

15-0878

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

VS

CRIMINAL ACTION NO 14-F-45

Judge Lorensen

RASHAUN BOYD

STATE OF WEST VIRGINIA

VS.

CRIMINAL ACTION NO 14-f-48

Judge Lorensen

CHRISTOPHER WYCHE

2015 MAY -4 PM 3:56
VIRGINIA M. SIMS, CLERK

POST TRIAL MOTIONS HEARING ORDER

ENTERED AS DUPLICATE ORIGINALS

Wherupon, this matter comes on for hearing on this 23rd day of March, 2015, upon the papers and pleadings had herein, upon the appearance of defendant Rashaun Boyd , in person, and by counsel, Thomas Stanley, and upon the appearance of defendant Christopher Wyche, in person, and by counsel, Kim Crockett, and upon the appearance of the State of West Virginia by Pamela Jean Games-Neely, Prosecuting Attorney for Berkeley County, West Virginia.

Whereupon this matter comes on for hearing regarding post trial motions only, Both defendants are awaiting trial separated on habitual offender actions. The Court notes that both defendants filed written pleadings and the State chooses to respond orally.

The Court heard from defense counsel for defendant Rashaun Boyd

Stanley
PA
Crockett
5/5/15

first.

Boyd arguments:

Defense argues that there is a total lack of evidence to support the convictions. Defendant states that there is no gun seen; no muzzle flash is seen; the living victim Stokes does not see a gun and never saw the video. The police just happen to follow a car which defense counsel says was fleeing because there were drugs in the car.

Defense argues that the State failed to explore two other possible suspects: Maurice Oliver who was reported to be involved by a Crime Stopper tip and Roy Winston whose vomit was found near one of the casings at the scene. The defense claims that there was late disclosure by the State on this issue and is an unresolved investigation issue.

Defense further states that there is a Batson issue in this case because the State struck a minority juror from the panel for reasons that the defendant had a pending matter to be heard in this Circuit during the trial period and her office was prosecuting the matter. However, the same juror was picked as a juror for a trial a week later by another prosecutor.

Defense argues that the State invoked the "diety" improperly in closing and implied that defense counsel was "stupid" because they did not understand the "total station" evidence.

Defense incorporates by reference all other issues raised at pre-trial, trial and motions.

Defense requested a judgment or acquittal or a new trial.

Wyche arguments

Defense agrees with many of the Boyd assertions and arguments with some distinctions.

Defense argues no direct evidence that Wyche was the shooter who cause the death. The evidence shows that there was a fight and the victims were followed, but there is no evidence that Whyce was following them. The jury was distracted by the evidence of the GSR and the evidence of flight. Victim Stokes never saw a gun or anyone shoot but only knows a shot was fired because of the statement of the deceased which said "I'm hit".

Defense argues that defendant Wyche's motion to sever should have been granted. The evidence shows the defendant Boyd appears to be wiping his hands prior to the taking of the GSR. Defendant Boyd was the driver who fled in Wyche's car where Wyche . This evidence was prejudicial to defendant Wyche.

Defense contends that they should have been allowed to cross examine officers about Captain Streets who is awaiting trial for embezzlement for taking guns from the evidence locker and the Sheriff's department.

Defense agrees with defendant Boyd that the State should not have been allowed to strike the juror.

Defense argues that the State's closing improperly referred to religious sympathy of the jury and improperly commented on the defense's issues with the "total station" evidence.

Defense incorporates by reference all other issues raised at pre-trial, trial, and motions.

Defense requested a judgment or acquittal or a new trial.

State's response

The State had the right to strike the juror because of pending charges which her office was prosecuting. The juror identified himself as white on his jury questionnaire and only after additional questioning by the defense was it learned that he was of hispanic heritage. He stated he identified as white.

Even if this juror was called in another cases, those factors may have been different for that Assistant Prosecutor in what strikes he was forced to make. The State did not violate Bateson because race was not the issue for her strike.

