IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2026 Term

No. 23-511

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
Plaintiff Below, Respondent,

v.

DANIEL MARCUS BATTLE,
Defendant Below, Petitioner.

Appeal from the Circuit Court of Cabell County
Honorable Alfred E. Ferguson, Judge
Case No. 18-F-140

AFFIRMED

Submitted: September 22, 2026
Filed: November 12, 2026

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JUSTICE WOOTON delivered the Opinion of the Court.

SYLLABUS BY THE COURT

1. "'To trigger application of the 'plain error' doctrine, there must be (1) an error; (2) that is plain; (3) that affects substantial rights; and (4) seriously affects the fairness, integrity, or public reputation of the judicial proceedings.' Syl. Pt. 7, *State v. Miller*, 194 W. Va. 3, 459 S.E.2d 114 (1995)." Syl. Pt. 1, *State v. Lewis*, 251 W. Va. 770, 916 S.E.2d 612 (2025).

2. "'The judge of the court when engaged in the trial of a case before a jury should studiously abstain from indicating by word, gesture or otherwise his personal views upon the weight of the evidence, or the credibility or incredibility of the witnesses, or the extent of the damages sued for, thereby to invade the province of the jurors, the proper triers of the facts.' Syl. Pt. 1, *Dye v. Rathbone*, 102 W. Va. 386, 135 S.E. 274 (1926)." Syl. Pt. 2, *Alexander ex rel. Ramsey v. Willard*, 208 W. Va. 736, 542 S.E.2d 899 (2000).

3. "A trial judge in a criminal case has a right to control the orderly process of a trial and may intervene into the trial process for such purpose, so long as such intervention does not operate to prejudice the defendant's case. With regard to evidence bearing on any material issue, including the credibility of witnesses, the trial judge should not intimate any opinion, as these matters are within the exclusive province of the jury." Syl. Pt. 6, in part, *State v. Thompson*, 220 W. Va. 398, 647 S.E.2d 834 (2007).

WOOTON, Justice:

Petitioner Daniel Marcus Battle ("the petitioner") appeals from his conviction in the Circuit Court of Cabell County on a single count of murder in the first degree without a recommendation of mercy. He raises one issue for resolution by this Court: whether ten words spoken by the trial judge during the trial, and within the hearing of the jury, were so prejudicial as to deprive him of his constitutional right to a fair trial.

Following careful review of the parties' briefs and oral arguments, the appendix record including the entire trial transcript, and the applicable law, we affirm.

I. Facts and Procedural Background

In the early morning hours of February 11, 2018, law enforcement officers were called to the scene of a shooting at Rehm's Bar, a nightclub located in Huntington, West Virginia. They found the victim, Brent Jackson ("Mr. Jackson"), lying face down on the stage near the dance floor and "barely alive"; despite the officers' attempts to provide emergency aid before Mr. Jackson could be transported by ambulance, he died at the hospital as a result of multiple gunshot wounds.

Immediately after the shooting, two men ran out of the bar: the petitioner, who got into a car and thereafter exchanged gunfire with the bar's bouncer, who had run outside yelling for the petitioner to stop; and a second man, Jordan Jeter ("Mr. Jeter"), who was observed by Huntington Police Sergeant Ronnie Lusk ("Sgt. Lusk") to be running

southwest across 4th Avenue and throwing "a metallic object in front of a [parked] Blazer[.]" Mr. Jeter obeyed the officer's shouted command that he get down, and thereafter he was taken into custody. The "metallic object," which turned out to be a 9-millimeter Taurus Model PT111 G2 firearm, was retrieved.

At the police station, Mr. Jeter tested positive for gunshot residue ("GSR"), a fact that was emphasized and argued by the petitioner at trial. However, because the police were informed that Mr. Jeter's firearm could not have been the murder weapon,[1] they eliminated him as a suspect immediately, did not send his gun to the lab for forensic testing, and focused entirely on building a case against the petitioner, which again was a fact emphasized and argued by the petitioner.

At trial, the State put on testimony and evidence which, if believed by the jury, was sufficient to establish the petitioner's guilt.[2] The jury was shown footage of the shooting from the bar's surveillance cameras, and although the petitioner could not be definitively determined to be the shooter due to the poor quality of the images, the pictures on the screen showed a man fitting his general appearance and wearing clothing that matched the clothing he was wearing in other footage taken that same evening. Stefan

[1]The State's ballistic expert testified that the general characteristics of a 9-millimeter Taurus Model PT111 G2 firearm are inconsistent with the rifling characteristics of bullets found at the murder scene.

