

SUPREME COURT OF APPEALS OF WEST VIRGINIA  
April 7, 2014 Argument Docket  
LAWS Program - Madison, WV

**1. State v. Antonio Prophet, No. 12-1389**

**Procedural and Factual Background:**

This case involves a criminal appeal. The defendant, Antonio Prophet, appeals the sentencing order of the Circuit Court of Berkeley County entered on September 10, 2012. The defendant was convicted of two counts of murder in the first degree and one count of arson in the first degree on July 16, 2012. The jury did not recommend mercy. The defendant was sentenced to incarceration for life without the possibility of parole for the death of his girlfriend; incarceration for life without the possibility for parole for the death of his girlfriend's son, age 3; and incarceration for twenty years for subsequently setting fire to the garage apartment where the remains of his girlfriend and his girlfriend's son were found. The circuit court ordered the sentences to run consecutively.

In this appeal, the defendant requests that the Supreme Court of Appeals of West Virginia reverse the order sentencing the defendant.

**Defendant Prophet's Argument:**

The defendant raises seven issues on appeal. First, the defendant asserts that the circuit court improperly denied his motion for judgment of acquittal. The defendant argues that the improper actions of the State and circuit court caused the jury to wrongfully convict him of the charges brought against him. Second, the defendant argues that the circuit court improperly denied the defendant's motion for a new trial. The defendant argues that the State and the circuit court made improper comments and communications to the jury and improperly used a novel that the defendant had written several years before the crimes to convict the defendant. Third, the defendant asserts that the circuit court erred when it failed to grant his motion for a new trial as the State improperly used defendant's post arrest/pre-trial silence to impeach him. Fourth, the defendant argues that the circuit court erred in denying the defendant's motion for a new trial on the basis that it did not give the jury instruction proffered by the defendant. Fifth, the defendant asserts that the circuit court erred in denying the defendant's motion for a new trial on the basis that the State knowingly allowed a witness to present false and perjured testimony. Sixth, the defendant argues that the defendant's due process rights, or his constitutionally protected rights, were violated when the prosecution made improper remarks and engaged in prosecutorial misconduct. Seventh, the defendant asserts that his due process rights were violated when the circuit court made improper remarks and engaged in judicial misconduct.

**Respondent State's Argument:**

The State argues that it presented sufficient evidence to support the convictions. In response to the defendant's first assignment of error, the State argues that the circuit court properly denied the defendant's motion for judgment of acquittal. Second, the State asserts that the circuit court properly denied the defendant's motion for a new trial. With regard to the defendant's novel, the State asserts that it acknowledges in its closing argument that the novel was written several years prior and did not itself constitute a crime. Third, the State argues that the circuit court did not err in denying the defendant's

motion for a new trial on the ground of the defendant's post-arrest/pre-trial silence. The State asserts that it properly questioned and impeached the defendant using his pre-arrest silence. Fourth, the State argues that the circuit court did not err in denying the defendant's motion for a new trial on the basis that the court did not give the jury instruction proffered by the defendant. The State argues that the defendant's instruction was not a correct statement of the law. Fifth, the State asserts that the circuit court did not err in denying the defendant's motion for a new trial on the basis that a witness allegedly presented false testimony. The State argues that the credibility of the witness was best left to the jury. Sixth, the State asserts that the defendant's due process rights were not violated by improper remarks or prosecutorial misconduct. The State avers that the prosecutor was vigorously arguing her case, and any misstatements made were unintentional. Seventh, the State asserts that there is no evidence in the record of judicial misconduct.