No. 30433 - State of West Virginia v. Thomas E. Griffin

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

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Davis, C.J., dissenting:

Thomas E. Griffin, appellant/defendant below (hereinafter referred to as "Mr. Griffin"), argued that his conviction and sentence for attempted breaking and entering should be reversed because of the trial court's refusal to strike a juror for cause. The majority agreed with Mr. Griffin and reversed the judgment. For the reasons set out below, I dissent from the majority decision.

A. The Prospective Juror Did Not Articulate Any Bias Toward Mr. Griffin

Mr. Griffin contends that a prospective juror, Sharon Young, revealed a bias against him during voir dire. The alleged bias occurred during the following exchange between the trial judge and Ms. Young:

> THE COURT: It was brought to my attention that you work at the U.S. Attorney's Office. That obviously is law enforcement. Well, I was wondering, Ms. Young, let me ask you: What do you do over there?
>
> JUROR YOUNG: I'm the grand jury technician in the criminal division.
>
> THE COURT: As a grand jury technician, you do what?
>
> JUROR YOUNG: I just physically coordinate with the

Court the time the grand juries are needed to meet. Then I coordinate with the attorneys to scheduling that, when they're going to be before the grand jury.

THE COURT: Do you believe that based on your job that you would tend to favor or disfavor the State's or the government's side of a particular criminal case?

JUROR YOUNG: I really don't think so.

THE COURT: Do you believe that you can listen to the evidence as presented in this courtroom and determine the facts of this case to be fairly and impartially, and to apply the law as I give to you in my charge?

JUROR YOUNG: I think so.

THE COURT: And what does it mean to you when a grand jury indicts somebody?

JUROR YOUNG: It means it's a possible cause that it needs to go to a trial jury to decide.

THE COURT: Do you believe the jury indicts people that are completely innocent?

JUROR YOUNG: I guess that could happen.

THE COURT: Do you believe that happens.

JUROR YOUNG: I believe it has happened.

THE COURT: Do you believe that when somebody has been indicted, they are more likely to be guilty than not, based on your experience when you were with the grand juries?

JUROR YOUNG: Probably.

. . . .

THE COURT: Let me ask you this: The Court will

> instruct you later on in this case that an indictment is not to be considered by you as any part of evidence of a person's guilt, and just because someone is charged, they still stand there with the presumption of the innocent that the statements overcome?
>
> JUROR YOUNG: Right.
>
> THE COURT: Can you apply that statement of the law in this case?
>
> JUROR YOUNG: Yes, I can.

Subsequent to the above questioning by the trial court, Mr. Griffin moved to strike Ms. Young for cause. The trial court denied the motion as follows:

> I'm going to deny the motion based on the responses of Ms. Young. She indicated she could follow the instructions of the Court, specifically this instruction of the indictment. There is no evidence to prove against the defendant. The defendant is still presumed innocent until the State can overcome its burden.

Mr. Griffin contended, and the majority agreed, that under this Court's decision in *State v. Bennett*, 181 W. Va. 269, 382 S.E.2d 322 (1989), and *State v. Nett*, 207 W. Va. 410, 533 S.E.2d 43 (2000) (per curiam), that the trial court was required to strike Ms. Young for cause. I disagree.

To begin, the decision in *Bennett* is distinguishable from this case. In *Bennett*, a prospective juror stated that he was reluctant to be a juror. The juror also stated that he would have difficulty setting aside his prejudices against the defendant. In *Bennett,* the trial judge attempted to rehabilitate the juror. However, on appeal we found that the juror should have

been struck for cause. Consequently, we held in syllabus point 1 of *Bennett* as follows:

> When individual voir dire reveals that a prospective juror feels prejudice against the defendant which the juror admits would make it difficult for him to be fair, and when the juror also expresses reluctance to serve on the jury, the defendant's motion to strike the juror from the panel for cause should ordinarily be granted.

In the instant case, Ms. Young did not express a reluctance to sit on the jury. More importantly, she did not express *any prejudice toward Mr. Griffin*. Thus, *Bennett* cannot be used for setting aside the judgment against Mr. Griffin.

