

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia v. Timothy Ray Sutherland, 231 W. Va. 410

745 S.E.2d 448 (2013) · No. No. 11-0799 · Decided June 5, 2013

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed Timothy Ray Sutherland's first-degree murder conviction and life-without-parole sentence. The court held that a prospective juror's general statement concerning punishment did not establish clear bias requiring removal for cause, particularly where further voir dire was not conducted. The court overruled the automatic-new-trial remedy in *State v. Phillips*, holding that a defendant who uses a peremptory strike to remove a juror who should have been struck for cause must show prejudice.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Davis; Chief Justice Benjamin
JURISDICTION	West Virginia
DECIDED	June 5, 2013
DOCKET	No. 11-0799
DISPOSITION	affirmed
PROCEDURAL POSTURE	Sutherland appealed his conviction for first degree murder and life sentence without mercy, arguing that the circuit court improperly denied his motion to strike a prospective juror for cause.
STANDARD OF REVIEW	Review of juror qualifications is plenary as to legal questions, clearly erroneous as to whether the facts support disqualification, and abuse of discretion as to the reasonableness of the procedure and the trial court's ruling on disqualification.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Appeals of West Virginia
PARTIES	Timothy Ray Sutherland v. State of West Virginia

TOPICS

[jury selection](#)[criminal procedure](#)[sixth amendment](#)[fourteenth amendment](#)[statutory interpretation](#)

PRACTICE AREAS

Criminal procedure

Jury selection

Appellate criminal law

Constitutional law

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by refusing to strike prospective juror Kevin Wong for cause based on his voir dire statements concerning punishment and mercy.
2. Whether a defendant is automatically entitled to a new trial when a trial court fails to remove a biased prospective juror for cause but the defendant removes that juror with a peremptory strike.

HOLDINGS

1. The trial court did not abuse its discretion by denying Sutherland's motion to strike Wong for cause because Wong's generalized statements concerning punishment and mercy were inconclusive and were not followed by further questioning establishing actual bias or an inability to follow the law.
2. A trial court's failure to remove a biased juror under W. Va. Code § 62-3-3 does not violate the defendant's right to an impartial jury when the defendant removes the juror with a peremptory strike. A defendant seeking a new trial must show prejudice. The court expressly overruled Syllabus point 8 of *State v. Phillips*.

KEY QUOTATIONS

"A trial court's failure to remove a biased juror from a jury panel, as required by W. Va. Code § 62-3-3 (1949) (Repl. Vol. 2010), does not violate a criminal defendant's right to a trial by an impartial jury if the defendant removes the juror with a peremptory strike." (231 W. Va. 410)

"In order to obtain a new trial for having used a peremptory strike to remove a biased juror from a jury panel, a criminal defendant must show prejudice." (231 W. Va. 410)

"The holding in Syllabus point 8 of State v. Phillips, 194 W. Va. 569, 461 S.E.2d 75 (1995), is expressly overruled." (231 W. Va. 410)

FACTUAL BACKGROUND

Sutherland was temporarily living at his cousin Stacie Smith's home when the two argued in the early morning of December 28, 2009. After Smith called him a "junkie," Sutherland left the bedroom, retrieved a butcher knife, returned, and fatally stabbed Smith in the neck. He fled with Smith's personal property and was arrested two days later; after his arrest, he confessed to the killing.

PROCEDURAL HISTORY

A Kanawha County grand jury indicted Sutherland for first degree murder and first degree robbery. After a three-day jury trial, he was convicted of first degree murder without a recommendation of mercy and acquitted of first degree robbery. The circuit court sentenced him to life imprisonment without the possibility of parole. The Supreme Court of Appeals of West Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Miller, 197 W. Va. 588, 476 S.E.2d 535 (1996)
- State v. Newcomb, 223 W. Va. 843, 679 S.E.2d 675 (2009)
- State v. Juntilla, 227 W. Va. 492, 711 S.E.2d 562 (2011)
- State v. Greer, 22 W. Va. 800 (1883)
- State v. Phillips, 194 W. Va. 569, 461 S.E.2d 75 (1995)
- Ross v. Oklahoma, 487 U.S. 81 (1988)
- United States v. Martinez-Salazar, 528 U.S. 304 (2000)
- State ex rel. Grob v. Blair, 158 W. Va. 647, 214 S.E.2d 330 (1975)
- State v. Salmons, 203 W. Va. 561, 509 S.E.2d 842 (1998)
- State ex rel. Knotts v. Facemire, 223 W. Va. 594, 678 S.E.2d 847 (2009)
- State v. Harris, 226 W. Va. 471, 702 S.E.2d 603 (2010)

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