State argues that there is evidence in this case to support the conviction. There is eye witness testimony, video, scene evidence, forensic evidence, flight evidence. While it is true that that the State does not have all the direct evidence that it would like, it does have substantial circumstantial evidence which is sufficient for conviction.

State argues that Captain Streets does not have a conviction and is awaiting trial. He did nothing at the crime scene but hold the marker stick that was testified to by Deputy St. Clair. Captain Streets was never called by the defense.

State argues that she did comment on the defense counsel's lack of understanding over the use of "Total Station" which is nothing more than a mapping program for documenting evidence where it is found so a scene can be recreated. Defense counsel at trial kept saying that they did not

understand it at trial. State was not implying that the defense counsel were "stupid" but rather that their contention that this program was too complex to be understood by the jury was just wrong. They were just making it more complex than it was and the jury should review the testimony of Deputy St. Clair who reviewed it before the jury.

The State did make the statement that she was sorry that the defendants " did not have the social skills God gave geese" at trial in reference to the fact that most individuals would have either accepted the compliment or merely walked away. Not engage individuals under such situations. It was never intended to invoke the diety or or rely in religious sympathy of the jury.

The State incorporates by reference all prior arguments made at pre-trial, motions and trial.

State requested that the motions be denied.

Court findings and rulings:

The Court finds that the standard is the light most favorable to the prevailing party at the motions stage and at the current stage. The Court agrees that this was a circumstantial case and it was a touch case. The jury considered all of the options available to them in the instructions and verdict form. The jury did find guilty on some counts and not guilty on others. There was circumstantial evidence to support the verdicts the jury returned. Boyd was found not guilty on the murder, but was found guilty of the attempt on Stokes, not guilty on conspiracy. The evidence supported that Boyd continued after the victims with a gun and fired it to do harm. The evidence

supported that there was an altercation and Wyche was in proximity to the incident when the first shots were fired. This evidence does not support Boyd firing these first shot, but does support Wyche firing the fatal shot.

The Court would deny the motion for judgment of acquittal for both defendants.

On the issue for new trial the Court addressed most of the issues at pre-trial; however, the issue regarding Captain Streets was not dealt with in detail. The Court will defer to the transcripts for rulings on these matters and will deny the motion for new trial.

On the issue of the joinder, the Court finds that there is no additional evidence for Wyche that was not addressed previously. The statements put the parties together but not at the altercation. The only additional evidence was that Boyd wiped his hands on his pants before the gunshot residue test was taken. The Court will incorporate the previous rulings on this issue and rely on its earlier ruling to try the cases jointly.

On the Batson issue, the Court finds no error in the State's strike. The State was about to prosecute this juror for a crime and made a record on the matter. The Court also noted that this juror indicated that he was white.

On the issue of the arguments at trial, the Court heard the argument in real time. The comments were in context and modest in weight. The statements were part of the rought and tumble of trial, The Court finds that the diety was not an expression as to stir religious sympathy.

The Court finds that this was a sad ending and it involved angry people and alcohol. The Court finds that the trial was fair.

The Court sets further hearing for Rashaun Boyd for April 8, 2015 at 9:00 am and for Christopher Whyce for April 17, 2015 at 9:00 am.

The Clerk shall enter the order as of this date and shall forward copies to all counsel of record.



JUDGE OF THE CIRCUIT COURT OF
BERKELEY COUNTY, WEST VIRGINIA

PREPARED BY:
PAMELA JEAN GAMES-NEELY
PROSECUTING ATTORNEY
BAR NO. 1332
380 WEST SOUTH STREET, SUITE 1100
MARTINSBURG, WEST VIRGINIA 25401

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA
STATE OF WEST VIRGINIA

VS

CRIMINAL ACTION NO 14-F-45
JUDGE LORENSEN

RASHAUN BOYD

JURY TRIAL HEARING ORDER

This matter came on for hearing this 13th, 14th, 15th, 16th, 20th, 21st, days of January, 2015, upon the papers and pleadings had herein, upon the appearance of the defendant, in person, and his counsel, Thomas Stanley, and upon the appearance of the State of West Virginia by Pamela Games-Neely, Prosecuting Attorney for Berkeley County, West Virginia.

