

NORTH DAKOTA SUPREME COURT

State v. Vondal

803 N.W.2d 578 (N.D. 2011) · Decided September 15, 2011

SUMMARY

Johnathan Vondal appealed convictions for aggravated assault and continuous sexual abuse of a child. The North Dakota Supreme Court held that prosecution for continuous sexual abuse was not barred by the defendant's age when some acts occurred, rejected his prosecutorial-misconduct and confrontation-rights claims, upheld the exclusion of speculative testimony, and found sufficient evidence to support both convictions. The court affirmed the criminal judgments.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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| COURT                 | North Dakota Supreme Court                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| WRITING FOR THE COURT | Justice Crothers; Gerald W. VandeWalle, C.J.; Mary Muehlen Maring, J.; Carol Ronning Kapsner, J.; Dale V. Sandstrom, J.; Crothers, J.                                                                                                                                                                                                                                                                                                                                                                                                         |
| JURISDICTION          | North Dakota                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| DECIDED               | September 15, 2011                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | Vondal appealed criminal judgments entered after a jury convicted him of aggravated assault and continuous sexual abuse of a child.                                                                                                                                                                                                                                                                                                                                                                                                           |
| STANDARD OF REVIEW    | Unpreserved issues were reviewed, if at all, for obvious error under N.D.R.Crim.P. 52(b). Prosecutorial misconduct was reviewed for prejudicial effect on substantial rights and, when unobjected to, for obvious error. Evidentiary and cross-examination rulings were reviewed for abuse of discretion. Sufficiency of the evidence was reviewed by viewing the evidence and reasonable inferences in the light most favorable to the verdict and asking whether any rational fact-finder could have found guilt beyond a reasonable doubt. |
| PRECEDENTIAL VALUE    | Published North Dakota Supreme Court opinion; precedential.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| PARTIES               | Johnathan Vondal v. State of North Dakota                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

TOPICS

- criminal procedure
- evidence
- sixth amendment
- appellate procedure
- statutory interpretation

## PRACTICE AREAS

criminal procedure

evidence

constitutional law

statutory interpretation

appellate procedure

## QUESTIONS PRESENTED

1. Whether N.D.C.C. § 12.1-04-01 barred adult prosecution for continuous sexual abuse based partly on acts occurring before Vondal turned fourteen.
2. Whether the district court committed obvious error by admitting evidence of sexual acts or contacts occurring before Vondal was fourteen.
3. Whether alleged prosecutorial misconduct deprived Vondal of due process and a fair trial.
4. Whether the district court violated Vondal's Sixth Amendment confrontation rights or abused its discretion by excluding speculative testimony about B.V.'s state of mind.
5. Whether the evidence was sufficient to support the aggravated assault and continuous sexual abuse convictions.
6. Whether police violated N.D.C.C. § 14-07.1-10(2) by failing to determine the predominant aggressor or consider self-defense before finding probable cause for the aggravated-assault arrest.

## HOLDINGS

1. The prosecution was not barred by N.D.C.C. § 12.1-04-01 because continuous sexual abuse is a continuous offense that was not complete until after Vondal turned fourteen.
2. The district court did not commit obvious error by allowing evidence of sexual acts or contacts occurring before Vondal was fourteen.
3. Vondal failed to establish prosecutorial misconduct that deprived him of due process or a fair trial.
4. The district court neither violated Vondal's confrontation rights nor abused its discretion by excluding speculative testimony from B.V.'s mother about B.V.'s state of mind.
5. Sufficient evidence supported both the aggravated assault and continuous sexual abuse convictions.

## KEY QUOTATIONS

*"A continuous offense is not committed until all of the essential elements of the offense are present and complete and the course of conduct ends."* (803 N.W.2d at 582-83)

*"To determine whether a prosecutor's misconduct rises to a level of a due process violation, we decide if the conduct, in the context of the entire trial, was sufficiently prejudicial to violate a defendant's due process rights."* (803 N.W.2d at 584)

*"The Sixth Amendment does not prevent a district court from imposing reasonable limits on a defendant's cross-examination, including excluding irrelevant evidence."* (803 N.W.2d at 585)

*"This Court will not weigh conflicting evidence or judge the credibility of witnesses; rather, we will only reverse a conviction if no rational fact-finder could have found the defendant guilty beyond a reasonable doubt."* (803 N.W.2d at 586)

## FACTUAL BACKGROUND

Police responded to a December 22, 2009, physical altercation between Vondal and his fourteen-year-old sister, B.V. During the investigation, B.V. disclosed that Vondal had sexually abused her repeatedly from childhood until 2008. B.V. testified to multiple sexual acts or contacts occurring over several years, including acts when Vondal was under fourteen and later acts after he turned fourteen, as well as testimony and physical evidence concerning the aggravated assault.

## PROCEDURAL HISTORY

Vondal was charged with aggravated assault after a December 2009 altercation with his sister and was later charged with continuous sexual abuse of a child. The district court joined the prosecutions, denied Vondal's motions for judgment of acquittal, and entered judgments after the jury found him guilty on both charges. The North Dakota Supreme Court affirmed.

## DISPOSITION

affirmed

## CASES CITED

- State v. Keller, 550 N.W.2d 411, 412 (N.D. 1996)
- State v. Woehlhoff, 540 N.W.2d 162, 164 (N.D. 1995)
- John v. State, 96 Wis. 2d 183, 291 N.W.2d 502, 505 (1980)
- State v. Meza, 38 Kan. App. 2d 245, 165 P.3d 298, 302 (2007)
- State v. Palmer, 248 Kan. 681, 810 P.2d 734, 740 (1991)
- Morris v. State, 595 So. 2d 840, 844-45 (Miss. 1991)
- State v. Knoefler, 325 N.W.2d 192, 199 (N.D. 1982)
- State v. Burke, 2000 ND 25, ¶¶ 22, 25-30, 606 N.W.2d 108
- State v. Kruckenberg, 2008 ND 212, ¶ 20, 758 N.W.2d 427
- State v. Evans, 1999 ND 70, ¶ 9, 593 N.W.2d 336
- State v. Duncan, 2011 ND 85, ¶ 18, 796 N.W.2d 672
- Pennsylvania v. Ritchie, 480 U.S. 39, 51 (1987)
- State v. Woinarowicz, 2006 ND 179, ¶ 8, 720 N.W.2d 635
- State v. Ness, 2009 ND 182, ¶¶ 20-21, 774 N.W.2d 254
- United States v. Owens, 484 U.S. 554, 559 (1988)
- Kentucky v. Stincer, 482 U.S. 730, 739 (1987)
- State v. McNair, 491 N.W.2d 397 (N.D. 1992)
- State v. Addai, 2010 ND 29, ¶ 49, 778 N.W.2d 555
- State v. Parisien, 2005 ND 152, ¶ 17, 708 N.W.2d 806
- State v. Wilson, 2004 ND 51, ¶ 6, 676 N.W.2d 98

- State v. Grant, 2009 ND 210, ¶ 22, 776 N.W.2d 209
- State v. McAvoy, 2009 ND 130, ¶ 8, 767 N.W.2d 874
- State v. Ochoa, 2004 ND 43, ¶ 10, 675 N.W.2d 161

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