[2] The petitioner does not argue otherwise; rather, his contention is that the jury was necessarily swayed in its credibility determinations and its overall evaluation of the evidence by what he deems to have been the trial judge's implicit endorsement of Mr. Jeter's innocence. *See infra*.

Marino, a bouncer at the bar, testified that he witnessed the petitioner shoot the victim, then leave the area for a short time after which he returned and shot the victim several more times. Michael Beatty, another bouncer, testified that he saw the petitioner fleeing the bar, chased after him, and exchanged gunfire with him.[3] Jazmin Hicks, a bartender, identified the petitioner as the shooter when shown a photo array. Anthony Stephens, a jail inmate who agreed to provide information in return for favorable treatment in the resolution of his own pending charges, testified that while the petitioner was in jail he boasted he had shot a man because "he had got into it with a guy at the bar who put his nose in his business[.]"

The petitioner's defense was that Jordan Jeter was the shooter. In that regard, defense counsel vigorously cross examined the three eyewitnesses and the jail informant in an attempt to show that they were unworthy of belief;[4] that the surveillance footage of the bar was too dark and grainy to establish that the petitioner was the shooter; and that the police were negligent in their failure to follow up with any further investigation of Mr. Jeter despite the gunshot residue on his sleeve, his flight from the bar immediately after the shooting, and his attempt to dispose of his weapon. The petitioner called two witnesses to

[3] Mr. Beatty's gun was subsequently tested, and it was determined that his gun was not the murder weapon.

[4] Counsel established that Mr. Marino did not identify the petitioner as the shooter until after he (Mr. Marino) had been arrested on marijuana charges two months later – charges which were subsequently dismissed. Prior to identifying the petitioner from the photo array, Ms. Hicks had initially claimed that she didn't remember seeing the shooter. Mr. Stephens was testifying in exchange for a very favorable plea deal that would dismiss his charges of burglary and forgery, allow him to plead guilty to a misdemeanor, and permit him to be released on bail.

rebut the testimony of Mr. Stephens; these witness, jail inmates, asserted that the petitioner did not and would never have made a "jailhouse confession" such as that described by Mr. Stephens. The petitioner's final witness was a ballistic expert whose purpose was to "hammer home" the fact that Mr. Jeter had GSR on his hand. Unfortunately for the petitioner, during cross examination his expert conceded that GSR is "easily transferrable" and that Mr. Jeter may have tested positive by virtue of having been "in the environment where [GSR] was present, or handling an item with [GSR] on it." Further, although the video footage from the bar clearly showed that the shooter held the gun in his right hand while firing it at the victim, Mr. Jeter is left-handed and the GSR was found on his left hand.

The State did not call Mr. Jeter as a witness in its case in chief, which sets the scene for the single assignment of error raised by the petitioner on appeal. The State established that prior to the petitioner's trial, Mr. Jeter had been indicted on both state and federal charges of being a prohibited person in possession of a weapon,[5] specifically, the 9mm Taurus. The state charges were ultimately dismissed pursuant to a plea deal Mr. Jeter made in federal court which required him to provide a stipulation of facts regarding the night of the shooting and to testify against the petitioner. The deal also provided that Mr. Jeter would have use immunity for any criminal acts disclosed in the stipulation of facts.[6]

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[5] *See* W. Va. Code § 61-7-7(a)(1); 18 U.S.C. § 922(g)(1).

[6] An individual who has been given use immunity may be prosecuted for the crime which was the subject of his or her compelled, self-incriminating testimony, but only if all of the evidence used against him was independently derived. *See, e.g.*, *Kastigar v. United*

In the absence of Mr. Jeter, the prosecutor sought to establish through the testimony of Sgt. Lusk that if Mr. Jeter had confessed in his stipulation of facts to killing the victim, the use immunity contained in the plea deal would have protected him from prosecution for the murder. This, in turn, would support an inference that Mr. Jeter's denial that he shot the victim was credible since he wouldn't have suffered any consequences in admitting it.

