No. 33035 – State of West Virginia v. Ronnie Allen Rush

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

Maynard, Justice, dissenting.

This case required the Court to determine whether the appellant's conviction for two counts of voluntary manslaughter, robbery, nighttime burglary, and conspiracy to commit robbery should stand. The majority opinion concluded that the appellant's convictions should be reversed due to the inadmissibility on prompt presentment grounds of the statements the appellant made to law enforcement at 2:00 p.m. and thereafter on May 15, 2003. For the reasons outlined below, I believe that the majority of this Court has made a grave error in reversing the appellant's conviction. Therefore, I dissent.

According to the majority, "there is simply no evidence that the excessive delay in taking appellant before a judicial officer was for a reason other than to extract a confession from appellant." I disagree and the record clearly contradicts that conclusion. In order to fully comprehend the majority's error it is necessary to review the facts of this case.

First, I have to point out that this was a vicious and savage homicide by the appellant without any provocation. As the sixty-nine-year-old Mr. Groves and his sixty-year-old companion, Ms. Hicks, slept in their separate bedrooms, both were killed in their sleep as they were shot at close range with a shotgun. In fact, the shotgun shell that killed Mr.

Groves entered from behind his right ear, passed through his skull, destroyed his brain, and exited as it exploded through the top of his forehead. The appellant, who enjoyed a close relationship with the victims, was spending the night in the victims' home at their request. The appellant usually spent several nights per week sleeping at Mr. Groves' home and had forged a close relationship with him as he often earned money by doing chores for him. The appellant even said he considered Mr. Groves and Ms. Hicks to be friends and family members and said they were like a father and mother to him.

During the morning of the murder, it was the appellant who called 911 and concocted a story about hearing two gunshots and then the sound of a car driving away. And, even though the phones in Mr. Groves' home were in working order, the appellant drove back to his father's trailer before calling 911. His trailer was approximately one-half-mile away from Mr. Groves' home. When the Sheriff and his deputy arrived at the appellant's trailer, they asked him to return with them to the crime scene to answer some questions. There was nothing unusual about the request since the appellant was present when the shots were fired and was the only potential witness to the crime. Both the appellant and his father consented and the appellant voluntarily left with the Sheriff.

At approximately 2:00 a.m., the appellant and the Sheriff arrived back at Mr. Groves' home. Initially, the appellant waited in the back of the Sheriff's jeep and even fell

asleep as the police investigated and collected evidence at the crime scene. At approximately 3:41 a.m., State Trooper Starcher read the appellant his *Miranda* rights, explained that he was not under arrest, and was free to go at any time. He then began to question him about what he knew with regard to the deaths of his friends, Mr. Groves and Ms. Hicks. Prior to answering any questions, the appellant knowingly and voluntarily waived his right to counsel. He then provided a statement to the officer.

After listening to the appellant's story about two people running from the house following two gun shots, Trooper Starcher returned to the victims' home to continue his investigation. After securing the crime scene, Trooper Starcher drove the appellant to the State Police Detachment, arriving at approximately 5:55 a.m. The appellant was once again read his *Miranda* rights and was told that he was not under arrest and was free to leave at any time. Trooper Fluharty conducted that part of the investigation. The majority opinion points out that the appellant said he felt threatened by an outburst of Trooper Fluharty directed toward him. Trooper Fluharty, who had been a State Trooper for twenty years, denies the incident. Trooper Fluharty interviewed the appellant, but did not take a statement from him because the appellant agreed to take a polygraph test. The appellant was still not under arrest, was free to leave at any time, and was not questioned any further until the arrival of State Trooper Streyle, who was going to administer the polygraph test.

It was approximately 2:00 p.m. when Trooper Streyle arrived. Trooper Streyle read the appellant his *Miranda* rights for the third time and asked him to sign another waiver.

Prior to this time, Trooper Cooper had gone to the appellant's father's home and obtained permission for Trooper Streyle to conduct the polygraph on the appellant. The officer even offered the father a ride to the State Police barracks to witness the entire polygraph and talk with his son. The appellant's father provided his signed consent, but refused to go to the police station.

