

SUPREME COURT OF WYOMING

Larkins v. State

429 P.3d 28 (Wyo. 2018) · No. 32-780, 32-781, 32-782 · Decided October 26, 2018

SUMMARY

The Wyoming Supreme Court affirmed the convictions of Dennis and Emily Larkins for multiple counts of child abuse and abuse of a vulnerable adult. The court rejected challenges to the sufficiency of the evidence, the denial of Rule 21 motions for a new trial based on ineffective assistance of counsel, and alleged prosecutorial misconduct during closing argument.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Fox, Justice; Boomgaarden; Burke; Davis; Fox; Kautz
JURISDICTION	Wyoming
DECIDED	October 26, 2018
DOCKET	32-780, 32-781, 32-782
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendants appealed their convictions and sentences for multiple counts of child abuse and abuse of a vulnerable adult. After the appeals were docketed, both defendants sought new trials under Wyoming Rule of Criminal Procedure 21 based on ineffective assistance of trial counsel. The district court denied the motions, and the appeals were consolidated.
STANDARD OF REVIEW	Sufficiency of the evidence is reviewed by accepting the State's evidence and reasonable inferences as true, disregarding conflicting evidence, and asking whether a rational factfinder could find the essential elements beyond a reasonable doubt. Review of a Rule 21 ruling involves mixed questions of law and fact; factual findings are reviewed for clear error and the legal conclusion regarding ineffective assistance is reviewed de novo. Unpreserved prosecutorial-misconduct claims are reviewed for plain error, requiring a clear record of error, violation of a clear and unequivocal rule of law, and a reasonable probability of a more favorable result absent the error.
PRECEDENTIAL VALUE	Published precedential opinion

PARTIES

Dennis Larkins, Emily Larkins v. State of Wyoming

TOPICS

criminal procedure

ineffective assistance

prosecutorial misconduct

appellate procedure

evidence

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

evidence

QUESTIONS PRESENTED

1. Whether the State presented sufficient evidence that Dennis Larkins caused physical injuries to J.K. and J.T.
2. Whether the State presented sufficient evidence that Dennis and Emily Larkins caused mental injuries to J.T. and M.D.T.
3. Whether the State presented sufficient evidence that Jesus Manzanares was a vulnerable adult.
4. Whether the district court erred in denying the defendants' Rule 21 motions for a new trial based on ineffective assistance of counsel.
5. Whether prosecutorial misconduct during closing argument required reversal.

HOLDINGS

1. The evidence was sufficient for a rational jury to find beyond a reasonable doubt that Dennis Larkins intentionally caused physical injuries to J.K. and J.T. by using a belt and backscratcher.
2. The evidence was sufficient for a reasonable jury to conclude that the Larkins' conduct caused or exacerbated J.T.'s and M.D.T.'s mental injuries.
3. The evidence was sufficient to establish that Manzanares was a vulnerable adult because his physical disabilities rendered him unable to care for himself without assistance, even though he could perform some activities independently.
4. Counsel were not ineffective for failing to object to joinder because the decisions were informed strategic choices and the cases involved sufficiently similar charges, victims, witnesses, and general allegations for the jury to compartmentalize the evidence.
5. Although the detective's vouching for the children's credibility and related statements were improper, allowing the recordings to be played without redaction did not establish ineffective assistance because there was no reasonable probability of a different result.
6. Counsel were not ineffective because the defendants had adequate notice of the charges, identified no way a bill of particulars would have changed trial preparation or performance, and the evidence and defense theory did not require a separate instruction defining mental disability.
7. The prosecutor committed misconduct by vouching for M.D.T.'s credibility, appealing to the jury's passions and prejudices, and portraying herself as speaking for the children, but the misconduct did not warrant reversal because there was no reasonable probability of a more favorable result.

KEY QUOTATIONS

“When trial counsel makes a “strategic decision” in a case, that decision is “virtually unchallengeable.”” (45)

“In this case, the prosecutor’s argument that implored the jury to “Please listen” to the children because “No one else can do anything about it” was an argument calculated to encourage a conviction so that the children would be “protected.”” (51)

“It is axiomatic that the prosecutor does not speak for the victim, but for the community.” (52)

“Comparing this evidence against the misconduct that occurred in closing argument, we cannot conclude that there is a reasonable probability that the result would have been different had the prosecutor not engaged in misconduct.” (53)

FACTUAL BACKGROUND

Dennis and Emily Larkins cared for several children, including relatives placed in their home, and Jesus Manzanares, an adult with significant physical disabilities. The evidence showed repeated physical abuse of the children with belts and a backscratcher, choking, beatings, verbal abuse, and mistreatment of Manzanares, along with resulting physical and psychological injuries. The State also introduced recorded police interviews, photographs of injuries, testimony from victims and other witnesses, and expert or therapist testimony concerning mental injuries.

