

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

SCA EFiled: Jan 20 2024
04:42PM EST
Transaction ID 71840377

STATE OF WEST VIRGINIA,

Respondent,

v.

Supreme Court No.: 23-511
Circuit Court Case Nos. 18-F-140

Cabell County, West Virginia

DANIEL MARCUS BATTLE ,

Petitioner.

PETITIONER'S BRIEF

Robert C. Catlett
W.Va. Bar No.: 8522
Robert C. Catlett Law Office
P.O. Box 572
Wellsburg, WV 26070
304-374-3676
RC@Catlettlawoffice.net

Counsel for the Petitioner

TABLE OF CONTENTS

ASSIGNMENT OF ERROR.....	1
--------------------------	---

In Petitioner’s murder trial the defense theory of the case was that the evidence was consistent with an alternative suspect committing the murder as this suspect was at the scene with a similar firearm.

Did the court err in making comments bolstering the state’s case that implied this suspect could have been fully immune from a murder prosecution had this suspect confessed to this murder while pleading guilty in federal court to possessing that firearm?

STATEMENT OF THE CASE.....	1
----------------------------	---

SUMMARY OF ARGUMENT.....	6
--------------------------	---

STATEMENT REGARDING ORAL ARGUMENT.....	6
--	---

ARGUMENT.....	6
---------------	---

CONCLUSION.....	9
-----------------	---

TABLE OF AUTHORITIES

CASES

<i>State v. Burton</i> , 163 W.Va. 40, 254 S.E.2d 129 (1979)	6
<i>State v. Wotring</i> , 167 W.Va 104, 393 S.E.2d 182 (1981)	6
<i>State v. Thompson</i> , 220 W.Va. 398, 647 S.E.2d 834 (1995)	7
<i>State v. Crockett</i> , 164 W.Va. 435, 265 S.E.2d 268 (1979)	7
<i>State v. Keaton</i> , 215 W.Va. 376, 599 S.E.2d 799 (2004)	7,8
<i>State v. Austin</i> , 93 W.Va. 376, 599 S.E 607 (1923)	8

ASSIGNMENT OF ERROR

In Petitioner's murder trial the defense theory of the case was that the evidence was consistent with an alternative suspect committing the murder as this suspect was at the scene with a similar firearm.

Did the court err in making comments bolstering the state's case that implied this suspect could have been fully immune from a murder prosecution had this suspect confessed to this murder while pleading guilty in federal court to possessing that firearm?

STATEMENT OF THE CASE

Shortly after a shooting at Remy's bar in Huntington, West Virginia, a man was arrested.¹ This man was in possession of a nine-millimeter caliber pistol.² A nine-millimeter pistol was believed to be used in this shooting.³ This man also during a federal plea hearing admitted to being in Remy's bar when the shooting occurred.⁴ This man also on the night of the shooting tested positive for gunshot residue.⁵ This man was not Daniel Battle, the petitioner in this case. This man was Jordan Jeter.⁶ The pistol was not examined by an expert to determine if it were the murder weapon,⁷ and his picture was never shown to potential witnesses as part of a photo array.⁸

The State's case that Mr. Battle was the shooter at the core consisted of four witnesses along with law enforcement and expert testimony. Michael Beatty was working as a bouncer the night of the shooting.⁹ He testified that he saw Mr. Battle leaving the bar and that he engaged in a

¹ A.R. 0165

² A.R. 0167

³ A.R. 0509

⁴ A.R. 0187

⁵ A.R. 0614-0615

⁶ A.R. 0168

⁷ A.R. 0554-0555

⁸ A.R. 0444

⁹ A.R. 0205

brief exchange of gunfire with Mr. Battle.¹⁰ He did not testify that he saw the shooting, just that he identified the person with whom he had exchanged gunfire.¹¹

Jazmin Hicks was working as a bartender the night of the shooting.¹² She claimed to not remember seeing the shooter given the amount of time that had passed.¹³ She did acknowledge that she picked Mr. Battle's picture out of a photo array but at trial was noncommittal as to whether she saw Mr. Battle shoot the victim or whether she just identified him as being at the scene.¹⁴

