
NO. 35463

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

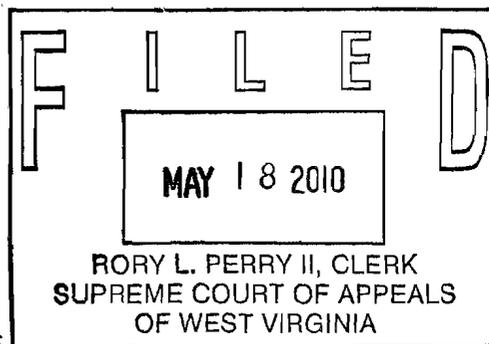
STATE OF WEST VIRGINIA,

Appellee,

v.

STEVEN L. MAHOOD,

Appellant.



BRIEF OF APPELLEE, STATE OF WEST VIRGINIA

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

ROBERT D. GOLDBERG
ASSISTANT ATTORNEY GENERAL
State Bar ID No. 7370
State Capitol, Room E-26
Charleston, West Virginia 25305
304-558-2021

Counsel for Appellee

TABLE OF CONTENTS

	Page
I. KIND OF PROCEEDING AND NATURE OF THE RULING BELOW	1
II. STATEMENT OF FACTS	1
III. ARGUMENT	5
A. THERE IS NO EVIDENCE OF PROSECUTORIAL MISCONDUCT	5
1. The Standard of Review	5
2. Discussion	5
B. EVEN IF THIS COURT FOUND PROSECUTORIAL MISCONDUCT, THE ERROR DID NOT DEPRIVE THE APPELLANT OF A FAIR TRIAL	10
1. The Standard of Review	10
2. Discussion	11
IV. CONCLUSION	13

TABLE OF AUTHORITIES

Page

Cases

State v. Catlett, 207 W. Va. 747, 536 S.E.2d 728 (2000) 10

State v. Guthrie, 194 W. Va. 657, 461 S.E.2d 163 (1995) 7, 8, 11

State v. Hamric, 151 W. Va. 1, 151 S.E.2d 252 (1966) 10

State v. Lowery, 222 W. Va. 284, 664 S.E.2d 169 (2008) 9

State v. Ocheltree, 170 W. Va. 68, 289 S.E.2d 742 (1982) 8

State v. Sugg, 193 W. Va. 388, 456 S.E.2d 469 (1995) 5, 8

State v. Williams, 172 W. Va. 295, 305 S.E.2d 251 (1983) 9

State v. Winebarger, 217 W. Va. 117, 617 S.E.2d 467 (2005) 9

Statutes

West Virginia Code § 61-2-1 1

NO. 35463

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA,

Appellee,

v.

STEVEN L. MAHOOD,

Appellant.

BRIEF OF APPELLEE, STATE OF WEST VIRGINIA

I.

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

Following a jury trial beginning October 15, 2008, Appellant Steven L. Mahood, defendant below (hereafter "Appellant"), was convicted of one count of First-Degree Murder pursuant to West Virginia Code § 61-2-1. (R. at 263-65.) By amended sentencing order of April 13, 2009, the trial court sentenced the Appellant to life without mercy. (R. at 279-80, 295-96.) On appeal, Appellant claims that the circuit court erred on evidentiary grounds thus denying him a fair trial.

II.

STATEMENT OF FACTS

A reasonable jury could have found that the Appellant murdered his wife, Ramona Mahood, on August 7, 2007. According to Chief Medical Examiner, Dr. James Kaplan, the victim died as

a result of multiple, powerful blows to her head, face, and torso and manual strangulation.¹ (R. at 1096.) The strangulation would have taken more than a couple of minutes to kill her. The victim suffered brain injuries caused by repeated blows to her head. (R. at 1101.) Her anus was torn, which was consistent with something forcibly inserted inside. (*Id.*)

The victim's face and scalp were almost covered with fresh bruising. There were deep cuts to her face, and her lip had been torn from her gums. (R. at 1100-01.) She also had defensive wounds on her hands and arms as if she had held her hands over her head. (R. at 1102.) A toxicology screen was negative for drugs or alcohol. (R. at 1107.)

The State's first witness, the victim's brother, Jerry Mahood, testified that on the day of the murder, the Appellant called him at 5:30 a.m. and asked him to come to his house because he thought "Mona" was dead. (R. at 981.) Jerry arrived forty-five minutes later. As he entered his brother's house, he saw the victim lying on the living room sofa. The Appellant was kneeling in front of her crying. (R. at 983.) Jerry Mahood called his wife, who called 911. (R. at 985.)

