

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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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.

**Respondent's Reply Brief**

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## REPLY ARGUMENT

The plain error analysis in Respondent's brief rests upon the assertion that defense counsel failed to object to the manner in which the trial court ruled on defense counsel's clearly stated objection.<sup>1</sup> The requirement that trial counsel take exception to a ruling on an objection was specifically disclaimed by West Virginia Rule of Criminal Procedure 51.

Defense counsel objected to testimony.<sup>2</sup> As part of ruling on that objection, the trial court made the comments<sup>3</sup> alleged in petitioner's brief to be prejudicial to the defense case. There was no need to again object to a ruling on an objection. A plain error analysis is not appropriate and as a result the Respondent's whole brief rests on a faulty premise and the analysis therein inapplicable.

Beyond that, the Respondent generally misframes the issue in this appeal as one of express judicial bias. Whether the trial court was actually biased or not is irrelevant, as "We do not believe that it is necessary to pry into the mind of the trial judge or to speculate as to his motives in asking questions or making comments during the trial. We need only to view the judge's conduct from the perspective of the members of the jury."<sup>4</sup> That lawyers reading a cold record would assume the trial court was not acting out of bias is irrelevant. All that matters is the potential effect on the jurors.

This is not an issue of a trial judge exhaustively questioning witnesses with a clear pattern of bias as in *Thompson*.<sup>5</sup> The facts here are more similar to that in *Keaton* where poorly

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<sup>1</sup> Respondent's Brief at 12

<sup>2</sup> A.R. 0198-0199

<sup>3</sup> "Comments" meaning the entire exchange that contextualized and led to the ultimate restatement, or comment, that Mr. Jeter could have confessed and not been held liable for murder.

<sup>4</sup> *State v. Thompson*, 220 W.Va. 398, 411, 647 S.E.2d 834, 837 (2007)

<sup>5</sup> See generally *Id.* at 411, 647 S.E.2d at 847 (summarizing the extent of the trial court's questioning).

chosen words from a trial court were held to require reversal of a conviction.<sup>6</sup> However, as this Court has observed "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..."<sup>7</sup> No case fits the issues here perfectly, but the broad general concepts contained in these three cases combined establish that the core question is whether a jury would be prejudiced by the comments of a trial court no matter the intention of that trial court. Here, the trial court made a shambles of the defense case.

The Respondent emphasizes that Mr. Jeter testified and "adamantly and emotionally denied any involvement in the case."<sup>8</sup> Which is the problem. With the seed sown that Mr. Jeter would have no reason to lie about committing a murder his denials carry far more punch than they would otherwise. As plain error analysis is inappropriate the proper standard here is whether the trial court's comments "became a factor in the determination of the jury so that the defendant did not receive a fair trial."<sup>9</sup>

The response brief claims that the jury "[saw] him on video committing this cold-blooded killing."<sup>10</sup> This is a distortion of the evidence. The response brief acknowledges that the image of the actual shooter was not clearly identifiable as the Petitioner.<sup>11</sup> Only Stephan Marino testified in court that the shooter was Petitioner, and Mr. Marino agreed to testify after being arrested for possession of over a pound of marijuana.<sup>12</sup> There was evidence establishing that Petitioner was at Remy's bar, but it is undisputed that the same could be said for Mr. Jeter.

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<sup>6</sup> See generally *State v. Keaton*, 215 W.Va. 376, 383, 599 S.E.2d 799, 806 (2004)

<sup>7</sup> *State v. Burton*, 163 W.Va. 40, 54, 254 S.E.2d 129, 138 (1979)

<sup>8</sup> Respondent's Brief at 19

<sup>9</sup> *Thompson*, 220 W.Va at 403, 647 S.E.2d at 839.

<sup>10</sup> Respondent's Brief at 19

<sup>11</sup> *Id.* at 2

<sup>12</sup> A.R. 0312, 0332, 0334, 0336.

## CONCLUSION

The trial court's comments bolstered the credibility of Mr. Jeter's denial. As Petitioner's theory of the case was that Mr. Jeter committed the murder these comments prevented Petitioner from fully defending himself. A one sided trial is not a fair trial.

Respectfully submitted,  
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By Counsel

/s/ Robert C. Catlett

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