The decision in *Nett* is also distinguishable. *Nett* involved the prosecution of the defendant for third offense DUI. During jury voir dire, a prospective juror stated that there was a possibility that he could not fairly and impartially decide the case. The prospective juror had two friends who were killed in drunk driving incidents.[1] In spite of this disclosure, the trial court refused to strike the juror for cause. We determined that the trial court committed error. This Court found that syllabus point 4 of *State v. Johnson*, 49 W. Va. 684, 39 S.E. 665 (1901), controlled the disposition of the case:

> When a juror on his voir dire admits that he has formed and expressed an opinion of the guilt or innocence of the accused, and expresses any degree of doubt as to whether such previously formed opinion would affect his judgment in arriving at a just and proper verdict in the case, it is error to admit him on the panel.

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[1]On appeal the State confessed error because of the trial court's failure to strike the juror for cause.

Here, the record reveals that Ms. Young neither stated nor implied that she had formed an opinion as to Mr. Griffin's guilt or innocence. Consequently, *Nett* is not controlling authority in this case.

The majority opinion also relied upon syllabus point 5 of *O'Dell v. Miller*, ___ W. Va. ___, ___ S.E.2d ___ (No. 29776 May 24, 2002), wherein we held that "[o]nce a prospective juror has made a clear statement during voir dire reflecting or indicating the presence of a disqualifying prejudice or bias, the prospective juror is disqualified as a matter of law and cannot be rehabilitated by subsequent questioning, later retractions, or promises to be fair."

The sound reasoning in *O'Dell* has no application in this case. Here, the trial court did not attempt to rehabilitate Ms. Young. In fact, the trial court did nothing more than ask Ms. Young questions regarding the impact of her work on her ability to fairly and impartially decide Mr. Griffin's innocence or guilt. Ms. Young clearly, and without rehabilitative questioning, stated that she could fairly and impartially decide the facts in the case. We indicated in *State v. Miller* that "[i]n determining whether a juror should be excused, our concern is whether the juror holds a particular belief or opinion that prevents or substantially impairs the performance of his or her duties as a juror in accordance with the instructions of the trial court and the jurors' oath." 197 W. Va. 588, 605, 476 S.E.2d 535, 552 (1996) (citation omitted). Ms. Young never expressed any belief or opinion that could

logically lead to the conclusion that she would be unable to follow the instructions of the trial judge.

The majority opinion also focused upon Ms. Young's response to the judge's questioning indicating that she "*probably*" believed that "when somebody has been indicted, they are more likely to be guilty than not." This statement, taken out of context in the majority opinion, was not an indication of prejudice against Mr. Griffin. I believe Ms. Young's response was an honest response of the type one would expect from the average person. That is, I do not believe that the average person in the state of West Virginia believes that the majority of people who are indicted are innocent. Our criminal justice system would indeed be flawed if most people who are indicted are innocent.

Moreover, this specific issue is not new to this Court. We have previously addressed the issue in *State v. Williams*, 206 W. Va. 300, 524 S.E.2d 655 (1999) (per curiam). In *Williams*, the defendant argued that the trial court committed error in refusing to strike a juror who "indicated that he believed when a person is indicted that person is guilty of the offense." *Williams*, 206 W. Va. at 303, 524 S.E.2d at 658. This Court rejected the defendant's argument after concluding that, based upon the full questioning by the trial court, the juror "truly understood that an indictment was nothing more than an accusatory instrument and not evidence of guilt." *Williams*, 206 W. Va. at 304, 524 S.E.2d at 659.

Similarly, in the *Miller* case discussed above, the defendant was convicted of first degree murder. 197 W. Va. 588, 476 S.E.2d 535. One of the issues argued on appeal was that a juror, who actually served on the jury that convicted the defendant, should have been struck for cause on the ground that the juror indicated she "'believed a person could not be charged without being guilty.'" *Id.*, 197 W. Va. at 604, 476 S.E.2d at 551. In writing for the Court, Justice Cleckley summarily rejected the argument. The opinion concluded that "the prospective juror expressed the opinion that if she believed someone was not guilty she would have no problem returning a not guilty verdict." *Id*.

In the final analysis, there was simply no showing that Ms. Young was biased against Mr. Griffin. Therefore, the trial court was correct in not striking her for cause.

In view of the foregoing, I dissent. I am authorized to state that Justice Maynard joins me in this dissenting opinion.