Stefan Marino was working as a bouncer the night of the shooting.¹⁵ He claimed to have previously resided with Mr. Battle and that he witnessed the shooting and identified Mr. Battle as the shooter.¹⁶ However, the night of the shooting he acknowledged talking to the police and claimed to not remember what he said to them.¹⁷ Two months later in Wayne County Mr. Marino was arrested for possession of over a pound of marijuana and charged with a felony.¹⁸ These charges were dismissed after he reached out to police to identify Petitioner as the shooter.¹⁹

Anthony Stevens was an inmate at Western Regional jail with Petitioner leading up to the trial.²⁰ He claimed that Petitioner told him the Petitioner had shot and killed someone in a bar.²¹ He testified in exchange for reduced charges.²²

¹⁰ A.R. 0247

¹¹ A.R. 0262, 0267

¹² A.R. 0272

¹³ A.R. 0284

¹⁴ A.R. 0278-0284

¹⁵ A.R. 0303

¹⁶ A.R. 0312

¹⁷ A.R. 0336

¹⁸ A.R. 0334

¹⁹ A.R. 0332

²⁰ A.R. 0369

²¹ A.R. 0373

²² A.R. 368-9

The state also presented testimony about Jordan Jeter. Ronnie Lusk, a sergeant with the Huntington Police testified that he heard shots fired in the vicinity of Remy's bar.²³ He then saw Mr. Jeter running and discarding a metallic object.²⁴ Sergeant Lusk then, believing that object to be a firearm, detained Mr. Jeter.²⁵ The object turned out to be a nine millimeter caliber pistol.²⁶ This led to Federal criminal charges against Mr. Jeter for being a felon in possession of a firearm.²⁷

On cross examination, defense counsel entered into evidence the federal criminal complaint charging Mr. Jeter.²⁸ The defense also entered into evidence the stipulation of facts signed by Mr. Jeter as part of his guilty plea.²⁹ This included an admission of running out of Remy's bar with a firearm.³⁰

During re-direct examination the state appeared to be eliciting testimony suggesting that had Mr. Jeter shot the victim he would have been legally incentivized to include shooting the victim in his stipulation; that he by doing so would immunize him from ever being prosecuted for the shooting.³¹ Defense counsel objected in an attempt to forestall such testimony.³² While this objection did largely prevent the witness from testifying about immunity, the trial judge in handling this objection made comments in the following exchange that on their face would support the idea that Mr. Jeter could have immunized himself.³³

²³ A.R. 0162

²⁴ A.R. 0165

²⁵ A.R. 0165

²⁶ A.R. 0167

²⁷ A.R. 0170

²⁸ A.R. 0186

²⁹ A.R. 0187

³⁰ A.R. 0187-0188

³¹ A.R. 0199

³² A.R. 0199

³³ A.R. 0200

MS. NEAL: Okay. Would you read paragraph number 8?

A. Use of immunity, unless the agreement becomes void due to a violation of any of its terms by Mr. Jeter and except expressly provided in paragraph 10 below, nothing contained -- I can't see that.

Q. I'm sorry.

A. In any statement or testimony provided by him pursuant to this agreement or any evidence developed therefrom will be used against him directly or indirectly in any further criminal prosecution or in determining the application guideline range under the federal sentencing guidelines.

Q. So nothing that he said was going to be used to prosecute him criminally; correct?

A. That's correct.

Q. Okay. So, had he shot and killed Mr. Jackson-

MR. BOOTEN: Your Honor, I want to object at this point.

THE COURT: Wait a minute. Ask your question, and then you can make an objection. Go ahead.

MS. NEAL: According to this agreement, it says he wasn't going to be prosecuted; is that correct?

A. That's correct.

MR. BOOTEN: Now may I object, Your Honor?

THE COURT: What is your objection?³⁴

(Defense counsel then went on a lengthy explanation about the absurdity of where it appeared the prosecution was going, that Mr. Jeter could have immunized himself from all criminal liability if he confessed, and the court overruled the objection)³⁵

THE COURT: I don't know how the federal system works, but she is reading from the agreement. I'm going to overrule your objection. You can bring somebody if you want to.

MR. BOOTEN: I will.

THE COURT: All right.

