

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia v. Tracy A. Back

820 S.E.2d 916 (W. Va. 2018) · No. No. 17-0466 · Decided November 9, 2018

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed Tracy A. Back’s conviction and sentence for threatening to commit a terrorist act under West Virginia Code § 61-6-24(b). The court held that a defendant must make a prima facie showing of willful, intentional fraud before a court may review evidence presented to a grand jury. It also held that the threatened act, rather than the threat itself, must satisfy the statutory definition of a terrorist act, and concluded that the evidence was sufficient.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Jenkins; Justice Paul T. Farrell, sitting by temporary assignment
JURISDICTION	West Virginia
DECIDED	November 9, 2018
DOCKET	No. 17-0466
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed his felony conviction and sentence for threatening to commit a terrorist act, challenging the denial of his motion to dismiss the indictment and the sufficiency of the evidence.
STANDARD OF REVIEW	Review of denial of a motion to dismiss an indictment is generally de novo. When an evidentiary hearing is held, factual findings are ordinarily reviewed for clear error. Sufficiency of the evidence is reviewed by examining 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. Statutory interpretation is reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Tracy A. Back v. State of West Virginia

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the circuit court erred in refusing to dismiss the indictment based on allegedly misleading or insufficient evidence presented to the grand jury.
2. Whether the evidence was sufficient to prove that Back knowingly and willfully threatened to commit a terrorist act under West Virginia Code § 61-6-24(b).

HOLDINGS

1. A defendant must make a prima facie showing of willful, intentional fraud in obtaining the indictment before a court may go behind the indictment to examine the legality or sufficiency of the evidence presented to the grand jury. Because Back expressly disclaimed and failed to establish such fraud, the circuit court properly denied his motion to dismiss.
2. Under West Virginia Code § 61-6-24(b), the State must prove a knowing and willful threat to commit a terrorist act, but need not prove an intent or present ability to carry out the threatened act. The threat itself need not satisfy the statutory definition of a terrorist act; the specific act threatened must be likely to cause serious bodily injury or property or environmental damage and must be intended to intimidate or coerce the civilian population, or satisfy another statutory intent category. The evidence that Back threatened an active-shooter-style mass killing to gain attention was sufficient.

KEY QUOTATIONS

“Thus, in order to violate W. Va. Code § 61-6-24(b), the threat itself need not meet the definition of a “terrorist act” as set out in W. Va. Code § 61-6-24(a)(3), but the specific act that is threatened must meet that definition.” (Syllabus point 3)

“In plain language, W. Va. Code § 61-6-24(b) prohibits knowingly and willfully making a threat to commit a terrorist act, regardless of whether there is any intent to actually commit the same.” (at 12)

“The ability to carry out a threat simply is not an element of the crime of threatening to commit a terrorist act.” (at 15)

FACTUAL BACKGROUND

Back's mother reported that he had threatened to kill members of his family and his former wife's family and had expressed a desire to kill people to gain attention because he was not known in West Virginia. A chief deputy investigated and testified that Back wanted to become the first active shooter from West Virginia and intended to commit acts that would make him famous. Back's mother testified that he repeatedly said he would kill people after seeing reports of killings and that he wanted attention by doing so.

PROCEDURAL HISTORY

A Pocahontas County grand jury indicted Back on one count of knowingly and willfully threatening to commit a terrorist act. The circuit court denied his motion to dismiss the indictment, and a jury convicted him after receiving an Allen charge when initially unable to reach a unanimous verdict. The circuit court denied post-trial motions for judgment of acquittal or a new trial and sentenced Back to one to three years of incarceration. The Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- State ex rel. Pinson v. Maynard, 181 W. Va. 662, 383 S.E.2d 844 (1989)
- Barker v. Fox, 160 W. Va. 749, 238 S.E.2d 235 (1977)
- State v. Davis, 205 W. Va. 569, 519 S.E.2d 852 (1999)
- State v. White, 228 W. Va. 530, 722 S.E.2d 566 (2011)
- State v. LaRock, 196 W. Va. 294, 470 S.E.2d 613 (1996)
- State v. Guthrie, 194 W. Va. 657, 461 S.E.2d 163 (1995)
- Chrystal R.M. v. Charlie A.L., 194 W. Va. 138, 459 S.E.2d 415 (1995)
- State v. Yocum, 233 W. Va. 439, 759 S.E.2d 182 (2014)
- State v. Knotts, 233 W. Va. 665, 760 S.E.2d 479 (2014)
- State v. Shabazz, 206 W. Va. 555, 526 S.E.2d 521 (1999)
- State v. Waldron, 218 W. Va. 450, 624 S.E.2d 887 (2005)
- Allen v. United States, 164 U.S. 492, 41 L. Ed. 528 (1896)
- Farley v. Buckalew, 186 W. Va. 693, 414 S.E.2d 454 (1992)
- Smith v. State Workmen's Compensation Commissioner, 159 W. Va. 108, 219 S.E.2d 361 (1975)
- Appalachian Power Co. v. State Tax Department, 195 W. Va. 573, 466 S.E.2d 424 (1995)
- Town of Fayetteville v. Law, 201 W. Va. 205, 495 S.E.2d 843 (1997)
- McCormick v. Allstate Insurance Co., 197 W. Va. 415, 475 S.E.2d 507 (1996)
- People v. Morales, 20 N.Y.3d 240, 982 N.E.2d 580 (2012)
- State v. Laber, No. 12CA24, 2013 WL 3283218 (Ohio Ct. App. June 11, 2013)