

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State v. Hatcher

211 W. Va. 738 (2002) · Decided June 27, 2002

SUMMARY

The Supreme Court of Appeals of West Virginia reversed Bethel Hatcher’s first-degree murder conviction and remanded for a new trial. The court held that a juror’s failure to disclose that the juror’s mother had been murdered and that a prosecution witness had investigated the murder denied Hatcher a fair trial. The court also held that the prosecutor’s repeated misstatement that premeditation could be formed instantaneously was not adequately cured by the trial court’s response.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam
JURISDICTION	West Virginia
DECIDED	June 27, 2002
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Hatcher appealed his first-degree murder conviction and denial of a motion for a new trial, asserting that a juror failed to disclose material and potentially disqualifying information during voir dire and that the prosecutor misstated the law of premeditation during closing argument.
STANDARD OF REVIEW	The court reviewed the denial of the motion for a new trial based on juror disqualification and assessed whether the prosecutor's preserved misstatement of law, absent an adequate curative instruction, prejudiced the defendant.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Bethel Hatcher v. State

TOPICS

- jury selection
- curative instructions
- jury instructions
- criminal procedure
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the defendant was denied a fair trial when a juror failed to disclose, in response to direct voir dire questions, material information concerning a family member's murder and the juror's connection to a prosecution witness who investigated that murder.
2. Whether the defendant was prejudiced by the prosecutor's repeated misstatement that premeditation for first-degree murder could be formed in an instant, when the trial court failed to give a proper corrective instruction.
3. Whether the defendant's pre-indictment-delay claim warranted relief.

HOLDINGS

1. A juror's failure to disclose highly important and potentially disqualifying information in response to direct voir dire inquiries denied the defendant a fair trial when the defendant was diligent in discovering the information and prejudice or injustice resulted from the juror's participation.
2. A trial court must provide a proper corrective instruction when a prosecutor repeatedly and materially misstates the law of premeditation during closing argument; merely telling the jury that it must follow the court's written instructions, without stating the correct law, does not cure the error.
3. The defendant's assignment of error concerning pre-indictment delay was without merit.

KEY QUOTATIONS

“Based on this syllabus point, we conclude that in the instant case the presence on the jury of a juror who for whatever reason failed to disclose highly important and potentially disqualifying information despite a direct inquiry about that information denied the defendant a fair trial.” (at 740-741)

“We have never held that the fact that the law is correctly stated in a written charge that the jury takes to the jury room will cure a serious and repeated misstatement of the law by a prosecutor in closing argument.” (at 742)

FACTUAL BACKGROUND

Hatcher was convicted of murdering Phyllis Rogers, with whom he had lived and who disappeared in late 1992; her remains were discovered in 1994, and Hatcher was arrested and charged in 1998. The prosecution relied on contested circumstantial, forensic, and alleged third-party statement evidence. A juror did not disclose that the juror's mother had been murdered in a domestic-violence situation or that a prosecution witness had investigated the murder. During closing argument, the prosecutor repeatedly told the jury that premeditation could be formed in an instant, and the trial court did not tell the jury the correct legal rule after defense counsel objected.

PROCEDURAL HISTORY

Hatcher was convicted of first-degree murder in the Circuit Court of Summers County on February 2, 2000, and the jury recommended mercy. After learning that a juror had failed to disclose that the juror's mother had been

murdered in a domestic-violence situation and that a prosecution witness had investigated that murder, Hatcher moved for a new trial; the motion was denied. During closing argument, the prosecutor repeatedly stated that premeditation could be formed in an instant, despite a contemporaneous objection. The Supreme Court of Appeals of West Virginia reversed the conviction and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The conviction was reversed and the case remanded to the Circuit Court of Summers County for further proceedings.

CASES CITED

- State v. Dean, 134 W. Va. 257, 58 S.E.2d 860 (1950)
- Watkins v. Baltimore & Ohio Railroad Co., 130 W. Va. 268, 43 S.E.2d 219 (1947)
- State v. Guthrie, 194 W. Va. 657, 461 S.E.2d 163 (1995)
- State v. Schrader, 172 W. Va. 1, 302 S.E.2d 70 (1982)
- State v. Starr, 158 W. Va. 905, 216 S.E.2d 242 (1975)

OPINION

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PER CURIAM.