MS. NEAL: And there's another section, so let me -

THE COURT: Are you claiming under this agreement that if he admitted that he committed a murder, that he would have immunity? Is that what you're saying?

MS. NEAL: I'm asking if that is what this is.

THE COURT: So he could have confessed and not been held liable.³⁶

³⁴ A.R. 0198-0199

³⁵ A.R. 0199-0200

³⁶ A.R. 0200

After this exchange the prosecution moved on to pointing out that Mr. Jeter swore to be truthful and didn't include shooting anyone in his statement.³⁷

The Defense presented three witnesses. Two were inmates at the Western Regional Jail who were in the same housing pod as Mr. Battle. Kevin Fox testified that given the circumstances it was implausible that Mr. Battle confessed a murder to Anthony Stevens both because of the racially segregated nature of their surroundings and that it was uncommon for those awaiting trial to discuss their case because of the danger of another inmate using that information to bargain with the state.³⁸ Adrian Patterson likewise was housed with Mr. Battle.³⁹ He likewise testified about the racially segregated nature of the pod and that Mr. Battle was not open about the details of his charges.⁴⁰

The third witness was Nicole MacEwan, a gunshot residue expert.⁴¹ She testified that there was a test finding gunshot residue on the hand of Mr. Jeter.⁴² Also that the data sheet submitted to her indicated that the discharge in question was at Remy's Bar at roughly the same time as the shooting.⁴³

The State called Jordan Jeter as an undisclosed rebuttal witness.⁴⁴ He testified to being at Remy's Bar with a handgun the night of the shooting.⁴⁵ He claimed to be at the bar only briefly, that he did not shoot anyone, and that he didn't witness a shooting.⁴⁶

³⁷ A.R. 0200-1

³⁸ A.R. 0577

³⁹ A.R. 0585

⁴⁰ A.R. 0588

⁴¹ A.R. 0601

⁴² A.R. 0614-0615

⁴³ A.R. 609

⁴⁴ A.R. 0623-0625

⁴⁵ A.R. 0626-0627

⁴⁶ A.R. 0627

The jury found Petitioner guilty of First Degree Murder and after a hearing declined to grant mercy.⁴⁷ Petitioner was then sentenced to life in prison without the possibility of parole.⁴⁸ This appeal followed.

SUMMARY OF ARGUMENT

The trial court bolstered the credibility of the state's case by making comments from the bench in the presence of the jury that had an alternative suspect claimed to have murdered the victim that suspect would have been immune from prosecution.

STATEMENT REGARDING ORAL ARGUMENT

The assignments of error involve settled law and as such a Rule 19 argument is appropriate.

ARGUMENT

Petitioner is appealing his First Degree Murder conviction and sentence of life without parole. The trial court made improper comments about immunity that bolstered the state's case thus depriving Petitioner of a fair trial.

"[A] claim of improper trial court intervention must on occasion be viewed more broadly than from the narrow perspective of the incident itself."⁴⁹ Comments about material issues of credibility are reversible error.⁵⁰ When a defendant on appeal alleges a trial court's comments prejudiced the defendant, the reviewing court is to review the record to determine whether these

⁴⁷ A.R. 847-849

⁴⁸ A.R. 849

⁴⁹ *State v. Burton*, 163 W.Va. 40, 54, 254 S.E.2d 129, 138 (W. Va. 1979).

⁵⁰ *See State v. Wotring*, 167 W.Va. 104, 116, 279 S.E.2d 182, 190 (1981) ("[A] comment which does not go to a material issue bearing on the witness' credibility will not result in reversible error").

comments “became a factor in the determination of the jury so that the defendant did not receive a fair trial.”⁵¹

In a criminal trial “the court should be extremely cautious not to intimate in any manner, by word, tone, or demeanor, his opinion upon any fact in issue.”⁵² These comments from the trial judge carry serious danger of influencing the jury as the trial judge “occupies a unique position in the minds of the jurors.”⁵³ The motive or purpose of a trial court’s comments are not relevant and “[w]e need only to view the judge’s conduct from the perspective of the members of the jury.”⁵⁴