Deputy Brian Varney of the Jackson County Sheriff's Department was the first law enforcement officer on the scene. He was dispatched at 7:09 a.m., and did not arrive until 7:31. (R. at 1036.) He found the Appellant and his brother inside the house. The victim was lying on the sofa with a comforter pulled up to her chest. (R. at 1038.) Her face was severely bruised, and she had a cut above her right eye. (R. at 1039.)

At approximately 9:27 a.m. the Appellant gave a voluntary statement to Herbert Faber of the Jackson County Sheriff's Department. (R. at 483.) The Appellant told Deputy Faber that his wife

¹The strangulation standing alone was sufficient to bring about the victim's demise. (R. at 1100.)

left their home the previous evening while he was sleeping in a living room chair. (R. at 490.) He did not know that she left, nor could he say when. (R. at 485, 490.) He claimed that she came home the following morning, “beat all to hell.” (R. at 486, 491.) He asked her if she needed to go to the hospital, but she said no. (*Id.* at 491.) Ms. Mahood never told the Appellant what happened to her. She just held her head as if it was hurting. (R. at 488, 491.) The Appellant sat her down on the couch and wiped the blood from her face using a wet rag. (R. at 491.) After tending to her wounds he fell asleep. When he awoke his wife was dead. (R. at 489.)

Later that day, the Appellant gave a second statement to Captain Faber. (R. at 498.) The Appellant claimed that both he and his wife stayed home the night before. (R. at 499.) Although he drank three or four beers, the Appellant was not drunk. (R. at 500.) Sometime after nightfall the Appellant fell asleep in a chair. (Tr. at 502.) The next morning the Appellant was awoken by the sound of his wife coming through the door. (Tr. at 505.) Ms. Mahood would not tell her husband what had happened, and refused to go to the emergency room. After washing her face, the Appellant went back to sleep. (R. at 508.)

Appellant’s statement was not consistent with the evidence adduced by the State. Although the Appellant claimed he didn’t leave the house the evening before the murder, Lisa Whitehouse testified that she saw the Appellant and the victim at her home in Ripley that evening. (R. at 1266.) Tim Tucker testified that the Appellant came to his house at about 7:00 p.m. (R. at 1274.) After drinking a few beers, the two of them went back to the Appellant’s house, picked up Ms. Mahood and drove to Ms. Whitehouse’s home. Approximately twenty minutes later the three of them drove back to Mr. Tucker’s house. The Appellant and his wife stayed at Mr. Tucker’s house until 12:00 p.m. (R. at 1280-81.)

Nor did the Appellant's statement correspond to the forensic evidence. Although he claimed his wife came home beaten, and never left the living room, the police found blood and clumps of hair, many times mixed together, throughout the house and on the outside of the couple's car. (R. at 1048, 1168.) The investigating officers also found several dents on the car's hood containing blood and large patches of hair. (R. at 1051.) There was dried blood and patches of hair on the car's roof, the door jamb, the front bumper just below the headlights, the driver's side door, and the passenger side windshield. (R. at 1048-67.)

Two pillowcases in the master bedroom had large bloodstains. (R. at 1324.) Both the living room and kitchen floors were stained with blood. (R. at 1143-44.) There were bloodstains on the kitchen wall, the refrigerator, on a kitchen mixer, the kitchen stove, and a bread machine. (R. at 1146-47, 1172-81.) There were two bloodstained rags on a table located next to the couch. (R. at 1075.) Two refrigerator magnets and two pictures all found in the kitchen trash can tested positive for blood. (R. at 1331.) The investigating officers also found a pile of wet clothing containing underwear, bra, shorts and a belt in a corner of the bedroom. (R. at 1119.)

The Forensics Department of the West Virginia State Police found blood on all of the articles of clothing except one.² (R. at 1326.) Blood found on the refrigerator, the floral pillowcase, and the kitchen mixer belonged to the victim. The State's latent print examiner Stephen King found two of the victim's prints on the rear passenger windshield and the passenger side rear slide door glass. (R. at 1505.) Trooper King also found the Appellant's print on the car's trunk.

²The victim was found wearing a gray t-shirt, maroon sweat pants, and white socks. Dr. Kaplan testified that there were bloodstains on the grey t-shirt and maroon sweat pants, but that the white socks appeared as if they had just come out of the washer. (R. at 1096.)

When confronted with physical evidence and statements from Ms. Whitehouse and Mr. Tucker, the Appellant had no explanation. (R. at 1394.)

III.

