

No. 31121 – State v. Richardson

No. 31158 – State v. Brooks

**FILED**

**December 8, 2003**

**RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA**

Maynard, Justice, dissenting, in part, and concurring, in part:

At the outset, I am faced with an unusual dilemma. It is difficult to figure out how to style this separate opinion. Without trying to distinguish between the two cases, and for want of anything better, I have settled on the above caption.

I write separately because I am firmly convinced that the criminal justice system treated the two defendants in these two cases so disparately as to be patently unfair. That being said, let me also say that the circuit judge in each case did nothing wrong. The result reached under each set of circumstances is entirely proper, and any judge, including the author of this separate opinion, could easily have reached the same result and sentence.

Nonetheless, I believe the dissimilarity with which the two defendants in these cases were treated should be pointed out by someone in some fashion. In order to shed light on the dissimilarity, one must compare the facts and contrast the charges and sentences. The actual conduct engaged in by each of these defendants when compared is not all that different. However, the charges levied against and sentences imposed upon the two are very different. The dissimilarity troubles me.

First, let me compare the facts. Both of these situations grew out of relationships in which couples were living together. Both of the situations included a member of a relationship who wished to dominate and control the other member. At the time the other member became disaffected with the relationship and attempted to leave, the dominating member felt his or her power and control slipping. And in the usual manner of domineering controllers, that member decided that he or she was not going to let that happen. Violence quickly erupted. At least as far as I understand the concept of domestic violence, the sum and substance of the conduct in both of these cases really constitutes domestic violence.

In *State v. Brooks*, \_\_\_ W.Va. \_\_\_, \_\_\_ S.E.2d \_\_\_ (No. 31158 Nov. 14, 2003), Brooks, in a jealous rage, went to the house in which McCoy and Barker were living, not once, not twice, but three times. The third time she approached the house, she wreaked havoc on the place. She threw a concrete block through the front door to gain entrance. She carried a steel crowbar and a crescent wrench, tools which by anyone's standards can be used as deadly weapons. Brooks attacked Barker with the crowbar, striking her in the elbow. After McCoy wrestled the crowbar from her, Brooks attempted to attack McCoy with the crescent wrench. She bit McCoy on the finger and forearm. Brooks herself suffered a broken nose in the fracas. I am relatively certain that some or all of those involved must have needed medical treatment, and police officers were called to the scene.

Before I relate the facts in *State v. Richardson*, \_\_\_ W.Va. \_\_\_, \_\_\_ S.E.2d \_\_\_ (No. 31121 Nov. 10, 2003), I readily admit that the violence suffered by Franks at the hands of Richardson is far more egregious than the violence suffered by Barker and McCoy at the hands of Brooks. Richardson and Franks were at an outing at the dog track in Nitro during which time both were drinking. Richardson then took Franks home and left. He later returned and entered her apartment through a window. After hitting Franks several times, he forced her to leave with him. He dragged her by her neck down the street with no clothes on to a building that was owned by his grandfather. Richardson pulled a gun on Franks while he was beating her. When she attempted to leave, he began punching, kicking, and biting her. He sexually assaulted her. He burned her with a cigarette. He poured gasoline on her legs and feet and lit a cigarette. After he threatened to burn her up, he left briefly, and then returned and urinated and spat on her. All of this occurred at a time when Franks was three months pregnant. I should mention that in spite of the violence inflicted upon her by Richardson, the victim has supported Richardson throughout these proceedings. Franks appeared before the trial court and pleaded with the judge not to incarcerate the defendant. She even appeared at the oral argument before this Court to show her support for Richardson.

Those are the facts. Now to the charges and sentences faced by each defendant. Brooks was charged with burglary and malicious assault. The burglary charge was dismissed; the indictment was amended to charge Brooks with malicious assault by causing serious bodily harm. At trial, she was found guilty of misdemeanor battery and

sentenced to one year in prison and fined \$500.00. Her sentence was suspended. Brooks was placed on probation for three years with six months of home confinement and ordered to perform 450 hours of community service. There is absolutely no mention whatsoever of domestic battery or domestic violence.

Contrast that with Richardson's charges and sentence. Richardson was charged with kidnaping, wanton endangerment, malicious wounding, and domestic battery. He pleaded guilty to kidnaping and wanton endangerment; the malicious wounding and domestic battery charges were dropped. He was sentenced to 30 years in the penitentiary on the kidnaping charge and five years, to run concurrently with the kidnaping sentence, on the wanton endangerment charge.

What we have here are two cases of horribly outrageous conduct that are really about domestic violence. In both *Brooks* and *Richardson*, we have two very controlling individuals with limited emotional tools who inflicted serious violence on other people with whom they had been romantically involved. There is no doubt that the conduct in *Richardson* is more offensive. But is it 30 years more egregious!? Remember, Brooks had her sentence suspended and got home confinement, but not a single day in jail, while Richardson got 30 years in prison. If we reverse the relative positions of the two and keep the conduct as it is presented here, would the results in the two cases be different? If Ms. Brooks acted in the manner in which Mr. Richardson conducted himself, would she be facing

30 years in prison? On the other hand, would Mr. Richardson escape prison time completely if he broke into the home of someone who was trying to leave him and assaulted two people?

That being said, let me also state that I agree with the majority that Richardson should go to prison for ten years. Certainly he should not be locked up for 30 years. I believe equally strongly that Brooks should have served time. Until society sees its way clear to treat people who commit similar domestic violence crimes in a similar manner, we will make no headway in our fight against domestic violence.

As I stated previously, I agree that Richardson's sentence absolutely should be reduced. However, we probably should have remanded the case to the trial court with guidance, perhaps even with specific suggestions and strong guidance, regarding the manner in which sentencing should be handled. I agree with Justice Davis that "no justification existed for the majority to impose a specific sentence in this case." Sentencing is the trial court's job. But I must admit that ten years in prison is an appropriate sentence for Mr. Richardson's outrageous criminal conduct while thirty years in prison, considering that Ms. Brooks will not serve a day in jail, is far too severe. In sum, the judicial system perhaps did the right and just thing in Richardson's case, except for the troublesome sentencing, and did the wrong thing in Brooks' case.

For the foregoing reasons, and not knowing what else to call this separate

opinion, I respectfully concur, in part, and dissent, in part, from the majority opinions which have been filed in these cases.