
NO. 33831

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

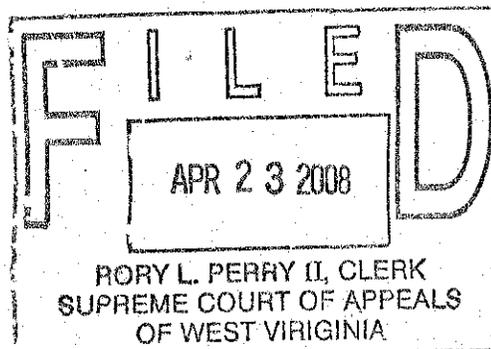
STATE OF WEST VIRGINIA,

Appellee,

v.

MEGAN S.,

Appellant.



BRIEF OF APPELLEE, STATE OF WEST VIRGINIA

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BRIEF OF APPELLEE, STATE OF WEST VIRGINIA

I.

**KIND OF PROCEEDING AND
NATURE OF THE RULING BELOW**

This is an appeal by Megan S. (hereinafter "Appellant") from the October 26, 2006, order of the Circuit Court of Wood County (Evans, J.), which found her to be a juvenile delinquent under West Virginia Code § 49-1-4 due to her being found guilty of battery, in violation of West Virginia Code § 61-2-9. On appeal, Appellant claims that the circuit court committed error.

II.

STATEMENT OF FACTS

There is no doubt that the facts in this case are very much in dispute and are starkly contrasted depending on which party's testimony is examined. This case involves a delinquency adjudicatory hearing arising from a fight where Appellant was charged as a juvenile delinquent for committing battery against the victim, Brittany B.

An altercation occurred at Spencer Park in Vienna on May 31, 2006, between Appellant and the victim. At this hearing, Brittany B. testified that while she was talking to a friend named Randy, Appellant approached her and said that she was very angry and was going to get her. (Adjudicatory Hr'g, October 12, 2006, 10.) Specifically, Appellant told the victim she was going to beat her a— because the latter was running her mouth. (*Id.*) Brittany told Appellant that it was not her that was yelling things at her, but rather other kids in the park. (*Id.*) After walking back to Brittany from speaking with the other kids, Appellant said she was going to “beat her [Brittany’s] a—” and struck her in the face with a closed fist. (*Id.* at 11-12.) According to her testimony, Brittany did not strike Appellant nor make any aggressive moves toward her. (*Id.*) The victim then testified that Appellant came at her again, they wrestled to the ground and the latter hit her a few more times. (*Id.*) Brittany said that the only action she took during this altercation was to push Appellant away from her.

The victim yelled an obscenity at Appellant after the latter repeatedly hit her. Appellant responded by slapping Brittany in the face. (*Id.* at 13.) Appellant then continued to hit the victim, until finally, the latter pushed her away and ran to the police station. (*Id.*) The victim suffered a swollen, black eye and a bleeding lip as a result of this beating. (*Id.*) At the police station, Brittany B. was provided with medical attention. (*Id.*)

Appellant testified at trial that she did initially hit Brittany because she thought the latter called her a name. (*Id.* at 28-29.) Appellant did state that Brittany hit her as well. She also testified that Randy held her down while Brittany kicked her. (*Id.* at 30-31.) However, the trial judge found Brittany B.’s testimony significantly more credible. (*Id.* at 32.) On this basis, the judge found Appellant to be a juvenile delinquent beyond a reasonable doubt. (*Id.* at 32-33.)

III.

RESPONSE TO ASSIGNMENTS OF ERROR

- A. THE CIRCUIT COURT OF WOOD COUNTY ERRED IN FINDING APPELLANT A JUVENILE DELINQUENT DUE TO THE STATE'S FAILURE TO PROVE BEYOND A REASONABLE DOUBT THAT APPELLANT COMMITTED THE OFFENSE OF BATTERY.

State's Response:

Examining the evidence in the light most favorable to the prosecution, it was sufficient to convince an impartial mind that Appellant was guilty of the offense charged beyond a reasonable doubt.

- B. APPELLANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL.

State's Response:

A direct appeal is not the proper forum to raise a claim of ineffective assistance of counsel, yet Appellant fails to even meet the standard to establish this claim.

IV.

ARGUMENT

- A. **IN EXAMINING THE CASE IN THE LIGHT MOST FAVORABLE TO THE PROSECUTION, THE EVIDENCE WAS SUFFICIENT TO CONVINCE AN IMPARTIAL MIND THAT APPELLANT WAS GUILTY BEYOND A REASONABLE DOUBT OF THE OFFENSE CHARGED, AND THE FINDING WAS NOT CONTRARY TO THE EVIDENCE.**

Appellant asserts that there was insufficient evidence to establish that she committed battery at her adjudicatory hearing; and thus, the court abused its discretion by finding her guilty of being a juvenile delinquent. In particular, she makes this argument due to her and Brittany B. being the only witnesses to testify during this hearing. Yet this is not a factually or legally sound argument.

There was indeed sufficient evidence to convince an impartial mind that she was guilty beyond a reasonable doubt. Therefore her conviction should not be reversed.

