Miranda v. Arizona, 384 U.S. 436 (1966)

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