The following is a verbatim account of what ensued:

> DEFENSE COUNSEL: 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.
>
> PROSECUTOR: According to this agreement, it says he wasn't going to be prosecuted; is that correct?
>
> WITNESS: That's correct.
>
> DEFENSE COUNSEL: Now may I object, Your Honor?
>
> THE COURT: What's your objection?
>
> DEFENSE COUNSEL: I'm a federal attorney. I can bring the U.S. attorney [sic] over here. The statement attached there is a stipulation of facts as to what he is being prosecuted to. The paragraph that they read from deals with statements he made to law enforcement officers, if he made any, that might incriminate him outside of the stipulation of facts. If he hadn't entered into that stipulation of facts, the judge couldn't accept his guilty plea, the judge couldn't sentence him. The paragraph she is reading, she is trying to allude to that he

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States, 406 U.S. 441, 453 (1972) ("The privilege [against self-incrimination] has never been construed to mean that one who invokes it cannot subsequently be prosecuted. Its sole concern is to afford protection against being 'forced to give testimony leading to the infliction of penalties affixed to . . . criminal acts.' Immunity from the use of compelled testimony, as well as evidence derived directly and indirectly therefrom, affords this protection.") (citation omitted)).

> can't be prosecuted, tell me if I'm wrong, prosecuted for the stipulation of facts. A stipulation of facts is what supports the plea agreement. Your Honor, if I have to, I will bring the U.S. attorney over here to explain this, but she is butchering how the federal system works.
>
> 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.
>
> DEFENSE COUNSEL: I will.
>
> THE COURT: All right.
>
> PROSECUTOR: 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?
>
> PROSECTOR: I'm asking if that is what this is.
>
> THE COURT: **So he could have confessed and not been held liable.**
>
> PROSECUTOR: I'm asking that question for anything that he says.

(Emphasis added).

At this point the State seems to have decided that further discussion wasn't worth the candle; rather than pursue her truncated line of questioning about use immunity, she merely questioned Sgt. Lusk as to whether the plea agreement required Mr. Jeter to be "forthcoming and truthful." The witness responded in the affirmative and testified that Mr. Jeter had admitted to leaving the bar while in possession of a firearm but not to having shot and killed anybody.

Although the subject of Mr. Jeter's use immunity was seemingly concluded at that point, it arose again when the State called Mr. Jeter as a rebuttal witness after the

petitioner had rested his case in chief. Mr. Jeter testified that he did not kill Mr. Jackson, and on cross examination further testified it was his understanding of the plea agreement that he could have been prosecuted if he admitted committing the crime and that there is no statute of limitations on murder.

In its closing arguments, the State made no mention of whether Mr. Jeter's plea agreement did or did not immunize him from prosecution. In his closing argument, defense counsel emphasized Mr. Jeter's testimony that he could be prosecuted for the murder notwithstanding the plea agreement – a contention the State never attempted to rebut.

The jury returned a verdict of guilty of first-degree murder, and following a bifurcated proceeding held pursuant to *State v. LaRock*, 196 W. Va. 294, 470 S.E.2d 613 (1996), it did not recommend mercy. This appeal followed, with the petitioner raising a single 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 [circuit] 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?"

II. Standard of Review

In this case, the petitioner did not object to the circuit court's comment, did not ask for a limiting instruction to the jury, and did not move for a mistrial. Therefore, we

review the petitioner's single assignment of error pursuant to the plain error doctrine. "'To trigger application of the 'plain error' doctrine, there must be (1) an error; (2) that is plain; (3) that affects substantial rights; and (4) seriously affects the fairness, integrity, or public reputation of the judicial proceedings.' Syl. Pt. 7, *State v. Miller*, 194 W. Va. 3, 459 S.E.2d 114 (1995)." Syl. Pt. 1, *State v. Lewis*, 251 W. Va. 770, 916 S.E.2d 612 (2025); *see also State v. Keaton*, 215 W. Va. 376, 380, 599 S.E.2d 799, 803 (2004) ("The plain error doctrine . . . enables this Court to take notice of error, including instructional error occurring during the proceedings, *even though such error was not brought to the attention of the trial court.* However, the doctrine is to be used sparingly and only in those circumstances *where substantial rights are affected,* or the truth-finding process is substantially impaired, or a miscarriage of justice would otherwise result.") (citing Syl. Pt. 4, in part, *State v. England,* 180 W. Va. 342, 376 S.E.2d 548 (1988)).