ARGUMENT

A. THERE IS NO EVIDENCE OF PROSECUTORIAL MISCONDUCT.

1. The Standard of Review.

Syllabus point 6 of *State v. Sugg*, 193 W. Va. 388, 456 S.E.2d 469 (1995), provides:

Four factors are taken into account in determining whether improper prosecutorial comment is so damaging as to require reversal: (1). the degree to which the prosecutor's remarks have a tendency to mislead the jury and to prejudice the accused; (2). whether the remarks were isolated or extensive; (3). absent the remarks, the strength of competent proof introduced to establish the guilt of the accused; and (4). whether the comments were deliberately placed before the jury to divert attention to extraneous matters.

The court will review the circuit court's denial of the appellant's motion for a mistrial . . . for an abuse of discretion. *State v. Rush*, 224 W. Va. 554, 555, 687 S.E.2d 133; 134-135 (2009) citing *State v. Lowery*, 222 W. Va. 284, 288, 664 S.E.2d 169, 173 (2008).

2. Discussion.

The Appellant first claims that counsel for the State improperly introduced evidence of a sexual relationship between the Appellant and State's witness Lisa Whitehouse during its direct examination of Ms. Whitehouse. It is Appellant's position that the jury convicted him because of his promiscuity and marital infidelity; not based on the evidence adduced by the State. The Appellant is simply mistaken. The Appellant's conviction was not based upon a single stray remark made during the course of a four-day trial; he was convicted because of the overwhelming evidence of guilt.

During counsel for the State's direct examination of Ms. Whitehouse, the following exchange took place:

Q: How do you know [the Appellant]?

A: We're friends.

Q: Okay. How long have you known him?

A: Probably about nine months or longer.

Q: As of today, nine months?

A: No, its been about a year.

Q: Okay. What type of relationship did you have with Mr. Mahood?

A: Just friends.

Q: Did you ever have any other type of relationship with him?

A: Yes.

Q: What type of relationship was that?

A: Sexual relationship.

(R. at 1259-60.)

Defense counsel immediately objected and moved to strike the comment. During the ensuing bench conference, defense counsel argued that counsel for the State was improperly injecting character evidence through her questioning of Ms. Whitehouse. (R. at 1260.) The State responded that the evidence was relevant to motive. (R. at 1261.) The court responded:

THE COURT: Yeah, but if it is probative of motive, you would have to have some evidentiary basis for concluding that the reason the victim was killed had to do with Lisa [Whitehouse].

MS. BALDWIN: Well, I mean, I don't know that.

THE COURT: Okay.

MS. BALDWIN: I don't know what happened when they got home.

(R. at 1262.)

Counsel for the defense requested a mistrial. When the trial court asked for supporting case law, defense counsel had none. (R. at 1263.) Defense counsel never argued prosecutorial misconduct at trial.

The trial court denied defense's motion for a mistrial, but offered the following curative instruction:

Okay. Ladies and gentlemen of the jury, the testimony of this witness with respect to the nature and extent of her relationship with the defendant, Steven L. Mahood, that you just heard is not admissible as evidence, and you are to disregard it entirely, give it no mind, and you are directed to – to completely ignore that in connection with your determination of whether the evidence that is presented in this trial is sufficient to prove guilt beyond a reasonable doubt.

Do you understand what I am saying? It is not admissible, it is not relevant, and therefore the jury is to disregard it.

(R. at 1265-66.)

Absent concrete evidence connecting the Appellant's sexual relationship with Ms. Whitehouse to Ms. Mahood's murder, the State's question was more prejudicial than probative. But this does not end the inquiry.

"Prosecutorial misconduct does not always warrant the giving of a mistrial or a new trial. The rule in West Virginia since time immemorial has been that a conviction will not be set aside because of improper remarks and conduct of the prosecution in the presence of the jury which do not clearly prejudice a defendant or result in manifest injustice." *State v. Guthrie*, 194 W. Va. 657,

684, 461 S.E.2d 163, 190 (1995). *See also* Syl. pt. 5, *State v. Ocheltree*, 170 W. Va. 68, 289 S.E.2d 742 (1982) (“A judgment of conviction will be reversed because of improper remarks made by a prosecuting attorney to a jury that clearly prejudice the accused or result in a manifest injustice.”).

The Appellant was convicted after a four-day trial in which the State introduced hundreds of exhibits, the testimony of three experts, several lay witnesses, and numerous police officers. The evidence against him was overwhelming. The victim’s blood and hair found on his car and inside his home belied his statements to the investigating officers that his wife arrived home already beaten, and that he had never left the living room. Although the Appellant claimed that he stayed home, and that he did not know that his wife had left, two witnesses, Mr. Tucker and Ms. Whitehouse, testified that they saw the couple together the night of the murder. *See Guthrie*, 194 W. Va. at 190, 461 S.E.2d at 684 (in determining prejudice Court will consider strength of evidence supporting defendant’s conviction).