The Court was advised that the defendant desired to bifurcate the mercy phase of the trial should there be a conviction for murder of the first degree. The Court granted the motion.

Whereupon a jury of twelve persons were empaneled and heard the presentation of evidence and the arguments of counsel. At the conclusion of the said presentation, argument and instructions the twelve person jury was returned to their jury room for deliberations.

Whereupon, the Court was advised that the jury had reached a verdict. The parties were assembled before the Court and the jury was returned to the courtroom from their deliberation room. The Court inquired of the foreperson if a verdict had been reached to which the foreperson responded in the affirmative. The Court directed that the verdict form be handed to the Clerk and read as signed by the foreperson.

The Verdict read: We, the members of the jury, find the defendant, Rashaun Boyd:

BERKELEY COUNTY CIRCUIT CLERK

REC'D
JAN 22 10 42 AM '15
VIRGINIA JUDICIAL CLERK

PA
EJ
PD
PD
Prockitt
2/5/14

Count 1

Not Guilty

Count 2

Guilty of Attempted Murder of the First Degree

Count 3

Not Guilty

Count 4

Guilty of Wanton Endangerment

Count 6

Guilty of Felon in Possession of a Firearm

The Court asked the parties if they desired to inspect the jury form and both reviewed and accepted the verdict form as proper. The Court then inquired if the parties desired to have the jury polled. The defendant elected to have the jury polled.

The Clerk read the poll of the jury and each acknowledged in the affirmative that the verdict was his/her verdict.

The Court ORDERED the verdict form filed and dismissed the jury.

The Court ORDERED that motions shall be filed within ten days of this date with the hearing to occur on the said motions on the 23rd day of March, 2015 at 3:00 p.m.

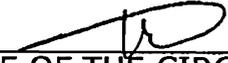
The Court ORDERED that a pre-sentence investigation be conducted by the probation officer of this Court returnable on the 23rd day of March, 2015 at 3:00 p.m.

The Court ORDERED that sentencing shall be scheduled for the 23rd day of March, 2015 at 3:00 p.m.

The defendant was remanded to the Eastern Regional Jail.

The Clerk shall enter this order as of this date and shall forward copies

to all counsel of record, to the probation office, to the Eastern Regional Jail.



JUDGE OF THE CIRCUIT COURT OF
BERKELEY COUNTY, WEST VIRGINIA

PREPARED BY:
Pamela Jean Games-Neely
Prosecuting Attorney for Berkeley County
Bar no. 1332
380 West South Street, Suite 1100
Martinsburg, West Virginia 25401
304-264-1971

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

VS

CRIMINAL ACTION NO 14-F-45

JUDGE LORENSEN

RASHAUN R. BOYD

SENTENCING ORDER

BERKELEY COUNTY CIRCUIT CLERK
2015 AUG -5 PM 3:51
VIRGINIA M. SINE, CLERK

This matter came on for hearing this 3rd day of August, 2015, upon the papers and pleadings had herein, upon the appearance of the defendant, in person and by his counsel, Thomas Stanley, and upon the appearance of the State of West Virginia by Pamela Jean Games-Neely, Prosecuting Attorney for Berkeley County, West Virginia.

Whereupon, the Court asked the parties if there was any legal reason why the parties could not proceed to sentencing. The parties advised that there was no legal reason. The Court inquired if the parties had received the pre sentence report. Both parties acknowledged that they had received the report and had no objections.

The Court then heard the statement of the defendant. The victim's statements from the sister, mother, brother, and surviving victim.

The Court also heard the arguments of counsel. The Court having been fully informed does place its sentencing findings upon the record which are incorporated herein.

Accordingly, it is ORDERED that the defendant, Rashaun R. Boyd, having been found guilty by a jury of the offense of attempted murder in the first degree, a felony, shall be sentenced to the penitentiary house of this state for the a period of not less than three nor more than fifteen years, there to be dealt with according to law.

