

Summary of SC90775, State of Missouri v. George Biggs

Appeal from the Greene County circuit court, Judge Thomas Mountjoy
Argued and submitted Dec. 8, 2010; opinion issued March 1, 2011

Attorneys: Biggs was represented by G. Michael Baker, a solo practitioner in Springfield, (417) 883-8200; and the state was represented by James B. Farnsworth of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man appeals his conviction for child abuse of his 7-year-old son. In a unanimous decision written by Judge Michael A. Wolff, the Supreme Court of Missouri affirms the judgment. Admission of evidence of the boy's out-of-court statements under the relevant statute did not violate the man's constitutional rights. The evidence in the case was admissible and sufficient to support the jury's verdict, which was rendered after the jury was instructed correctly.

Facts: George Biggs was charged with child abuse after his 7-year-old son was found to have suffered extensive bruising after spending about five weeks with Biggs. The boy has a medical condition that prevents him from controlling his bowels. After arriving home, the boy showed his mother bruises along his buttocks, extending to his upper thighs and sides of his legs. He told her that his father had "whopped [his] butt" when he defecated on himself. The mother called the police, and the responding officer photographed the bruises, which the officer reported were consistent with belt strikes and which were in various stages of healing, indicating they had been inflicted at different times. The boy told the officer that his father often "whopped" him. The boy was taken to a Springfield child advocacy center, where a forensic interviewer recorded an interview in which the boy said his father often "whopped" him with a belt when he soiled himself, that this happened every day and that the beatings caused bruises. Before trial, the state notified Biggs that it intended to use the boy's out-of-court statements to his mother, the officer, the forensic interviewer and his godmother. Biggs objected, arguing the statute permitting the hearsay statements to be admitted as substantive evidence violates the confrontation clause of the federal constitution and improperly bolsters witness testimony. After a hearing to determine whether there were sufficient indicia of reliability to admit the statements, as required by section 491.075, RSMo Supp. 2006, the trial court overruled Biggs' objections. At trial, these witnesses testified pursuant to section 491.075, and the videotaped interview of the boy was admitted into evidence. When the boy took the stand, he testified that he never showed his mother or godmother anything in his body, that he did not know if he had any bruises; that he did not remember the videotaped interview; that he never had any accidents when he visited his father; and that he did not remember if anyone ever hit him. The jury found Biggs guilty, and the trial court sentenced him to seven years in prison. Biggs appeals.

AFFIRMED.

Court en banc holds: (1) Section 491.075 does not violate Biggs' constitutional rights. Section 491.075 allows the hearsay statements of a child younger than 14 years to be admitted as substantive evidence in certain circumstances. Pursuant to this statute, the child's mother and godmother, the responding officer and the forensic interviewer testified about the boy's statements concerning his father's abuse of him. This evidence did not violate the confrontation clause of the Sixth Amendment to the United States Constitution. Because the boy was cooperative, answered Biggs' questions and provided a meaningful opportunity for cross-examination, his prior statements could be admitted. In addition, Biggs' due process rights were not violated, and he presented a complete defense to the jury. The record supports the trial court's finding that the statements here provided sufficient indicia of reliability, and this Court previously has held that admitting evidence under section 491.075 does not prevent a defendant from presenting a complete defense. Further, section 491.075 serves a legitimate state purpose, in no way diminishes the state's burden to prove every element of the crime and does not violate the equal protection clause of the 14th Amendment to the United States Constitution.

(2) Section 491.075 was not improper bolstering, and the witness's testimony offered pursuant to that statute was not duplicative of the boy's testimony. At trial, the boy testified he did not remember the interviews and did not know whether his father had abused him, but in his substantially different out-of-court statements, he described his father's daily abuse of him. Each witness's testimony – of that witness's personal recollection of the boy's statements – also was not duplicative of any other witness's testimony.

(3) The trial court did not err in not submitting Biggs' proposed jury instruction of third-degree assault because third-degree assault is not a lesser-included offense of child abuse. Third-degree assault cannot be established by the same or fewer facts as child abuse: Third-degree assault requires proof of physical injury, while child abuse does not; and child abuse requires establishment of cruel and inhuman punishment as well as the age of the victim, while third-degree assault does not.

(4) The state presented sufficient evidence that Biggs knowingly inflicted cruel and inhuman punishment on a child younger than 17 years. The boy's mother and godmother, the officer and the forensic interviewer all testified that the boy told them that his father – Biggs – “whooped him,” causing the bruises, and Biggs and his wife testified that he spanked his son. The state also presented photographs of the black, purple, green and yellow bruising on the boy's body, and this Court previously has held that persistent bruising is sufficient to show “cruel and inhumane punishment.”