III. Discussion

This Court has consistently cautioned trial judges, in a long line of cases dating back more than one hundred years, that

> [t]he judge of the court when engaged in the trial of a case before a jury should studiously abstain from indicating by word, gesture or otherwise his personal views upon the weight of the evidence, or the credibility or incredibility of the witnesses, or the extent of the damages sued for, thereby to invade the province of the jurors, the proper triers of the facts. Syl. Pt. 1, *Dye v. Rathbone*, 102 W. Va. 386, 135 S.E. 274 (1926).

Syl. Pt. 2, *Alexander ex rel. Ramsey v. Willard*, 208 W. Va. 736, 542 S.E.2d 899 (2000); *see also* Syl. Pt. 6, *State v. Thompson*, 220 W. Va. 398, 647 S.E.2d 834 (2007) ("A trial judge in a criminal case has a right to control the orderly process of a trial and may intervene into the trial process for such purpose, so long as such intervention does not operate to prejudice the defendant's case. With regard to evidence bearing on any material issue, including the credibility of witnesses, the trial judge should not intimate any opinion, as these matters are within the exclusive province of the jury.") (citing Syl. Pt. 4, *State v. Burton*, 163 W. Va. 40, 254 S.E.2d 129 (1979)).

Accordingly, this Court has not hesitated to reverse a conviction where a trial judge's words and/or actions have resulted in unfair prejudice to a defendant. *See, e.g.*, *Thompson*, 220 W. Va. at 412, 647 S.E.2d at 848 ("[W]e find that the judge in this case abandoned his role of impartiality and neutrality and that his role in both questioning witnesses and making comments to aid the prosecuting attorney in the presentation of the State's case seriously affected the fairness, integrity, and public reputation of the judicial proceedings. We also find that the judge's conduct in this case weighed in favor of the State's case to the point that the judge's partiality became a factor in the determination of the jury to such an extent that the appellant did not receive a fair trial."); *State v. Eldredge*, 251 W. Va. 702, 714, 916 S.E.2d 121, 133 (2025) ("Whether these questions [posed by the judge to a witness] reflected partiality or were an inadvertent indulgence of the trial court's own curiosity or surprise is of no moment. These questions clarified nothing and, as petitioner argues, expressed to the jury both 'moral condemnation' and suspicion about

R.E.'s testimony. We therefore find that the trial court's examination of R.E. was erroneous[.]"); *State v. Leep*, 212 W. Va. 57, 61, 569 S.E.2d 133, 137 (2002) ("This Court has consistently required trial judges not to intimate an opinion on any fact in issue in any manner. In criminal cases, we have frequently held that conduct of the trial judge which indicates his opinion on any material matter will result in a guilty verdict being set aside and a new trial awarded.") (citing Syl. Pt. 4, in part, *State v. Wotring,* 167 W. Va. 104, 279 S.E.2d 182 (1981)).

In this case, the trial judge's comment occurred during a colloquy between the judge and counsel following defense counsel's objection to a question posed by the prosecutor to Sgt. Lusk. It is apparent that the judge was first attempting to ascertain exactly what the prosecutor was asking the witness: "Are you claiming under this agreement that if he [Mr. Jeter] admitted that he committed a murder, that he would have immunity? Is that what you're saying?" The prosecutor responded that yes, this was what she was asking the witness. The petitioner argues that the trial judge's next words, "[s]o he could have confessed and not been found liable[,]" would necessarily have been understood by the jury as judicial affirmation of the State's theory: that Mr. Jeter's denial that he committed the murder must be true because his admission to committing the murder would have had no consequence. The petitioner further argues that this is critical because, as this Court has noted, "[t]he trial judge in a criminal trial must consistently be aware that he occupies a unique position in the minds of the jurors and is capable, because of his position, of unduly influencing jurors in the discharge of their duty as triers of the facts." *See State v. Rogers*,

215 W. Va. 499, 501, 600 S.E.2d 211, 213 (2004) (citing *Wotring*, 167 W. Va. at 104, 279 S.E.2d at 184, Syl. Pt. 4, in part); *see also State v. Austin*, 93 W. Va. 704, 117 S.E. 607, 611 (1923) ("It has long been recognized that even a slight remark, apparently innocent in its language, may, when uttered by the court, have a decided weight in shaping the opinion of the jury. Vested as he is with superior authority, disinterested, and possessing experience not available to the ordinary layman, jurors, as a rule, are anxious to catch his view, upon which to found their conclusions. As the jurors should be the triers of the facts, such judicial influence should be studiously guarded against.").