PER CURIAM. We reverse this case based on the appellant being denied a fair trial because of a juror's failure to respond fully and honestly to questions propounded on voir dire, and the trial court's failure to provide a proper curative instruction following a misstatement of the law by the prosecuting attorney in the closing argument. I. The appellant Bethel Hatcher was convicted of first degree murder on February 2, 2000, in the Circuit Court of Summers County. The jury recommended mercy. Specifically, the appellant was convicted of murdering Phyllis Rogers, with whom he had lived and who disappeared in late 1992. Her remains were discovered in 1994; the appellant was arrested and charged with her murder in 1998.¹ The evidence against the appellant was a mixture of circumstantial and forensic evidence and alleged inculpatory statements to third parties by the appellant. Taken together, the evidence was certainly sufficient to support a conviction; but the evidence was also strongly controverted at trial. One of the third parties to whom the defendant allegedly made inculpatory statements was a person who was in jail with the appellant; another was a former girlfriend who admitted to drug use. The forensic evidence against the appellant was challenged by the defense, in part on the grounds that early investigation of the victim's disappearance did not discover the evidence. In short, the defendant's challenge to the prosecution's case was substantial, and the jury could have found that the evidentiary challenge

raised a reasonable doubt as to the defendant's guilt. It is in this context that we discuss two of the appellant's assignments of error. II. The basis for the first assignment is the fact that one of the jurors who convicted the appellant did not disclose in voir dire that the juror's mother had been murdered in a domestic violence situation, and further did not disclose that one of the State's witnesses against the appellant was the same police officer who had investigated the juror's mother's murder. The appellant learned of these circumstances after his conviction and raised them in a motion for a new trial, which the court denied. This juror was asked during voir dire, along with the other members of the prospective jury panel, if he "ever had a friend or family member who has been a victim of a crime of violence?" Although three other potential jurors disclosed that relatives had been the victims of domestic violence or murder, the juror in question said nothing. This juror later also disclosed that he knew the police officer in question who was listed as a possible State witness, but when asked how, the juror simply said that the police officer was a life-long neighbor and acquaintance. The juror made no mention of the police officer's role in investigating the juror's mother's death. It may be conceivable that the juror in question did not understand the direct question about family members being the victims of violence, even after other jurors spoke up with answers. It may also be conceivable that the juror simply forgot to mention the police officer's role in investigating his mother's murder. But the weight of the evidence in the record strongly suggests that the juror failed to honestly disclose circumstances that might cause the juror to be disqualified; or at the least that would give rise to further inquiry by defense counsel, and perhaps a peremptory strike from the jury panel. In *Syllabus Point 2 of State v. Dean*, 134 W.Va. 257, 58 S.E.2d 860 (1950), this Court stated: "A motion to set aside a verdict and grant a new trial on the ground that a juror subject to challenge for cause was a member of the jury which returned it, must be supported by proof that the juror was disqualified, that movant was diligent in his efforts to ascertain the disqualification and that prejudice or injustice resulted from the fact that said juror participated in finding and returning the verdict. Such facts must be established by proof submitted to the court in support of the motion, and not from evidence adduced before the jury upon the trial." *Syl., Watkins v. Baltimore and Ohio Railroad Company et al.*, 130 W.Va. 268 [43 S.E.2d 219] (1947). Based on this syllabus point,² we conclude that in the instant case the presence on the *741 jury of a juror who for whatever reason failed to disclose highly important and potentially disqualifying information despite a direct inquiry about that information denied the defendant a fair trial. The appellant also assigns as error certain remarks of the prosecutor in the prosecutor's closing argument. The prosecutor argued to the jury in closing that "premeditation can be formed in an instant," going so far as to put this phrase on a slide that was projected on a screen to the jury during closing argument. Defense counsel promptly objected to this argument. The circuit court told the jury that the prosecutor was merely stating what the prosecutor thought the law was, and the jury was not bound by that statement, but by the law as the judge had charged the jury. The judge pointed out that the jury would have a copy of the charge in the jury room. The judge did not instruct the jury as to what the