PA
PD
BLR
ERJ
DOC
PO
WY P+P
8/16/15

It is ORDERED that the defendant, Rashaun R. Boyd, having been found guilty by a jury of the offense of wanton endangerment, a felony, shall be sentenced to the penitentiary house of this state for a period of five years with an additional five years as a sentencing enhancement, for a total of ten years, there to be dealt with according to law.

It is ORDERED that the defendant, Rashaun R. Boyd, having been found guilty by a jury of the offense of felon in possession of a firearm, shall be sentenced to the penitentiary house of this state for a period of five years there to be dealt with according to law.

It is ORDERED that these sentences shall run consecutively.

CONVICTION DATE: January 22, 2015

SENTENCING DATE: August 3, 2015

EFFECTIVE SENTENCING DATE: December 17, 2013

It is ORDERED that defense counsel shall pay court costs within one year of his release.

The defendant was notified of his right to appeal his conviction. The Court does APPOINT the Public Defender's Office as counsel for appellate purposes.

The Court notes the exception and objection to the defendant of all adverse rulings.

The defendant is remanded to the Regional Jail Authority until an agent or representative of the West Virginia Division of Corrections does appear to transport the defendant to a Department of Corrections Facility.

The Clerk shall enter this order as of this date and shall forward copies to all counsel of record, probation office, Regional Jail Authority, West Virginia Department of Corrections, West Virginia Probation and Parole



JUDGE OF THE CIRCUIT COURT OF BERKELEY
COUNTY, WEST VIRGINIA

The Clerk is directed to retire this action from the active docket and place it among causes ended.

PREPARED BY:

Pamela Jean Games-Neely

Prosecuting Attorney for Berkeley County

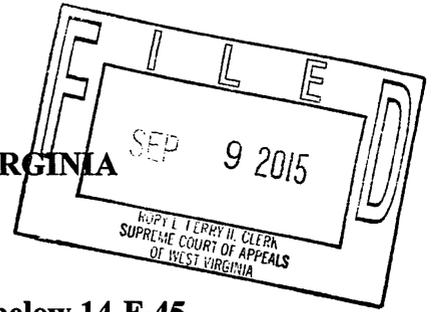
Bar no. 1332

380 West South Street, Suite 1100

Martinsburg, West Virginia 25401

304-264-1971

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

FILE COPY

Rashaun Boyd,
Petitioner,

v.

Criminal Action No. below 14-F-45
Berkeley County, West Virginia

State of West Virginia,
Respondent.

NOTICE OF APPEAL

Comes now the Petitioner/Defendant below, Rashaun Boyd, by and through counsel, Benjamin Hiller, pursuant to the West Virginia Rules of Appellate Procedure Rules 5 and 37, and respectfully files with this Honorable Court the attached Notice of Appeal with its associated documents.

Wherefore, the Petitioner/Defendant below prays that this Honorable Court file said Notice of Appeal.

Respectfully Submitted,

Rashaun Boyd,
By Counsel,

Benjamin M. Hiller, Bar #12254
Public Defender Corporation
Twenty-Third Judicial Circuit
295 Monroe Street
Martinsburg, WV 25401
PH: 304-263-8909/FX: 304-267-0418

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**Rashaun Boyd,
Petitioner,**

v.

**Criminal Action No. below 14-F-45
Berkeley County, West Virginia**

**State of West Virginia,
Respondent.**

Certificate of Service

I, Benjamin Hiller, Esq., Public Defender Corporation, hereby certify that I have caused a copy of the attached **NOTICE OF APPEAL** and **MOTION TO FILE NOTICE OF APPEAL OUT OF TIME**, to be delivered to the office of the Clerk of the Berkeley County Circuit Court, the Berkeley County Prosecuting Attorney, and the Court Reporter from whom a transcript has been requested, at 380 W. South Street, Martinsburg, West Virginia 25401 on this 8 day of September 2015.


Benjamin M. Hiller, Bar #12254
Public Defender Corporation
Twenty-Third Judicial Circuit
295 Monroe Street
Martinsburg, WV 25401
PH: 304-263-8909/FX: 304-267-0418