The petitioner's impassioned arguments notwithstanding, we are mindful that given the procedural posture of this appeal, specifically, the petitioner's failure to preserve this issue in circuit court, he must meet each of the four elements necessary to trigger the plain error doctrine in order to obtain appellate relief. Accordingly, we will assume without deciding that the petitioner has satisfied the first two elements of the plain error test – that the circuit court's words amount to error and that such error was plain – and proceed to examine the entire record in order to determine whether the putative error prejudiced the petitioner's right to a fair trial before an unbiased judge, adversely affected his substantial rights, and seriously affected the fairness, integrity, or public reputation of the judicial proceedings. *See Miller*, 194 W. Va. at 6, 459 S.E.2d at 117, Syl. Pt. 9 ("Assuming that an error is 'plain,' the inquiry must proceed to its last step and a determination made as to whether it affects the substantial rights of the defendant. To affect substantial rights means the error was prejudicial. It must have affected the outcome of the proceedings in the circuit

court, and the defendant rather than the prosecutor bears the burden of persuasion with respect to prejudice."); *see also id*. at 18, 459 S.E.2d at 129 (explaining that "[i]nformally, to affect substantial rights means that the error was prejudicial. It must have affected the outcome of the proceedings in the circuit court. In addition, '[i]t is the defendant rather than the [prosecutor] who bears the burden of persuasion with respect to prejudice.'") (quoting *United States v. Olano*, 507 U.S. 725. 734 (1993)). These determinations all rely upon a common nucleus of fact.

The facts here are indisputable. First, although we are mindful that "a prejudice inquiry is not confined to the degree of intrusion by the trial court's questioning, but rather the impact[,]" *Eldredge*, 251 W. Va. at 714, 916 S.E.2d at 133, it must be noted that the ten words at issue in this case occurred during a trial that lasted for three days and featured the testimony of fifteen witnesses. Second, it cannot be said that the disputed issue in this case – the effect of Mr. Jeter's use immunity – was critical, as neither the prosecutor not defense counsel appeared to attribute much, if any, importance to it after their colloquy with the court had concluded. The petitioner's counsel did not object, did not move for a mistrial, and did not follow through with his commitment to call a witness to explain how use immunity actually works. Similarly, the prosecutor made no attempt to capitalize on what the petitioner claims to be the judge's tacit adoption of her position; she did not follow up with the witness, Sgt. Lusk, in order to lay a foundation for an inference that Mr. Jeter had nothing to lose by confessing, and never even mentioned the issue or the inference in her closing argument to the jury. Additionally, the inference itself is a weak one at best, as there is nothing in the record to suggest that Mr. Jeter *would* have confessed even if he

thought he *could* do so without consequence. Indeed, Mr. Jeter testified that his understanding of his immunity deal was that he could be prosecuted if he had committed the murder, which he vehemently denied having done. And finally, the trial judge specifically instructed the jury that "[n]othing I said during this trial, and nothing I say in these instructions, and nothing I said during the trial is to be taken as an indication that I have any opinion about the facts of this case or what that opinion is."

Our review of the entire trial transcript compels a finding that the judge's words were not prejudicial to the petitioner's right to a fair trial. *Thompson*, 220 W. Va. at 400–01, 647 S.E.2d at 836–37. Given that the State's evidence against the petitioner can fairly be deemed overwhelming, that the judge's fleeting comment was relevant only to a single weak credibility inference the State sought to establish through the testimony of Sgt. Lusk, and that the State didn't attempt to "capitalize" on the judge's words in any way, dropping its attempt to establish the inference through the witness and omitting any reference to it during closing argument, we find that the judge's words did not adversely affect the petitioner's substantial rights or seriously affect the fairness, integrity, or public reputation of the judicial proceeding.

In summary, having found no prejudice to the substantial rights of the petitioner, we affirm the petitioner's conviction and sentence.

IV. Conclusion

For the foregoing reasons, the July 20, 2023, order of the Circuit Court of Cabell County is affirmed.

Affirmed.