

SUPREME COURT OF KENTUCKY

Nunley v. Commonwealth

393 S.W.3d 9 (Ky. 2013) · Decided March 21, 2013

SUMMARY

The Kentucky Supreme Court affirmed Charles W. Nunley II's convictions for three counts of sodomy against his stepdaughter. The court held that the mid-trial disclosure of the victim's prior counseling did not warrant a mistrial under *Brady v. Maryland*, particularly because the prosecution did not possess or know of the information and the defense had addressed it at trial. The court also upheld the trial court's decision to excuse a juror who had interacted with the defendant's supporters.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Justice Noble; Chief Justice Minton; Justice Abramson; Justice Cunningham; Justice Scott; Justice Venters
JURISDICTION	Kentucky
DECIDED	March 21, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	Nunley appealed as a matter of right from his convictions and twenty-year sentence for three counts of sodomy, arguing that the trial court should have granted a mistrial based on an alleged Brady violation and improperly excused a juror.
STANDARD OF REVIEW	The denial of a mistrial based on an alleged Brady violation was reviewed for error, with the court noting that a mistrial is available only upon manifest necessity. The decision to remove a seated juror was reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Kentucky Supreme Court opinion and precedential authority.
PARTIES	Charles W. Nunley, II v. Commonwealth of Kentucky

TOPICS

criminal procedure discovery criminal jury selection appellate procedure evidence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Commonwealth's failure to disclose before trial that the victim had attended counseling in 2006 violated *Brady v. Maryland* and required a mistrial.
2. Whether the trial court improperly removed a seated juror by designating him as an alternate after concerns arose about his communications with persons associated with the defendant's supporters.

HOLDINGS

1. No. *Brady* did not apply because the record did not establish that the Commonwealth possessed, knew of, controlled, or had access to the information about the victim's 2006 counseling. In addition, the defense learned of and cross-examined the victim about the evidence during trial, and the late discovery did not create a manifest necessity for a mistrial.
2. No. Although the juror was not properly designated as an alternate under the ordinary agreement-or-random-selection procedure, the substance of the trial court's action was a for-cause strike. The court did not abuse its discretion in excusing a juror whose impartiality was reasonably in doubt.

KEY QUOTATIONS

“Brady does not give a defendant a second chance after trial once he becomes dissatisfied with the outcome if he had a chance at trial to address the evidence complained of.” (393 S.W.3d at 13)

“The ‘alternate juror’ may be designated by agreement of the parties; otherwise, the alternate must be chosen at random.” (393 S.W.3d at 14)

“The trial court should err on the side of caution by striking the doubtful juror; that is, if a juror falls within a gray area, he should be stricken.” (393 S.W.3d at 15)

FACTUAL BACKGROUND

Nunley was convicted of three sexual assaults against his stepdaughter, who testified that he committed the assaults in 2006. During trial, the defense learned that the victim had seen a school counselor in 2006, but the prosecutor stated that she had not known the timing or identity of that counseling. The trial court also removed a seated juror after the juror was observed speaking with people associated with Nunley's supporters and designated him as an alternate. The court concluded that the juror's removal was substantively a for-cause strike and that the trial court acted within its discretion.

PROCEDURAL HISTORY

Nunley was indicted on one count of first-degree sodomy, two counts of second-degree sodomy, and three counts of first-degree sexual abuse. The sexual-abuse counts were dismissed, and he was tried and convicted on the three sodomy counts. The Marion Circuit Court sentenced him to twenty years in prison, and the Supreme Court of Kentucky affirmed.

DISPOSITION

affirmed

CASES CITED

- Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)
- United States v. Agurs, 427 U.S. 97, 96 S. Ct. 2392, 49 L. Ed. 2d 342 (1976)
- Bowling v. Commonwealth, 80 S.W.3d 405, 410 (Ky. 2002)
- Pennsylvania v. Ritchie, 480 U.S. 39, 107 S. Ct. 989, 94 L. Ed. 2d 40 (1987)
- Ballard v. Commonwealth, 743 S.W.2d 21, 22 (Ky. 1988)
- Cardine v. Commonwealth, 283 S.W.3d 641, 647 (Ky. 2009)
- Lester v. Commonwealth, 132 S.W.3d 857, 863 (Ky. 2004)
- Ordway v. Commonwealth, 391 S.W.3d 762, 780-81 (Ky. 2013)
- Shane v. Commonwealth, 243 S.W.3d 336 (Ky. 2007)