PROCEDURAL HISTORY

A jury convicted Dennis and Emily Larkins of multiple child-abuse counts, and both of abuse of a vulnerable adult. The district court imposed prison sentences and probation. The district court later denied Rule 21 motions alleging ineffective assistance concerning joinder, interview recordings, a bill of particulars, and jury instructions. The Wyoming Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Villarreal v. State, 2017 WY 81, ¶ 26, 398 P.3d 512, 520
- Bean v. State, 2016 WY 48, ¶ 44, 373 P.3d 372, 386
- Pena v. State, 2015 WY 149, ¶ 16, 361 P.3d 862, 866
- Flores v. State, 2017 WY 120, ¶ 12, 403 P.3d 993, 996
- Grimes v. State, 2013 WY 84, ¶ 10, 304 P.3d 972, 975
- Allen v. State, 2002 WY 48, ¶ 42, 43 P.3d 551, 565-66
- Willis v. State, 2002 WY 79, ¶ 8, 46 P.3d 890, 894
- In re KLS, 2004 WY 87, ¶¶ 18, 20, 23, 94 P.3d 1025, 1029-31
- In re ZKP, 979 P.2d 953, 958 (Wyo. 1999)

- Foltz v. State, 2017 WY 155, ¶ 20, 407 P.3d 398, 403
- Gifford v. State, 2017 WY 93, ¶ 36, 399 P.3d 1240, 1248
- V.S.B. v. State, Department of Health & Social Services, Division of Family & Youth Services, 45 P.3d 1198, 1204 (Alaska 2002)
- Blevins v. State, 2017 WY 43, ¶¶ 11, 14-15, 393 P.3d 1249, 1252-53
- Worley v. State, 2017 WY 3, ¶ 9, 386 P.3d 765, 769
- Griggs v. State, 2016 WY 16, ¶ 37, 367 P.3d 1108, 1124
- Strickland v. Washington, 466 U.S. 668, 687, 690-91, 695, 697, 104 S.Ct. 2052, 2064, 2066, 2068-69, 80 L.Ed.2d 674 (1984)
- Bruckner v. State, 2018 WY 51, ¶ 15, 417 P.3d 178, 181-82
- Earley v. State, 2011 WY 164, ¶¶ 4-6, 267 P.3d 561, 563
- Linn v. State, 505 P.2d 1270, 1274 (Wyo. 1973)
- Woods v. State, 2017 WY 111, ¶ 15, 401 P.3d 962, 969
- Hernandez v. State, 2001 WY 70, ¶¶ 7-8, 28 P.3d 17, 19-20
- Dobbins v. State, 483 P.2d 255, 259 (Wyo. 1971)
- Hathaway v. State, 2017 WY 92, ¶¶ 28-41, 399 P.3d 625, 634-36
- Sweet v. State, 2010 WY 87, ¶ 28, 234 P.3d 1193, 1204-05
- Mersereau v. State, 2012 WY 125, 286 P.3d 97
- Lancaster v. State, 2002 WY 45, ¶¶ 35, 39, 43 P.3d 80, 95-96
- Tortolito v. State, 901 P.2d 387, 390 (Wyo. 1995)
- Buszkiewicz v. State, 2018 WY 100, ¶ 12 n.1, 424 P.3d 1272, 1276 n.1
- Volpi v. State, 2018 WY 66, ¶ 54, 419 P.3d 884, 899
- Young v. State, 2005 WY 136, ¶ 16, 121 P.3d 145, 149
- Mowery v. State, 2011 WY 38, ¶ 9, 247 P.3d 866, 869
- Temen v. State, 2009 WY 25, ¶ 11, 201 P.3d 1139, 1142
- Osterling v. State, 2018 WY 95, ¶¶ 7, 10, 424 P.3d 250, 252-53
- Watts v. State, 2016 WY 40, ¶ 6, 370 P.3d 104, 106
- Wiese v. State, 2016 WY 72, ¶¶ 28, 32, 375 P.3d 805, 810-11
- Strickler v. Greene, 527 U.S. 263, 300-01, 119 S.Ct. 1936, 1957-58, 144 L.Ed.2d 286 (1999)
- United States v. Dominguez Benitez, 542 U.S. 74, 81, 124 S.Ct. 2333, 2339, 159 L.Ed.2d 157 (2004)
- Carrier v. State, 2017 WY 88, ¶¶ 59-60, 400 P.3d 358, 370-71
- Lindstrom v. State, 2015 WY 28, ¶ 32, 343 P.3d 792, 800
- Webb v. State, 2017 WY 108, ¶ 28, 401 P.3d 914, 925
- Wilks v. State, 2002 WY 100, ¶ 28, 49 P.3d 975, 987
- Sam v. State, 2017 WY 98, ¶¶ 62-63, 401 P.3d 834, 855
- Hamilton v. State, 2017 WY 72, ¶¶ 13-14, 396 P.3d 1009, 1013-14
- Carroll v. State, 2015 WY 87, ¶ 41, 352 P.3d 251, 261

- Solis v. State, 2013 WY 152, ¶ 50, 315 P.3d 622, 633
- Black v. State, 2017 WY 135, ¶¶ 33, 50, 405 P.3d 1045, 1056, 1060-61
- Berger v. United States, 295 U.S. 78, 88, 55 S.Ct. 629, 633, 79 L.Ed. 1314 (1935)
- Stirone v. United States, 361 U.S. 212, 80 S.Ct. 270, 4 L.Ed.2d 252 (1960)

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