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

FILED
July 9, 2002
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED
July 10, 2002
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
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Starcher, Justice, concurring:

I concur with the majority opinion and write separately to point out that this defendant is absolutely and constitutionally entitled to one fair jury trial on the charges against him. Juror Young in the instant case made a clear statement during *voir dire* indicating bias – she believed that when a defendant has been indicted, he or she is "most likely to be guilty than not, based on [her] experience when [she was] *with grand juries*." (Emphasis added.) Once the juror made this clear statement, fairness mandated that she be disqualified as a matter of law and another prospective juror called in her place. That Juror Young was employed as a "criminal grand jury coordinator" for the U.S. Attorney's Office adds some understanding as to why Ms. Young might think as she stated.

In *O'Dell v. Miller*, ___ W.Va. ___, ___ S.E.2d ___ (No. 29776, May 24, 2002) this Court recently made clear that prospective jurors who indicate disqualifying bias or prejudice should be disqualified as a matter of law, and judges should not attempt to rehabilitate those prospective jurors by extracting promises to be fair. The safest course – and the fairest course to the litigants – is to call another prospective juror.

My dissenting colleagues cite to earlier opinions, such as *State v. Williams*, 206 W.Va. 300, 524 S.E.2d 655 (1999) (*per curiam*) and *State v. Miller*, 197 W.Va. 588, 476

S.E.2d 535 (1996), to suggest that the circuit court in the instant case correctly allowed Juror Young to remain on the jury. However, these earlier cases have been superseded by our holding in *O'Dell v. Miller*, where we stated:

> [A]s far as is practicable in the selection of jurors, trial courts should endeavor to secure those jurors who are not only free from but who are not even subject to any well-grounded suspicion of any bias or prejudice. When in doubt, a trial court should exclude a prospective juror.

___ W.Va. at ____, ___ S.E.2d at ___ (Slip Op. at 7) (citations omitted).

Upon review of the record, as the majority opinion suggests, there exists in the record a "well-grounded suspicion of any bias or prejudice" by Juror Young. I therefore concur with the majority opinion's reversal of the conviction, and the remand of the instant case so that the defendant may have a clearly, constitutionally fair trial.