No. 33052 – State of West Virginia v. Michael Doonan

Maynard, Justice, dissenting:

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I dissent to the majority opinion because I do not believe that Rule 16 of the West Virginia Rules of Criminal Procedure should apply to criminal discovery issues in magistrate courts.

First, according to Rule 1 of the Rules of Criminal Procedure, those rules apply to criminal proceedings before magistrates only "whenever specifically provided in one of the rules." Rule 16 does not specifically provide that it applies to magistrate court proceedings, and it should not be made to do so by this Court.

Second, application of Rule 16 to magistrate court proceedings is simply a bad idea because non-lawyer magistrates are not trained to handle such complex rules. In order to be a magistrate in West Virginia, a person need only be twenty-one years of age, have a high school education or its equivalent, and have no felony convictions or any misdemeanor convictions involving moral turpitude. *See* W.Va. Code § 50-1-4 (1992). I believe that charging non-lawyer magistrates with utilizing Rule 16 invites inconsistent application of that rule at best and serious error at worst. Plainly, Rule 16 was written to be used by highly

trained lawyer judges and not non-lawyer magistrates who may have only a high school education.

Significantly, making Rule 16 applicable to magistrate courts is another instance of placing excessive legal responsibilities on non-lawyer magistrates at a time when important constitutional safeguards that protect criminal defendants have been removed in magistrate courts. Prior to the amendments to W.Va. Code § 50-5-13 in 1994, a person convicted of a crime in magistrate court was guaranteed on appeal a trial *de novo* in circuit court. Thus, he or she was guaranteed a trial presided over by a lawyer judge before his or her liberty could be taken. Now, if a person is convicted by a jury in magistrate court, he or she is no longer guaranteed a trial *de novo* before a lawyer judge. Rather, the appeal to circuit court is a hearing on the record. *See* W.Va. Code § 50-5-13(b) (1994).

I believe that denying the right of a person convicted in magistrate court a trial *de novo* in circuit court violates that person's constitutional due process rights. In the 1995 case of *State ex rel. Collins v. Bedell*, 194 W.Va. 390, 460 S.E.2d 636 (1995), this Court upheld W.Va. Code § 50-5-13 against due process challenges under both the State and Federal Constitutions. However, I believe that *Bedell* was incorrectly decided. In *Bedell,* this Court addressed the U.S. Supreme Court case of *North v. Russell* as follows:

> The Supreme Court of the United States has not yet addressed whether the *United States Constitution* is violated if a criminal defendant does not have

> a lawyer-judge preside at his or her trial. The closest the Supreme Court of the United States has come to deciding the issue was in *North v. Russell,* 427 U.S. 328, 96 S.Ct. 2709, 49 L.Ed.2d 534 (1976). In *North* the Supreme Court of the United States determined that Kentucky procedures provided for a trial *de novo,* which included the right to a trial by jury, before a lawyer-judge; therefore, the Supreme Court found it unnecessary to decide whether the proceeding before a lay officer, which resulted in a sentence of thirty days in jail for driving under the influence, violated the constitutional rights of the defendant.[1]

*Bedell,* 194 W.Va. at 397-398, 460 S.E.2d at 643-644 (footnote added).

In his dissent to the majority opinion, Justice Neely expressed his belief that a criminal defendant appealing from a proceeding in magistrate court before a non-lawyer judge should be afforded a statutory right to a jury trial *de novo* on appeal to circuit court. Justice Neely noted that in *North* the U.S. Supreme Court "tacitly affirmed the constitutionality of non-lawyer judges based upon the guarantee of a trial *de novo* on appeal before a lawyer/judge." *Bedell,* 194 W.Va. at 404, 460 S.E.2d at 650. Justice Neely also discussed the case of *Ludwig v. Massachusetts,* 427 U.S. 618, 96 S.Ct. 2781, 49 L.Ed.2d 732 (1976), which he described as,

> decided just two days after the *North* decision, the Supreme Court again

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[1]Kentucky's procedure was described in *Colten v. Kentucky*, 407 U.S. 104, 113, 92 S.Ct. 1953, 1958, 32 L.Ed.2d 584 (1972) as follows:

> The right to a new trial is absolute. A defendant need not allege error in the inferior court proceeding. If he seeks a new trial, the Kentucky statutory scheme contemplates that the slate be wiped clean. Prosecution and defense begin anew. . . . The case is to be regarded exactly as if it had been brought there in the first instance.

> partially relied on the existence of a trial *de novo* to uphold a state court system when a defendant in a criminal case was initially tried *without a jury* before a nonlawyer judge, but had the right to obtain a trial *de novo* by jury on appeal. Thus, in *Ludwig* the Supreme Court ruled that no due process violation was found.

*Id.* Both *North* and *Ludwig* strongly imply that constitutional due process is not violated if a criminal defendant's trial is presided over by a non-lawyer judge as long as that defendant has an absolute right to a trial by jury before a lawyer-judge. Because in West Virginia a criminal defendant has no such right, constitutional due process is violated.

As originally envisioned, magistrate courts were supposed to use simple procedures where small claims civil and misdemeanor criminal cases could be heard without the necessity of legal counsel. However the authority and jurisdiction of magistrate courts have increased over the years. Non-lawyer magistrates are now charged with understanding intricate legal arguments made by lawyers and applying complex constitutional principles that persons with a law degree and years of experience may find challenging. Significantly, at stake in the application of these complex legal principles is a person's liberty for up to a year.

By holding that magistrates are now responsible for the proper application of Rule 16 of the Rules of Criminal Procedure, this Court continues the unwise trend of placing ever greater responsible on non-lawyer magistrates in the absence of the necessary check on

their rulings in the form of a jury trial *de novo* before a lawyer judge. For this reason, I dissent to the majority opinion.