1. **The Standard of Review.**

“In a criminal case, a verdict of guilt will not be set aside on the ground that it is contrary to the evidence, where the state's evidence is sufficient to convince impartial minds of the guilt of the defendant beyond a reasonable doubt. The evidence is to be viewed in the light most favorable to the prosecution. To warrant interference with a verdict of guilt on the ground of insufficiency of evidence, the court must be convinced that the evidence was manifestly inadequate and that consequent injustice has been done.” Syl. Pt. 1, *State v. Starkey*, 161 W. Va. 517, 244 S.E.2d 219 (1978).

Syl. Pt. 1, *State v. Eddie “Tosh” K.*, 194 W. Va. 354, 460 S.E.2d 489 (1995).

“[A]n adjudication of delinquency is subject to the same standards of review on appeal as is a criminal conviction.”

Id. at 358, 460 S.E.2d at 493 (citing *State v. William T.*, 175 W. Va. 736, 738, 338 S.E.2d 215, 218 (1985) (citation omitted)).

2. **The Evidence Presented in the Delinquency Adjudicatory Hearing Was Sufficient to Convince an Impartial Mind That Appellant Was Guilty of Battery Beyond a Reasonable Doubt; and Therefore, Finding Her a Juvenile Delinquent Was Not an Abuse of Discretion.**

Appellant wrongfully contends that the circuit court abused its discretion in finding her a juvenile delinquent because there was insufficient evidence to find her guilty beyond a reasonable doubt of battery in the October 12, 2006, adjudicatory hearing. However, as was established in *Eddie “Tosh” K.*, *supra*, a verdict of guilt will not be set aside on the ground that it is contrary to the evidence, where the state's evidence is sufficient to convince impartial minds of the guilt of the defendant beyond a reasonable doubt when the latter is examined in the light most favorable to the prosecution. *Id.* at Syl. Pt. 1.

As was previously mentioned, Brittany B. testified that Appellant approached her and struck her in the face with a closed fist, came at her again and hit her a few more times and slapped her yet once more in the face. (Adjudicatory Hr'g, October 12, 2006, 11-13.) Brittany B. testified that she suffered physical damage from this beating. (*Id.* at 13.) Despite the fact that the Appellant's testimony differed from Brittany's, the former did state that she approached the victim and initially hit her. (*Id.* at 28-29.) At the conclusion of the hearing, the circuit judge stated,

I do feel that Megan's- Brittany's testimony was more persuasive by an extensive amount and she was very distinct and clear in her testimony. So, I will find on the basis of credibility, which is all I have to go on right now, that the allegations in Paragraph Four have been sustained by proof beyond a reasonable doubt and that Megan Lee Stansberry is a delinquent within the meaning of Chapter 49- Article 2-

[Correction made by prosecutor.]

Okay, 49-1-4, and that the act committed by the juvenile Megan Lee Stansberry is an act which, if committed by an adult, would be a crime under our State law, punishable by confinement, and that Megan is a delinquent within the meaning of the West Virginia Juvenile Law.

(Adjudicatory Hr'g, October 12, 2006, 32-33.) Clearly, the circuit court judge found Brittany credible, and the evidence was sufficient to convince him that Appellant was guilty of the offense beyond a reasonable doubt. As stated above, "an adjudication of delinquency is subject to the same standards of review on appeal as is a criminal conviction." *Eddie "Tosh" K.*, at 358, 460 S.E.2d at 493 (citing *State v. William T.*, 175 W. Va. at 738, 338 S.E.2d at 218) (citation omitted).

It is unclear why more witnesses were not called in this adjudicatory hearing. Appellant seems to take issue with the fact that the circuit judge misspoke and confused the girls' names when he made his ruling. (*See* Appellant's Brief at 8.) Yet, when this evidence is examined in the light most favorable to the prosecution, it can be characterized as sufficient to convince an impartial

mind—the circuit judge’s—that Appellant committed battery beyond a reasonable doubt. Appellant classifies Brittany B.’s testimony as unbelievable and implausible. (*Id.* at 9.) Yet this is merely a conclusory remark with no real evidence to establish the assertion. Further, Appellant cites no law as to why the circuit judge could not have found the victim to have presented the more credible testimony and have made the ruling that Appellant was guilty of the offense beyond a reasonable doubt on this basis. In light of this, Appellant’s conviction should not be reversed on this ground.

B. A DIRECT APPEAL IS AN IMPROPER FORUM TO RAISE THE ISSUE OF INEFFECTIVE ASSISTANCE OF COUNSEL. REGARDLESS, APPELLANT FAILS TO ESTABLISH HER COUNSEL’S ACTIONS AMOUNTED TO INEFFECTIVE ASSISTANCE.

Appellant attempts to make an ineffective assistance of counsel claim on direct appeal. This is not the proper forum for such a claim, however. Such claims are to be raised during the habeas stage. Additionally, even if a direct appeal were the proper forum to raise this claim, Appellant fails to meet the standard set by this Court to establish a claim that she suffered from ineffective assistance.

