

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia v. David M. Corey

233 W. Va. 297 (2014) · No. No. 13-0769 · Decided April 23, 2014

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed David M. Corey’s conviction for first-degree murder and sentence of life imprisonment without the possibility of parole. The court rejected challenges to the search-warrant affidavit, admission of ammunition and knives, speedy-trial ruling, denial of a mistrial, and sufficiency of the evidence. The opinion applies probable-cause, evidentiary, continuance, waiver, mistrial, and sufficiency-of-the-evidence standards.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam
JURISDICTION	West Virginia
DECIDED	April 23, 2014
DOCKET	No. 13-0769
DISPOSITION	affirmed
PROCEDURAL POSTURE	Corey appealed his first-degree murder conviction and sentence of life imprisonment without the possibility of parole after the Circuit Court of Hampshire County denied his post-conviction motion for judgment of acquittal or a new trial.
STANDARD OF REVIEW	The court reviewed the denial of the post-conviction motion under a two-pronged deferential standard: the circuit court's rulings concerning a new trial and its conclusion regarding reversible error were reviewed for abuse of discretion, underlying factual findings for clear error, and questions of law de novo. Search-warrant probable-cause determinations receive substantial deference and are reviewed under the totality-of-the-circumstances standard. Evidentiary rulings are generally reviewed for abuse of discretion, with underlying legal analysis reviewed de novo. Sufficiency of the evidence is reviewed by asking whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could find the essential elements beyond a reasonable doubt.

PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	David M. Corey v. State of West Virginia

TOPICS

search and seizure probable cause suppression of evidence evidence speedy trial

PRACTICE AREAS

criminal procedure evidence constitutional law appellate procedure

QUESTIONS PRESENTED

1. Whether the affidavits supporting search warrants for Corey's home and vehicle established probable cause despite relying in part on hearsay.
2. Whether evidence concerning ammunition and collector knives found at or associated with Corey's residence was improperly admitted as irrelevant or unfairly prejudicial.
3. Whether the continuance of trial beyond the term in which Corey was indicted violated West Virginia Code section 62-3-1.
4. Whether the trial court erred by failing to declare a mistrial after a witness referred to Corey as a felon.
5. Whether the evidence was sufficient to support Corey's first-degree murder conviction.

HOLDINGS

1. The search-warrant affidavits established probable cause under the totality of the circumstances because they described the shooting, supplied information from a known individual who had known Corey for more than a year, described his hostility toward the victim and his access to weapons and ammunition, and established a nexus between the suspected criminal activity and the places to be searched.
2. The trial court properly admitted evidence concerning the collector knives because the evidence supported an inference that Corey owned the ammunition found nearby, and its probative value was not substantially outweighed by unfair prejudice or confusion. Any separate challenge to the ammunition was waived because Corey did not brief it.
3. The circuit court did not abuse its discretion by continuing the trial beyond the term in which Corey was indicted because the prosecutor's recovery from surgery constituted good cause and the record showed no substantial prejudice to Corey.
4. The mistrial issue was not properly before the court because Corey did not make a timely pre-verdict motion for mistrial and did not adequately brief the issue. In any event, the trial court's curative instruction rendered the isolated statement harmless.
5. The evidence was sufficient to support Corey's first-degree murder conviction because, viewed in the light most favorable to the prosecution, a rational jury could find the essential elements of the crime beyond a reasonable doubt.

KEY QUOTATIONS

“Reviewing courts should grant magistrates deference when reviewing warrants for probable cause. Such warrants should be judged by a ‘totality-of-the-circumstances’ test.” (Syllabus point 1)

“Assignments of error that are not argued in the briefs on appeal may be deemed by this Court to be waived.” (Syllabus point 6)

“Prior to the entry of the verdict by a jury, a mistrial is procedurally possible; however, declaring a mistrial after the jury verdict is rendered is improper.” (Syllabus point 7)

“The function of an appellate court when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, is sufficient to convince a reasonable person of the defendant’s guilt beyond a reasonable doubt.” (Syllabus point 8)

FACTUAL BACKGROUND

Danny Corey was shot and killed through a second-floor bedroom window at his mother's home in Romney, West Virginia, on January 8, 2012. Evidence connected David Corey to the crime, including statements that he had threatened Danny, gunshot residue found on his right hand, ammunition and knives found near his residence, and evidence that bullets at his residence had similar design characteristics to the fatal bullet. A jury convicted Corey of first-degree murder and recommended no mercy, resulting in a sentence of life imprisonment without parole.

PROCEDURAL HISTORY

A jury convicted Corey of first-degree murder and recommended that he receive no mercy. The circuit court sentenced him to life without parole. The court denied Corey's post-conviction motion on June 17, 2013, and the Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Thomas, 187 W. Va. 686, 421 S.E.2d 227 (1992)
- Illinois v. Gates, 462 U.S. 213 (1983)
- State v. Adkins, 176 W. Va. 613, 346 S.E.2d 762 (1986)
- State v. Lilly, 194 W. Va. 595, 461 S.E.2d 101 (1995)
- State v. Kilmer, 190 W. Va. 617, 439 S.E.2d 881 (1993)
- State v. Worley, 179 W. Va. 403, 369 S.E.2d 706 (1988)
- State v. Bruffey, 231 W. Va. 502, 745 S.E.2d 540 (2013)
- State v. Corbett, 177 W. Va. 397, 352 S.E.2d 149 (1986)
- State v. Rodoussakis, 204 W. Va. 58, 511 S.E.2d 469 (1998)

- State v. Peyatt, 173 W. Va. 317, 315 S.E.2d 574 (1983)
- State v. Guthrie, 194 W. Va. 657, 461 S.E.2d 163 (1995)
- State v. Derr, 192 W. Va. 165, 451 S.E.2d 731 (1994)
- State v. Blevins, 231 W. Va. 135, 744 S.E.2d 245 (2013)
- State v. Bush, 163 W. Va. 168, 255 S.E.2d 539 (1979)
- State ex rel. Shorter v. Hey, 170 W. Va. 249, 294 S.E.2d 51 (1981)
- State ex rel. Workman v. Fury, 168 W. Va. 218, 283 S.E.2d 851 (1981)
- State v. McCartney, 228 W. Va. 315, 719 S.E.2d 785 (2011)
- State v. Davis, 182 W. Va. 482, 388 S.E.2d 508 (1989)
- State v. Williams, 172 W. Va. 295, 305 S.E.2d 251 (1983)
- State v. LaRock, 196 W. Va. 294, 470 S.E.2d 613 (1996)
- State v. Lockhart, 208 W. Va. 622, 542 S.E.2d 443 (2000)
- State v. Grimes, 226 W. Va. 411, 701 S.E.2d 449 (2010)
- State v. Vance, 207 W. Va. 640, 535 S.E.2d 484 (2000)
- State v. Biehl, 224 W. Va. 584, 687 S.E.2d 367 (2009)
- State v. Merritt, 183 W. Va. 601, 396 S.E.2d 871 (1990)
- State v. Rice v. Henderson, 140 W. Va. 284, 83 S.E.2d 762 (1954)

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