The witnesses’ testimony was isolated. After discussing the matter with counsel for the State and defense counsel, the trial court instructed the jury to ignore any evidence of a relationship between the Appellant and Ms. Whitehouse. In fact, the court issued a strongly worded curative instruction. Although the Appellant faults the trial court for not repeating the instruction in its jury charge, defense counsel never requested the court do so.

Nor can it be said that counsel for the State elicited this testimony in order to divert attention to extraneous matters. Syl. pt. 6, *State v. Sugg*, 193 W. Va. at 393, 456 S.E.2d at 474. The case did not revolve around the credibility of the Appellant, who did not testify, or Ms. Whitehouse, whose testimony was corroborated by Mr. Tucker. Contrary to the Appellant’s assertion, counsel for the State did not intentionally introduce evidence that she knew to be inflammatory or irrelevant. She

asked a question of a witness, in good faith,³ which she believed would lead to relevant evidence.⁴ After discussing the matter with counsel the trial court disagreed. Prosecutors must make judgment calls like this during every trial.

The judge's decision not to declare a mistrial was also well within the bounds of his discretion. "The decision to declare a mistrial, discharge the jury and order a new trial in a criminal case is a matter within the sound discretion of the trial court. A trial court is empowered to exercise this discretion only when there is a 'manifest necessity' for discharging the jury before it has rendered its verdict. This power of the trial court must be exercised wisely; absent the existence of manifest necessity, a trial court's discharge of the jury without rendering a verdict has the effect of an acquittal of the accused and gives rise to a plea of double jeopardy." *State v. Williams*, 172 W.Va. 295, 304, 305 S.E.2d 251, 260 (1983) (citations omitted). *See also State v. Winebarger*, 217 W.Va. 117, 127, 617 S.E.2d 467, 477 (2005) (*per curiam*).

Upon hearing argument from both sides the trial court issued a curative instruction in which he instructed the jury that the nature of any relationship between Ms. Woodhouse and the Appellant was "not admissible as evidence," and that the jury was to "disregard it entirely, give it no mind, and you are directed to – to completely ignore that in connection with your determination . . ." (R. at 1265-1266.) *See State v. Lowery*, 222 W. Va. 284, 664 S.E.2d 169 (2008)(after outburst from spectator trial court's immediate ejection of spectator and curative instruction did not create a

³Counsel for the State explained that the Appellant called Ms. Whitehouse "Ol' Blue Eyes" and that this may have triggered an argument between the Appellant and his wife. (R. at 1260-62.)

⁴Indeed, the existence of a sexual relationship between the Appellant and a State's witness was relevant to the issue of bias.

manifest necessity for a mistrial). *See also State v. Catlett*, 207 W. Va. 747, 753, 536 S.E.2d 728, 734 (2000) (“[o]rdinarily where objections to questions or evidence by a party or sustained by the trial court during the trial and the jury instructed not to consider such matter, it will not constitute reversible error.”) quoting Syl. pt. 18, *State v. Hamric*, 151 W. Va. 1, 151 S.E.2d 252 (1966).

In the case-at-bar, the Appellant’s objection was sustained by the trial court judge, who followed up with a curative instruction. The trial court’s decision not to declare a mistrial from an isolated incident occurring during a four-day trial was well within the bounds of reason.

B. EVEN IF THIS COURT FOUND PROSECUTORIAL MISCONDUCT, THE ERROR DID NOT DEPRIVE THE APPELLANT OF A FAIR TRIAL.

1. The Standard of Review.

Prosecutorial misconduct does not always warrant the granting of a mistrial or a new trial. The rule in West Virginia since time immemorial has been that a conviction will not be set aside because of improper remarks and conduct of the prosecution in the presence of a jury which do not clearly prejudice a defendant or result in manifest injustice. *State v. Beckett*, 172 W.Va. 817, 310 S.E.2d 883 (1983); *State v. Buck*, 170 W.Va. 428, 294 S.E.2d 281 (1982). Similarly, the United States Supreme Court has acknowledged that given “the reality of the human fallibility of the participants, there can be no such thing as an error-free, perfect trial, and that the Constitution does not guarantee such a trial.” *U.S. v. Hastings*, 461 U.S. at 508-09, 103 S.Ct. at 1980, 76 L.Ed.2d at 106. Thus, the Supreme Court has held that an appellate court should not exercise its “[s]upervisory power to reverse a conviction ... when the error to which it is addressed is harmless since, by definition, the conviction would have been obtained notwithstanding the asserted error.” *Hastings*, 461 U.S. at 506, 103 S.Ct. at 1979, 76 L.Ed.2d at 104.

