

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia v. Billy W.

Billy W. · No. No. 16-0345 · Decided January 27, 2017

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed Billy W.'s conviction for child abuse resulting in serious bodily injury and his sentence of two to ten years' incarceration. The court held that West Virginia Code § 62-12-26 requires a period of supervised release for felony violations of the Child Welfare Act, including the defendant's conviction under § 61-8D-3. The court also rejected challenges to the sufficiency and weight of the evidence and declined to review an unpreserved closing-argument issue for plain error.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Allen H. Loughry II; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	January 27, 2017
DOCKET	No. 16-0345
DISPOSITION	affirmed
PROCEDURAL POSTURE	Billy W. appealed the Mercer County Circuit Court's denial of his motion for a new trial, his conviction for child abuse resulting in serious bodily injury, and the imposition of ten years of supervised release.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo. The sufficiency of the evidence is reviewed highly deferentially, viewing the evidence in the light most favorable to the prosecution and asking whether any rational trier of fact could find the essential elements beyond a reasonable doubt. Unpreserved claims concerning prosecutorial remarks are reviewed, if at all, under the plain-error standard.
PRECEDENTIAL VALUE	Memorandum decision under West Virginia Rule of Appellate Procedure 21; precedential status is not stated in the opinion text.
PARTIES	Billy W. v. State of West Virginia

TOPICS

criminal procedure

sentencing

statutory interpretation

standard of review

preservation of error

PRACTICE AREAS

criminal law

criminal procedure

statutory interpretation

appellate procedure

evidence

QUESTIONS PRESENTED

1. Whether West Virginia Code § 62-12-26(a) requires ten years of supervised release for a defendant convicted of felony child abuse under West Virginia Code § 61-8D-3, even though the offense is not sexual in nature.
2. Whether the evidence was sufficient to support Billy W.'s conviction for child abuse resulting in serious bodily injury.
3. Whether the State's closing argument concerning intent constituted plain error warranting a new trial when defense counsel failed to object.

HOLDINGS

1. West Virginia Code § 62-12-26(a) applies to a defendant convicted of felony child abuse under West Virginia Code § 61-8D-3 because § 61-8D-3 is included within the statute's express reference to felony violations of article 8-D, chapter 61. The circuit court therefore properly imposed ten years of supervised release.
2. The evidence was sufficient to support the conviction for child abuse resulting in serious bodily injury, because, viewed in the light most favorable to the State, a rational jury could find the elements of the offense beyond a reasonable doubt.
3. The court declined to consider the challenge to the State's closing remarks because Billy failed to adequately argue that the remarks satisfied the requirements for plain error.

KEY QUOTATIONS

“The plain and unambiguous language of West Virginia Code § 62-12-26(a) provides that “any defendant convicted . . . [of] a felony violation of the provisions of . . . [61-8D-1 et seq.] shall . . . as part of the sentence imposed at final disposition, be required to serve, in addition to any other penalty or condition imposed by the court, a period of supervised release of up to fifty years[.]”” (at 3)

“A criminal defendant challenging the sufficiency of the evidence to support a conviction takes on a heavy burden.” (at 5)

“Credibility determinations are for a jury and not an appellate court.” (at 6)

FACTUAL BACKGROUND

Billy W. was the primary caretaker of his six-month-old son despite being limited to supervised visitation, and he lied to Child Protective Services about living with the child and the child's mother. The child suffered severe

brain injuries, retinal injuries, broken ribs, seizures, and loss of consciousness after two incidents in May 2014. Billy admitted that he shook the child during the second incident and was alone with him when the injuries occurred. Medical testimony attributed the injuries to abusive head trauma rather than a short fall, playful tossing, or properly administered CPR.

PROCEDURAL HISTORY

Billy W. was indicted in the Circuit Court of Mercer County for two counts of child abuse resulting in serious bodily injury. After a jury trial, he was convicted on one count and acquitted on the other. The circuit court denied his motion for a new trial, sentenced him to two to ten years of incarceration, and ordered ten years of supervised release. The Supreme Court of Appeals of West Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- Chrystal R.M. v. Charlie A.L., 194 W. Va. 138, 459 S.E.2d 415 (1995)
- State v. Hargus, 232 W. Va. 735, 753 S.E.2d 893 (2013)
- State v. James, 227 W. Va. 407, 710 S.E.2d 98 (2011)
- City of Huntington v. State Water Commission, 135 W. Va. 568, 64 S.E.2d 225 (1951)
- Mazzella v. Yoke, 70 F. Supp. 462 (S.D. W. Va. 1947)
- Virginia Electric & Power Co. v. Public Service Commission of West Virginia, 162 W. Va. 202, 248 S.E.2d 322 (1978)
- State v. Epperly, 135 W. Va. 877, 65 S.E.2d 488 (1951)
- State v. Jarvis, 199 W. Va. 635, 487 S.E.2d 293 (1997)
- State v. McGilton, 229 W. Va. 554, 729 S.E.2d 876 (2012)
- State v. Guthrie, 194 W. Va. 657, 461 S.E.2d 163 (1995)
- State v. Martin, 224 W. Va. 577, 687 S.E.2d 360 (2009)
- State v. Davis, 180 W. Va. 357, 376 S.E.2d 563 (1988)
- Daniel B. by Richard B. v. Ackerman, 190 W. Va. 1, 435 S.E.2d 1 (1993)
- Tennant v. Marion Health Care Foundation, Inc., 194 W. Va. 97, 459 S.E.2d 374 (1995)
- 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, Department of Health and Human Resources v. Robert Morris N., 195 W. Va. 759, 466 S.E.2d 827 (1995)