

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

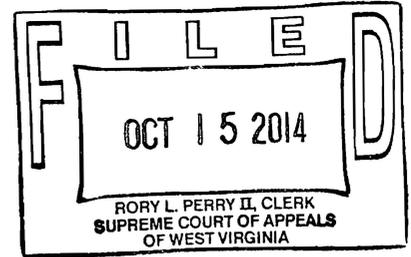
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STATE OF WEST VIRGINIA
Respondent,

v.

STEVEN MICHAEL WILLIAMS,
Petitioner.



APPEAL FROM A FINAL ORDER OF THE:
NINTH JUDICIAL CIRCUIT COURT OF MERCER COUNTY (13-F-366-OA)

Petitioner's *Reply* Brief

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REPLY ARGUMENTS

1. At the time Victoria Combs gave a statement implicating Mr. Williams in the crime she was convicted of a felony.

The State in its Response argues that the memorandum opinion issued by the West Virginia Supreme Court in State of West Virginia v. Lori F., 2013 W. Va. LEXIS 549 (2013) is directly on point; however, the State has failed to point out the major difference between State v. Lori F. and this case before the Court. In State v. Lori F., the circuit court denied the defense the right to cross-examine the witness about being charged with a crime and about being on probation because the witness was *under a pretrial diversion agreement* pursuant to West Virginia Code Section 61-11-22 at the time he gave a statement implicating the defendant. Thus, in State v. Lori F., the witness's guilt to the criminal charge had not been determined and was not a conviction.

In this case before the Court, Victoria Combs had plead guilty to felony conspiracy. She was convicted of a felony. Ms. Combs was given two years of probation and pursuant to the plea agreement would be allowed to withdraw her guilty plea to the felony conspiracy *if and only if*, she successfully completed her probation. P11. Thus, at the time Victoria Combs gave a statement implicating Mr. Williams in the crime, she was convicted of committing felony conspiracy and was on probation.

Clearly, her guilty plea and vulnerable status as a probationer provided a basis for an inference of bias or undue pressure on her leading to her statement implicating Mr. Williams. Ms. Combs had been arrested by the West Virginia State Police and one of the West Virginia State Police officers assisting with the investigation into the incident at McDonalds was the same West Virginia State Police officer who arrested Victoria Combs leading to her conviction. P151.

Unquestionably, these facts were *relevant evidence to suggest and infer* that Ms. Combs was, or felt pressured in cooperating with the West Virginia State Police. The Supreme Court of the United States held in Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974), “that the United States Constitution permits the accused to cross-examine witnesses for the purpose of exposing biases, prejudices, or ulterior motives” and “by so doing the cross-examiner intends to afford the jury *a basis to infer* that the witness’ character is such that he would be less likely than the average trustworthy citizen to be truthful in his testimony.” Id. at 318 (*emphasis added*).

2. The Mercer County Circuit Court’s ruling denying Mr. Williams the right to cross-examine Ms. Combs about her felony conviction and probation status was not harmless error.

In State v. Kelley, 192 W. Va. 124, 451 S.E.2d 425, 431 (1994), the West Virginia Supreme Court stated that:

Where constitutional rights are involved, the United States Supreme Court in Fahy v. Connecticut, 375 U.S. 85, 84 S.Ct. 229, 11 L.Ed. 2d 171 (1963), set forth the federal standard in regard to harmless constitutional error. The paramount question that must be answered in making this determination is ‘whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction. (*citing* Id. at 86-87, 84 S.Ct. at 230, 11 L.Ed.2d at 173.)

The West Virginia Supreme Court adopted the Fahy v. Connecticut standard in Syl. pt. 20, State v. Thomas, 157 W. Va. 640, 203 S.E.2d 445 (1974), holding that “[e]rrors involving deprivation of constitutional rights will be regarded as harmless only if there is no reasonable possibility that the violation contributed to the conviction.”

In this case before the Court, Ms. Combs’ testimony was the only reliable evidence linking Mr. Williams with the gun supporting the State’s position that Mr. Williams was a felon in possession of a firearm. Ms. Combs’ testimony was the only evidence that could support a conviction against Mr. Williams for felon in possession of a firearm. All of the other evidence

presented at the trial was used to try and link Mr. Williams to the crime of wanton endangerment for allegedly shooting at Cody Smith and Devon Honaker and was discredited during the course of the trial.

At trial the State called Victoria Combs in an attempt to prove the criminal charge of felon in possession of a firearm. Ms. Combs' testimony was limited to this charge because she did not see the alleged shooting which occurred in the parking lot of McDonalds involving Devon Honaker and Kody Smith. P162.

At trial the State called Devon Honaker and Cody Smith to provide evidence in an attempt to link Mr. Williams to the crime of wanton endangerment. The jury clearly did not rely on Devon Honaker and Kody Smith's testimony because their testimony was shown to be unreliable.

Devon Honaker testified that the driver of the black car was the person who fired the firearm that night and the driver was wearing a black shirt. P121. A recorded video surveillance was presented to the jury that clearly showed that Mr. Honaker's statement was not accurate because based on the recorded video surveillance Mr. Williams (the driver of the black car) was wearing a white shirt the night of the shooting. P122; P214-216.

Cody Smith testified at trial that he saw a gun being raised from the driver's window of the black car P134-138; however, Mr. Smith's recorded statement shortly after the shooting revealed that he only saw a gun but did not identify what window of the black car the gun came from. Id.

Clearly the jury determined that Devon Honaker and Kody Smith's testimony was unreliable. However, there is no question that the jury relied on Ms. Combs' testimony to determine Mr. Williams was guilty. The Mercer County Circuit Court's error in failing to

observe Mr. Williams' Sixth Amendment Right under the Constitution of the United States and allow the cross-examination of Ms. Combs was not harmless error.

CONCLUSION

Victoria Combs' testimony was key evidence in the case and Mr. Williams pursuant to the Sixth Amendment to the Constitution of the United States should have been permitted to cross-examine her regarding the relevant evidence that she had plead guilty to a felon and was on probation at the time she made a statement implicating Mr. Williams in the crime.

Mr. Williams seeks a reversal of his conviction or a new trial with the finding that Mr. Williams should be permitted to cross-examine the State's key witness Ms. Combs with regard to her guilty plea and probation.

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of October, 2014, true and accurate copies of the foregoing **Petitioner's Reply Brief** were deposited in the U.S. Mail contained in postage-paid envelope addressed to counsel for all other parties to this appeal as follows:

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