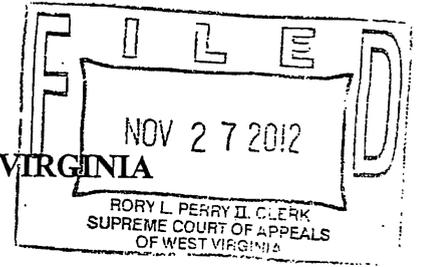


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 12-0120



STATE OF WEST VIRGINIA,

*Plaintiff,*

v.

WILLIAM R. JOHNSON,

*Defendant.*

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RESPONSE TO SUPPLEMENTAL BRIEF

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In his Supplemental Brief, Johnson argues that his Count II conviction for violating W. Va. Code § 61-8-D-2 [1994], Murder by a Guardian by Failure to Supply Necessary Medical Care, is invalid -- because, Johnson argues, his Count II conviction is assertedly inconsistent with his Count III conviction for violating W. Va. Code § 61-8-D-2a [1994], Death of a Child by a Guardian. (Resp't Supp. Br. at 1.)<sup>1</sup>

Johnson states that his conviction on the Count III conviction required the jury to find that Johnson intentionally and maliciously inflicted pain and physical injury on Jada, and that said infliction was a legal cause of Jada's death. (Pet'r's Br. at 2.) This finding, says Johnson, is

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<sup>1</sup>Johnson's original Second Assignment of Error argues that Johnson's conviction on Count I conviction for Second-Degree Murder) was inconsistent with Johnson's conviction on County II. The Respondent has replied to this argument showing that "[n]either conviction (Count I or Count II) required a finding that is contrary to a finding that is necessary to the other." (Resp't Resp. Br. at 22.)

logically inconsistent with the jury's Count II finding -- that Johnson's failure to supply necessary medical care was a legal cause of Jada's death. (*Id.* at 4.)<sup>2</sup>

The necessary logical premise of Johnson's argument is that there could be *only one* (or "sole") legal cause of Jada's death – and, therefore, that the jury's Count III finding of malicious/intentional infliction of injury causing death, and the Count II finding of malicious/intentional failure to supply medical care causing death, are necessarily mutually exclusive.

But these two findings are not mutually exclusive. Conduct that is *a* legal cause of death need not be *the* sole cause of death. "Nothing in our prior jurisprudence leads us to conclude that the State was required to prove that the delivery of the oxycodone was the sole cause of C. C J.'s death." *State v. Jenkins*, \_\_\_ W. Va. \_\_\_, \_\_\_, 729 S.E.2d 250, \_\_\_ (2012). (*See* discussion at Resp't Resp. Br. at 17-22.)

To be guilty of Count III, Johnson had to intentionally and maliciously inflict pain and injury on Jada, and that infliction had to be a legal cause of Jada's death. To be guilty of Count II, Johnson had to intentionally and maliciously fail to supply necessary medical care to Jada, and that failure had to be a legal cause of Jada's death.

By severely injuring Jada, and then by depriving her of a chance at life by failing to supply necessary medical care, Johnson engaged in conduct that fit each of those charges – and he was guilty of both offenses. Johnson's conviction for Count III is not logically inconsistent with his

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<sup>2</sup>Johnson's Supplemental Brief does not point to any place in the record where this argument or claim of error was raised in the trial court. Apparently, therefore, Johnson is presenting a "unpreserved plain error" claim to the effect that the circuit court should have *sua sponte* reversed Johnson's conviction on Count II because the Count II conviction was inconsistent with the Count III conviction

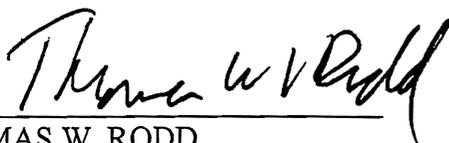
conviction on Count II. The additional Assignment of Error in Johnson's Supplemental Brief is not meritorious.

Respectfully submitted,

STATE OF WEST VIRGINIA  
*Respondent*

*By counsel*

DARRELL V. MCGRAW, JR.  
ATTORNEY GENERAL

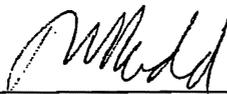
  
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**CERTIFICATE OF SERVICE**

I, THOMAS W. RODD, Assistant Attorney General and counsel for the Respondent, do hereby verify that I have served a true copy of the *RESPONSE TO SUPPLEMENTAL BRIEF* upon counsel for the Petitioner by depositing said copy in the United States mail, with first-class postage prepaid, on this 27th day of November, 2012, addressed as follows:

To: Michele Rusen, Esq.  
Rusen and Auvil, PLLC  
1208 Market Street  
Parkersburg, WV 26101

  
\_\_\_\_\_  
THOMAS W. RODD