correct law was. The prosecutor then resumed his argument, and told the jury that the court's written instructions did in fact say that premeditation could be formed in an instant. This statement was erroneous. The court's instructions, in fact, the parties agree, tracked this Court's decision in *State v. Guthrie*, 194 W.Va. 657, 461 S.E.2d 163 (1995), where we held in Syllabus Points 5 and 6: 5. Although premeditation and deliberation are not measured by any particular period of time, there must be some period between the formation of the intent to kill and the actual killing, which indicates the killing is by prior calculation and design. This means there must be an opportunity for some reflection on the intention to kill after it is formed.

6. In criminal cases where the State seeks a conviction of first degree murder based on premeditation and deliberation, a trial court should instruct the jury that murder in the first degree consists of an intentional, deliberate, and premeditated killing which means that the killing is done after a period of time for prior consideration. The duration of that period cannot be arbitrarily fixed. The time in which to form a deliberate and premeditated design varies as the minds and temperaments of people differ and according to the circumstances in which they may be placed. Any interval of time between the forming of the intent to kill and the execution of that intent, which is of sufficient duration for the accused to be fully conscious of what he intended, is sufficient to support a conviction for first degree murder. To the extent that *State v. Schrader*, 172 W.Va. 1, 302 S.E.2d 70, (1982), is inconsistent with our holding today, it is expressly overruled.

We went on in *Guthrie* to say that: This means there must be an opportunity for some reflection on the intention to kill after it is formed. The accused must kill purposely after contemplating the intent to kill. Although an elaborate plan or scheme to take life is not required, our *Schrader's* notion of instantaneous premeditation and momentary deliberation is not satisfactory for proof of first degree murder.... To speak of premeditation and deliberation which are instantaneous, or which take no appreciable time, is a contradiction in terms. It deprives the statutory requirement of all meaning and destroys the statutory distinction between first and second degree murder. 194 W.Va. at 657, 461 S.E.2d at 181 (emphasis added). While it is possible that the circuit court "could have cured the error if the Judge had responded to counsel's objection with a strongly-worded corrective statement," *State v. Starr*, 158 W.Va. 905, 911, 216 S.E.2d 242, 246 (1975), that did not occur in this case. Rather, the court left it to the jury to decide whether the prosecutor had correctly stated the law, based on the written charge that the jury took to the jury room. *742 We have never held that the fact that the law is correctly stated in a written charge that the jury takes to the jury room will cure a serious and repeated misstatement of the law by a prosecutor in closing argument. In the instant case, the element of premeditation was not indisputably shown by the State's evidence. The jury could well have relied on the prosecutor's repeated erroneous statements of the law (and the projected message on a screen) in deciding the issue of premeditation. It is likely, therefore, that the defendant was prejudiced by the prosecutor's misstatement of the law. The defendant's counsel properly preserved this error by means of contemporaneous objection and a later motion for a new trial. This assigned error, therefore, in addition to the fact of the juror who

did not disclose material and potentially disqualifying evidence in response to direct inquiries, requires the reversal of the appellant's conviction. The appellant's other assignments of error are either also without merit or moot in light of our ruling herein. III. The appellant's conviction is reversed and this case is remanded to the Circuit Court of Summers County. Reversed and Remanded. . The appellant has raised pre-indictment delay as error; we find this assignment to be without merit. . In the instant case, the juror's association with the investigating police officer in connection with a similar crime of violence against the juror's family member was a condition that would ordinarily be disqualifying. The appellant's counsel was diligent in seeking to ascertain facts that would support the disqualification, and we feel that prejudice could be concluded from the presence of a juror with such a background. This *741 could especially be true with a juror who had not been questioned about the effects of their background on their ability to decide the case fairly, and who had not revealed the disqualifying information. This met the State v. Dean test.