After obtaining the necessary consent of the appellant and his father, Trooper Streyle began a pre-interview of the appellant to build a rapport with him. Upon completing the pre-interview, Trooper Streyle began asking the appellant questions about the murders. Soon thereafter, Trooper Fluharty entered the room and stated that they had obtained incriminating evidence on the appellant. When Trooper Fluharty left the room, the appellant said that he would not answer any further questions without counsel present. Trooper Streyle immediately ended the interview without completing the polygraph test and informed Trooper Fluharty about the appellant's request. Trooper Fluharty told the appellant he was free to leave and that he was not under arrest. He also told the appellant that he could wait until Trooper Cooper, who was trying to locate the prosecuting attorney for advice, returned to the office. The appellant said he would voluntarily remain at the State Police barracks.

Lets be clear about what happened here. The appellant voluntarily stayed at the State Police barracks even though he was offered a ride home by the State Troopers. He stayed even though he was given unrestricted access to a telephone where he could have

called his father, another family member, a neighbor, or even a friend to take him home. Most importantly though, he stayed of his own free will and volition. He patiently waited at the police station for the return of Trooper Cooper without being questioned in any manner by any law enforcement officer. He walked around the office; he was allowed access to various rooms of the office without restriction; he slept for a period of time; he ate pizza; and he rested until Trooper Cooper arrived. At no time was he shackled, handcuffed, or subjected to any physical abuse. He simply waited for the return of Trooper Cooper.

Upon his return to the office, Trooper Cooper told the appellant that he was going to draft a complaint wherein he would be arrested for murder. After a brief silence, the appellant began to cry and gave a spontaneous statement saying, "I'm sorry. I loved Ward and Mary." Through this statement, it was the appellant who "evinced a willingness and a desire for a generalized discussion about the investigation" resulting in further communication, exchange, and conversation with the police. *See Oregon v. Bradshaw*, 462 U.S. 1039, 103 S.Ct. 2830 (1983).

Trooper Cooper stopped the appellant from making any further incriminating comments and immediately read his *Miranda* warnings to him. It was the appellant who, for at least the fourth time that day, knowingly waived his right to counsel and voluntarily provided a statement to the police after initiating conversation about the substance of the case

with the State Troopers. Once the appellant completed his thirty minute statement, Trooper Cooper immediately drove him to the magistrate for arraignment.

It has long been the rule of this State that it is the trial court's job to determine the facts surrounding a juvenile appellant's confession. If the trial court's factual determinations, including determinations regarding credibility, are reasonable supported by the record, this Court will not disturb them on appeal. *See In re James L.P.*, 205 W.Va. 1, 14, 516 S.E.2d 15, 28 (1999). The circuit judge specifically found that the appellant "knew and understood fully what his rights were, and that he knowingly and voluntarily again waived those rights." The circuit judge also explained:

> The "prompt presentment" rule is not invoked when a person, whether an adult or a juvenile, becomes a "suspect." It occurs when he is arrested or circumstances are such that a reasonable person would conclude that they were under arrest. This occurs when a person's freedom is deprived of them. The court is convinced that any such rule was not violated here - - at least as to the oral statements made by [the appellant] to the polygraph operator - - any delay was prompted by the police and [the appellant] desiring to wait for the arrival of a polygraph, and not for the purpose of obtaining a confession from [the appellant].

Again, let me be perfectly clear, this was a calculating, scheming young man who killed two people he supposedly loved. He was a frequent overnight guest in their home who had gained their trust. After reading the entire record in this case, it is clear to me that he was well aware of what he was doing each and every time he waived his right to counsel

and voluntarily provided statements to the law enforcement officers. Throughout the day in question, the appellant attempted to act like a victim and shift the blame to another individual. He rolled the dice creating stories he felt would relieve him of any responsibility, but eventually his lies created a web of deceit which he was unable to untangle. Even upon his arrest and detention at the juvenile center it took him only two days before he began plotting to escape from the facility.

It is clear to me that there is nothing in the aforementioned facts that even remotely amount to a violation of the prompt presentment rule. The appellant was not under arrest prior to the return in the evening of Trooper Cooper and was free to leave at any moment. He chose not to leave. Simply put, he provided several voluntary statements to the officers before and after his arrest. Those statements were taken by competent police officers who acted in full compliance with the laws of both the United States and West Virginia. My fear is that the majority opinion has created a situation which could result in chaos and havoc on future investigations of suspects of heinous crimes. Officers will read these facts and fear that even when they follow proper police procedures that much of their evidence will become inadmissable and tainted. Another result could be the premature arrest of innocent individuals who are quickly paraded in front of magistrates as police officers scramble to avoid the appearance of violating our prompt presentment rule. Common sense needs to prevail and police officers need to be able to do their jobs without unreasonable restraints and unworkable rules. Therefore, for the reasons stated above, I respectfully dissent.