

SUPREME COURT OF WYOMING

Talley v. State

2007 WY 37 (2007) · No. No. 05-268 · Decided March 6, 2007

SUMMARY

The Wyoming Supreme Court affirmed Eyvette Marie Talley's convictions for felony murder, attempted aggravated robbery, and conspiracy to commit aggravated robbery. The court held that the prosecutor's improper use of "were-they-lying" questions during cross-examination did not establish prejudicial plain error. It also held that the prosecutor improperly referred to a co-conspirator's Fifth Amendment privilege during closing argument, but that the fleeting comment did not require reversal.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Burke, Justice; Voigt, C.J.; Golden, J.; Hill, J.; Kite, J.; Burke, J.
JURISDICTION	Wyoming
DECIDED	March 6, 2007
DOCKET	No. 05-268
DISPOSITION	affirmed
PROCEDURAL POSTURE	Talley appealed her convictions for felony murder, attempted aggravated robbery, and conspiracy to commit aggravated robbery, alleging prosecutorial misconduct during cross-examination and closing argument. Because she did not object at trial, the Wyoming Supreme Court reviewed the claims for plain error.
STANDARD OF REVIEW	Prosecutorial-misconduct claims are reviewed in light of the entire record and the effect on the defendant's right to a fair trial. Unobjected-to claims are reviewed for plain error: the record must clearly show the alleged error, the error must violate a clear and unequivocal rule of law, and the defendant must have been denied a substantial right resulting in material prejudice. The court also evaluated closing-argument comments in the context of the entire argument and the strength and quality of the prosecution's case.
PRECEDENTIAL VALUE	published Wyoming Supreme Court opinion; precedential
PARTIES	Eyvette Marie Talley v. The State of Wyoming

TOPICS

prosecutorial misconduct

criminal procedure

appellate procedure

constitutional law

fifth amendment

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

QUESTIONS PRESENTED

1. Whether the prosecutor committed misconduct by asking Talley during cross-examination whether other witnesses were lying.
2. Whether the prosecutor committed misconduct during closing argument by stating that Talley's non-testifying co-conspirator could not testify because he had a right to remain silent.
3. Whether either unobjected-to instance of misconduct constituted plain error requiring reversal.

HOLDINGS

1. A prosecutor may not use the 'lying' or 'mistaken' questioning technique to require a testifying defendant to characterize contradictory witnesses as liars; such questioning is improper prosecutorial misconduct.
2. The improper questioning did not constitute reversible plain error because Talley failed to demonstrate material prejudice or a reasonable probability of a more favorable verdict absent the misconduct.
3. A prosecutor may not tell the jury that a non-testifying co-conspirator could not testify because he had a right to remain silent when that explanation is not based on evidence presented to the jury.
4. The prosecutor's reference was improper but did not amount to plain error requiring reversal because it was fleeting, was made in response to defense argument, was not used to request an adverse inference, and did not prejudice Talley in light of the record and her defense theory.

KEY QUOTATIONS

“A prosecutor may not cross-examine a defendant using the “lying” or “mistaken” technique. Such questions are improper, and use of them amounts to misconduct.” (¶ 10)

“It is well-settled law that a prosecutor must restrict his argument to the evidence presented to the jury.” (¶ 19)

“A prosecutor should not suggest that he has independent knowledge of facts that could not be presented to the jury.” (¶ 21)

FACTUAL BACKGROUND

Talley traveled to Wyoming with her boyfriend, brother, and their families. The State's evidence showed that Talley, her boyfriend, and her brother planned to rob Manuel Leon-Leyva, armed themselves with knives, and met him in Kemmerer. Leon-Leyva was stabbed, and his vehicle and body were burned; witnesses testified that Talley had blood on her and a knife, and other witnesses recounted her admissions concerning the crime. Talley

testified that she was present but denied direct involvement in the robbery and murder, while admitting participation in the subsequent cover-up.

PROCEDURAL HISTORY

A jury convicted Talley on all three counts. The district court imposed a life sentence for felony murder, with the attempted aggravated robbery conviction merged for sentencing, and a consecutive sentence of eight to ten years for conspiracy. Talley timely appealed, and the Wyoming Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Dysthe v. State, 2003 WY 20, ¶¶ 22-24, 63 P.3d 875, 884-85 (Wyo. 2003)
- Jensen v. State, 2005 WY 85, ¶¶ 20, 22, 116 P.3d 1088, 1095-97 (Wyo. 2005)
- Beaugureau v. State, 2002 WY 160, ¶ 17, 56 P.3d 626, 635-36 (Wyo. 2002)
- State v. Maluia, 108 P.3d 974, 978 (Haw. 2005)
- State v. Graves, 668 N.W.2d 860, 872-73, 877 (Iowa 2003)
- State v. Thompson, 832 A.2d 626, 648 (Conn. 2003)
- State v. Duran, 140 P.3d 515, 524 (N.M. 2006)
- Doherty v. State, 2006 WY 39, ¶ 20, 131 P.3d 963, 970 (Wyo. 2006)
- Adams v. State, 2005 WY 94, ¶ 18, 117 P.3d 1210, 1217 (Wyo. 2005)
- Whitney v. State, 2004 WY 118, ¶ 87, 99 P.3d 457, 486 (Wyo. 2004)
- White v. State, 2003 WY 163, ¶ 28, 80 P.3d 642, 653 (Wyo. 2003)
- Montoya v. State, 971 P.2d 134, 136-37 (Wyo. 1998)
- Dice v. State, 825 P.2d 379, 384-85 (Wyo. 1992)
- Namet v. United States, 373 U.S. 179, 187, 83 S. Ct. 1151, 1155, 10 L. Ed. 2d 278 (1963)
- Douglas v. Alabama, 380 U.S. 415, 420, 85 S. Ct. 1074, 1077, 13 L. Ed. 2d 934 (1965)
- State v. Ceballos, 832 A.2d 14, 41 (Conn. 2003)
- Earll v. State, 2001 WY 66, ¶¶ 12-14, 29 P.3d 787, 791 (Wyo. 2001)
- Trujillo v. State, 2002 WY 51, ¶ 15, 44 P.3d 22, 28 (Wyo. 2002)
- Warner v. State, 2001 WY 67, ¶ 23, 28 P.3d 21, 29 (Wyo. 2001)