The trial judge in this case made comments that on their face appears to support the implication by the state that Jordan Jeter could have insulated himself from possible criminal liability by admitting to have committed a murder while pleading guilty to a distinctly different crime. This is an absurd notion, but popular culture is rife with legal theories and myths equally preposterous.⁵⁵ Additionally, “[e]very practitioner knows how eagerly alert jurors are to every utterance from the bench, and how sensitive is the mind of the juror to the slightest judicial expression.”⁵⁶

Petitioner’s theory of defense included that the evidence was consistent with Jordan Jeter having committed the murder.⁵⁷ A big part of this was that Jordan Jeter, while pleading guilty to

⁵¹ *State v. Thompson*, 220 W.Va. 398, 403, 647 S.E.2d 834, 839 (2007). *See also* *Burton*, 163 W.Va. at 54, 254 S.E.2d at 138 (“Because this type of alleged error arises in the particular factual context of the individual case, it is often difficult to find precedent that is directly analogous. This has resulted in reliance on broad general statements...”).

⁵² *State v. Crockett*, 164 W.Va. 435, 442, 265 S.E.2d 268, 272 (1979).

⁵³ *See State v. Keaton*, 215 W.Va. 376, 382 599 S.E.2d 799, 805 (2004) (citing Syllabus Point 4, *State v. Wotring*, 167 W.Va. 104, 279 S.E.2d 182 (1981)).

⁵⁴ *State v. Thompson*, 220 W.Va. at 411 647 S.E.2d at 847 (2007).

⁵⁵ For example, in the 1999 film “Double Jeopardy” the main character is wrongfully convicted of the murder of her husband. She eventually is paroled and discovers her husband is still alive. The premise of the movie is that if she were to then kill her husband that she could not be convicted of the murder based on her already being tried for murdering her husband.

⁵⁶ *Thomson*, 220 W.Va. at 410, 647 S.E.2d at 846.

⁵⁷ A.R. 0699

a federal firearm charge, admitted to being in Remy's bar the night of the murder with a firearm the same caliber of that alleged to be the murder weapon.⁵⁸ Jordan Jeter did not include in his proffer that he also committed a murder that night.⁵⁹ When the state appeared to be building towards the implication that such a proffer would have literally allowed him to get away with murder ("Okay. So, had he shot and killed Mr. Jackson-")⁶⁰, the defense objected and during this sequence the trial judge unfortunately made a comment that on its face cemented the farfetched legal theory hinted at by the state's questioning ("So he could have confessed and not been held liable.").⁶¹

While it is likely that this specific comment was inadvertent and made in the context of the court trying to comprehend the point the state was trying to make, the motivation or purpose does not matter.⁶² What matters is what a jury of untrained laypersons would have understood from that comment, and if Jordan Jeter could have completed the perfect crime by strategically admitting to a murder then a jury could believe it critical that he did not do so.⁶³

This prevented Petitioner from receiving a fair trial. That Jordan Jeter could have committed this murder was a cornerstone of Petitioner's argument for reasonable doubt. The Court effectively crippled the defense by creating the implication that Jordan Jeter would have had nothing to lose and everything to gain by confessing to the killing.

⁵⁸ A.R. 0701

⁵⁹ A.R. 0201

⁶⁰ A.R. 0198

⁶¹ A.R. 0200

⁶² See *State v. Keaton*, 215 W.Va. 376, 383, 599 S.E.2d 799, 806 (2004) ("[T]he judge's inadvertent but prejudicial remarks could have caused a substantial negative feeling towards the appellant by one or more jurors").

⁶³ See *State v. Austin*, 93 W.Va. 704, 714, 177 S.E. 607, 611 (1923) ("such judicial influence should be studiously guarded against."

CONCLUSION

The trial judge by succinctly summing up a farcical line of questioning effectively endorsed that line of questioning and this prevented Daniel Battle from receiving a fair trial as it crippled his theory of the case. His conviction must be reversed and a new trial ordered.

Respectfully submitted,
Daniel Battle,
By Counsel

/s/ Robert C. Catlett

Robert C. Catlett
W. Va. State Bar No. 8522
Robert C. Catlett Law Office
P.O. Box 572
Wellsburg, WV 26070
(304) 374-3676
RC@Catlettlawoffice.net

Counsel for Petitioner