

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia v. Duane Hammock

Hammock · No. No. 12-1122 · Decided October 18, 2013

SUMMARY

The West Virginia Supreme Court of Appeals affirmed the Circuit Court of Raleigh County’s resentencing order following Duane Hammock’s conviction for first-degree robbery. The Court held that Hammock’s claims concerning alleged jury coercion, failure to declare a mistrial, and admission of a prior inconsistent statement were unpreserved or affirmatively waived.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Brent D. Benjamin; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	October 18, 2013
DOCKET	No. 12-1122
DISPOSITION	affirmed
PROCEDURAL POSTURE	Duane Hammock appealed the Circuit Court of Raleigh County's resentencing order following his first-degree robbery conviction, challenging the trial court's handling of jury deliberations and admission of impeachment evidence.
STANDARD OF REVIEW	A trial court's decision to declare a mistrial is reviewed for abuse of discretion. Jury instructions alleged to have coerced a verdict are evaluated based on the facts and circumstances of the particular case. Evidentiary rulings and application of the West Virginia Rules of Evidence are reviewed for abuse of discretion, subject to prejudice and substantial-rights analysis.
PRECEDENTIAL VALUE	Published memorandum decision; the opinion states that it was issued under Rule 21 because there was no substantial question of law and no prejudicial error.
PARTIES	Duane Hammock v. State of West Virginia

TOPICS

allen charge

jury instructions

preservation of error

impeachment

evidence

PRACTICE AREAS

criminal procedure

appellate procedure

evidence

QUESTIONS PRESENTED

1. Whether the trial court's remarks and instructions during jury deliberations improperly coerced the jury into reaching a guilty verdict.
2. Whether the trial court should have declared a mistrial after the jury initially announced a not-guilty verdict but disagreed during polling.
3. Whether the trial court improperly admitted the daughter's prior inconsistent statement as impeachment evidence.
4. Whether the appellate court could consider the challenged jury-deliberation and evidentiary issues when they were not preserved below.

HOLDINGS

1. The court declined to consider the mistrial claim because Hammock did not request a mistrial in the trial court, and the issue was therefore not preserved.
2. The court found no reversible coercion claim and held that Hammock affirmatively waived the issue by stating that he had no objection to the trial court's recommendation to give the Allen charge and resume deliberations.
3. The court declined to grant relief on the evidentiary challenge because Hammock did not object to admission of the prior statement at trial and therefore affirmatively waived the issue.

KEY QUOTATIONS

"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." (2)

"It is a well established principle that this Court will not decide nonjurisdictional questions which have not been raised in the court below." (2)

"Whether a trial court's instructions constitute improper coercion of a verdict necessarily depends upon the facts and circumstances of the particular case and cannot be determined by any general or definite rule." (3)

"constituted a fair and reasonable effort to stimulate continued deliberation." (3)

FACTUAL BACKGROUND

On August 27, 2009, Duane Hammock's daughter shoplifted liquor from a Raleigh County tobacco store. Hammock, who was in a vehicle outside the store, exited and pointed a gun at the clerk; the weapon was later identified as a BB gun, and surveillance video captured the incident. At trial, the daughter recanted an earlier

statement implicating Hammock, and the State introduced her prior statement as impeachment evidence. Hammock denied knowing about a planned robbery.

PROCEDURAL HISTORY

Hammock was tried before a jury for first-degree robbery. After the jury initially announced a not-guilty verdict, a poll revealed disagreement; the trial court sent the jury back for further deliberations, after which it returned a guilty verdict. The circuit court sentenced Hammock to fifteen years in prison, consisting of ten years for robbery and a consecutive five-year habitual-offender enhancement. The court later resentenced him so that he could pursue a direct appeal. The Supreme Court of Appeals affirmed, concluding that the appellate challenges were not preserved and that one argument was affirmatively waived.

DISPOSITION

affirmed

CASES CITED

- State v. Davis, 182 W. Va. 482, 388 S.E.2d 508 (1989)
- Hartwell v. Marquez, 201 W. Va. 433, 498 S.E.2d 1 (1997)
- Stonebraker v. Zinn, 169 W. Va. 259, 286 S.E.2d 911 (1982)
- State v. Pannell, 225 W. Va. 743, 696 S.E.2d 45 (2010)
- State v. Hobbs, 168 W. Va. 13, 282 S.E.2d 258 (1981)
- Allen v. United States, 164 U.S. 492 (1896)
- McDougal v. McCammon, 193 W. Va. 229, 455 S.E.2d 788 (1995)
- State v. LaRock, 196 W. Va. 294, 470 S.E.2d 613 (1996)