In determining prejudice, we consider the scope of the objectionable comments and their relationship to the entire proceedings, the ameliorative effect of any curative instruction given or that could have been given but was not asked for, and the strength of the evidence supporting the defendant's conviction. See *McDougal v. McCammon*, [193 W. Va. 229, 239, 455 S.E.2d 788, 798 (1995)]. As the United States Supreme Court explained “a criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments [or conduct] standing alone, for the statements or conduct must be viewed in context[.]” *U.S. v. Young*, 470 U.S. 1, 11, 105 S.Ct. 1038, 1044, 84 L.Ed.2d 1, 9-10, on remand, 758 F.2d 514, on reconsideration, 767 F.2d 737 (1985) (finding harmless error where the prosecutor

made an improper statement that the defendant was guilty and urged the jury to “do its job”).

State v. Guthrie, 194 W.Va. 657, 684-685, 461 S.E.2d 163, 190 - 191 (W.Va.,1995)

2. Discussion.

Even if this Court were to find prosecutorial misconduct, the outcome would be no different. There is no evidence that the prosecutor’s comment resulted in a “manifest injustice.” The Appellant’s conviction was justified by more than sufficient evidence, and a single isolated comment did nothing to address this evidence.

The Appellant called his brother at 5:30 a.m. stating that he thought his wife was dead. (R. at 982.) By the time Appellant’s brother arrived he saw the victim lying on the living room couch badly beaten. (R. at 983.) Sergeant Jim Bare of the Jackson County Sheriff’s Department was dispatched to a DOA at the Appellant’s home. When he arrived, he noticed blood and hair on the Appellant’s car. The Appellant told him that his wife had left alone that night and had returned badly beaten. When he asked her if she wanted to go to the hospital, she refused. (R. at 1030.)

West Virginia State Policeman Sergeant S.E. Wolfe observed blood spatter and hair all over the green car. There were several dents on the hood containing large patches of hair and blood. (R. at 1048.)

Chief Medical Examiner Dr. James Kaplan opined that the victim died of multiple, powerful blows to her head, face, and torso as well as manual strangulation.⁵ There was also evidence of injury to the area around her anus as if someone had forced something into it. (R. at 1096.) The victim arrived wearing a blood-stained gray t-shirt, maroon sweat pants, red panties and strikingly

⁵The victim also died of a brain bleed resulting from repeated slams of decedent’s head against a hard surface such as a floor or car hood. (R. at 1100.)

white socks. Dr. Kaplan found it strange that everything the victim was wearing was blood stained except her socks, which appeared to have been freshly laundered. (R. at 1099.)

The investigating officers found blood stains throughout the home, not just in the living room. There was blood in the bedroom, on the pillow cases, on two photographs found in the kitchen trash can, on two kitchen magnets, blood swabs from the living room floor, the kitchen bread machine, the kitchen wall, the mixer, a swab of blood from the bedframe, and a blood swab from the front hood of the car.

Linda Whitehouse testified that the Appellant, the victim and Tim Tucker were at her house the night before the murder. Tim Tucker testified that the Appellant came to his house at about 7:00 p.m., that they sat together and drank some beer, drove to the victim's house, picked her up and then drove to Linda Whitehouses' home. (R. at 1274-1277.) The Appellant, the victim, and Mr. Tucker then drove to a bar where they stayed for fifteen to twenty minutes. (R. at 1280.) The three of them then went to Mr. Tucker's home where they stayed until approximately 12:00 p.m. (R. at 1281.)

These witness statements directly contradicted the Appellant's version of the events that evening. The Appellant told the investigating officers that he stayed home the entire night before the murder. The Appellant told the investigating officers that his wife came home badly beaten.⁶ The Appellant claimed that she remained in the living room, yet the investigating officers found blood and hair in the kitchen, the bedroom, and on the Appellant's car.

This trial did not revolve around the Appellant's sexual mores. It was decided by a rational jury that recognized a liar when they saw one.

⁶Given Dr. Kaplan's testimony, it would have been virtually impossible for the victim to operate a car given her medical condition.

IV.

CONCLUSION

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

Respectfully submitted,

STATE OF WEST VIRGINIA,
Appellee,

By counsel

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL



ROBERT D. GOLDBERG
ASSISTANT ATTORNEY GENERAL
State Bar ID No. 7370
State Capitol, Room E-26
Charleston, West Virginia 25305
Telephone 304-558-2021

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, with first-class postage prepaid, on this 18th day of May, 2010, addressed as follows:

Lee F. Benford II
P.O. Box 586
Ripley, WV 25271



ROBERT D. GOLDBERG