1. The Standard of Review.

“It is the extremely rare case when this Court will find ineffective assistance of counsel when such a charge is raised as an assignment of error on a direct appeal. The prudent defense counsel first develops the record regarding ineffective assistance of counsel in a habeas corpus proceeding before the lower court, and may then appeal if such relief is denied. This Court may then have a fully developed record on this issue upon which to more thoroughly review an ineffective assistance of counsel claim.” Syl. Pt. 10, *State v. Triplett*, 187 W. Va. 760, 421 S.E.2d 511 (1992).

Syl. Pt. 10, *State v. Hutchinson*, 215 W. Va. 131, 599 S.E.2d 736 (2004).

In the West Virginia courts, claims of ineffective assistance of counsel are to be governed by the two-pronged test established in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984): (1) Counsel’s performance was deficient under an objective standard of reasonableness; and (2) there is a reasonable

probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different.

In reviewing counsel's performance, courts must apply an objective standard and determine whether, in light of all the circumstances, the identified acts or omissions were outside the broad range of professionally competent assistance while at the same time refraining from engaging in hindsight or second-guessing of trial counsel's strategic decisions. Thus, a reviewing court asks whether a reasonable lawyer would have acted, under the circumstances, as defense counsel acted in the case at issue.

Syl. Pts. 5 and 6, *State v. Miller*, 194 W. Va. 3, 459 S.E.2d 114 (1995).

2. **This Court Has Held That a Direct Appeal Is Not the Correct Forum to Raise the Issue of an Ineffective Assistance of Counsel Claim.**

Appellant raises a claim of ineffective assistance of counsel in her direct appeal. Yet this is not the proper forum for such a claim. As outlined above, this Court in *Hutchinson, supra*, held, "It is the extremely rare case when this Court will find ineffective assistance of counsel when such a charge is raised as an assignment of error on a direct appeal. The prudent defense counsel first develops the record regarding ineffective assistance of counsel in a habeas corpus proceeding before the lower court, and may then appeal if such relief is denied." In *Miller*, it was held, "In cases involving ineffective assistance on direct appeals, intelligent review is rendered impossible because the most significant witness, the trial attorney, has not been given the opportunity to explain the motive and reason behind his or her trial behavior." *Id.* at 14-15, 459 S.E.2d at 125-26. Appellant's trial attorney, Tamara Metz, has not had an opportunity to explain her motives and reasoning behind her trial behavior. Thus, the correct forum would be the state habeas court rather than a direct appeal to this Court. Therefore, this claim fails, and the conviction should not be reversed on this ground.

3. **Appellant Fails to Meet the Standard Set by This Court in Order to Establish an Ineffective Assistance of Counsel Claim.**

Assuming, *arguendo*, that Appellant has chosen the right forum via her direct appeal to the West Virginia Supreme Court of Appeals to raise an ineffective assistance of counsel claim, she has failed to meet the standard set by this Court to establish this. As was held in *Miller, supra*, there is a two-pronged test in order to establish such a claim: (1) Counsel's performance was deficient under an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. *Id.* at Syl. Pt. 5. The Court in *Miller* held that the identified acts or omissions were to be outside the broad range of professionally competent assistance rather than engaging in hindsight and second-guessing of trial strategy. *Id.* at Syl. Pt. 6.

Appellant fails to cite anything whatsoever in the record where calling these additional witnesses on her behalf would have changed the result of the case. There are no statements cited by any of these potential witnesses that would have changed the outcome of the adjudicatory hearing. In fact, Appellant merely states that if her counsel would have subpoenaed any of the five potential witnesses who were at the park that day, it *may have* confirmed her version of the events. (*See* Appellant's Brief at 10; emphasis added.) This could very well have been sound trial strategy on the part of her defense counsel in that these potential witnesses could have contradicted her testimony, their testimony could have been used to impeach her credibility or could have brought out facts that would have further damaged her case. This seems to be mere speculation rather than establishing a denial of her effective assistance of counsel when applying the *Miller* standard.

Appellant states that her counsel failed to provide effective assistance due to her failure to provide a self-defense argument and because she neglected to call Officer Pifer to the stand in order to establish that he gave the girls orders to stay away from each other. These assertions seem puzzling and fall short of the *Miller* standard since Brittany testified and Appellant admitted that the latter approached and initially struck her. (Adjudicatory Hr'g, October 12, 2006, 11-12. 28-29.) In light of all of this, Appellant fails to meet the standard to establish that she suffered from ineffective assistance of counsel, and her conviction should not be reversed on this ground.

V.

CONCLUSION

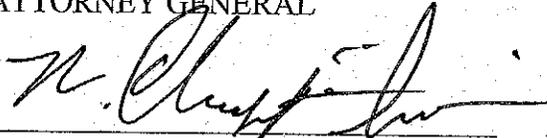
For the foregoing reasons, the judgment of the Circuit Court of Wood County should be affirmed by this Honorable Court.

Respectfully submitted,

State of West Virginia,
Appellee,

By counsel

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CERTIFICATE OF SERVICE

The undersigned counsel for Appellee hereby certifies that a true and correct copy of the foregoing *Brief of Appellee, State of West Virginia* was mailed to counsel for the Appellant by depositing it in the United States mail, first-class postage prepaid, on this 23rd day of April, 2008, addressed as follows:

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