

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State v. Keaton

215 W. Va. 376 (2004) · Decided June 17, 2004

SUMMARY

The West Virginia Supreme Court of Appeals held that a trial judge’s remarks to a juror, attributing inconvenience to the defendant’s insistence on a twelve-person jury, created a substantial potential for prejudice. Applying plain-error review and the harmless-beyond-a-reasonable-doubt standard, the court reversed the malicious-wounding conviction and remanded for a new trial. The court also provided best practices for judicial communications with jurors when the defendant and counsel are absent.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Starcher; Justice Davis; Justice Files
JURISDICTION	West Virginia
DECIDED	June 17, 2004
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Keaton appealed his malicious-wounding conviction after the trial judge told a juror that Keaton was insisting on his constitutional right to a twelve-person jury, potentially causing the jury to view Keaton negatively. The issue was raised for the first time on appeal and was reviewed for plain error and harmlessness beyond a reasonable doubt.
STANDARD OF REVIEW	De novo review for plain error because there was no post-trial objection or motion; alleged constitutional error was also reviewed under the harmless-beyond-a-reasonable-doubt standard.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Appeals of West Virginia
PARTIES	Housein B. Keaton v. State of West Virginia

TOPICS

- criminal procedure
- appellate procedure
- harmless error
- preservation of error
- constitutional law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether defense counsel's statement that there was no objection to the trial judge's speaking with the juror constituted a knowing and intelligent waiver by Keaton of his personal right to be present.
2. Whether the trial judge's remarks to the juror about Keaton's exercise of his constitutional right to a twelve-person jury created prejudicial error.
3. Whether any error was plain error and harmless beyond a reasonable doubt in light of the trial evidence.
4. What best practices should govern a trial judge's communications with jurors when the defendant and counsel are absent.

HOLDINGS

1. Defense counsel's statement that there was no objection constituted a waiver by Keaton because the surrounding circumstances showed that Keaton had consulted with counsel and allowed counsel to communicate his personal agreement.
2. The judge's remarks were erroneous because they told the juror that Keaton was responsible for the inconvenience caused by insisting on his constitutional right, creating a substantial potential for juror annoyance or anger and impairing impartial deliberation.
3. The State did not establish that the error was harmless beyond a reasonable doubt because the evidence of guilt was substantially controverted and was not so overwhelming that there was no reasonable possibility that the prejudice affected the verdict.
4. Absent special circumstances fully placed on the record, a trial judge should communicate with jurors on the record and in the defendant's and counsel's presence unless the defendant personally and affirmatively waives presence; if they are absent, the court should promptly provide an oral summary and later a transcript, and any objection should be promptly presented to the trial court.

KEY QUOTATIONS

"Such juror annoyance or anger at a criminal defendant (about an entirely irrelevant matter) has the inherent potential to improperly affect jury deliberations—by making it harder for jurors to view and weigh the evidence impartially, and to scrupulously afford the defendant the benefit of such difficult-to-apply principles as the presumption of innocence and the prosecution's burden of proof beyond a reasonable doubt." (383)

"The burden to make such a showing is upon the prosecution." (384)

FACTUAL BACKGROUND

Keaton was tried for malicious wounding before a twelve-person jury without an alternate juror. One juror had a previously scheduled tooth-extraction surgery, and when it became clear that trial proceedings would extend beyond the appointment, Keaton personally chose to retain his constitutional right to a twelve-person jury rather than proceed with eleven jurors. After defense counsel agreed to the judge's speaking with the juror, the judge met with the juror outside the defendant's and counsel's presence and stated that Keaton was pressing his right to

a twelve-person jury, creating an inconvenience for the juror and jury. The juror postponed the surgery, the jury deliberated, and the evidence of guilt was substantially controverted by Keaton's self-defense testimony and corroborating eyewitness testimony.

PROCEDURAL HISTORY

In April 2003, the Circuit Court of Kanawha County convicted Keaton of malicious wounding. During trial, a juror had a scheduled surgery, and Keaton declined to waive his constitutional right to a twelve-person jury. The trial judge spoke with the juror outside Keaton's and defense counsel's presence, explaining that Keaton was pressing his right to a twelve-person jury and asking whether the juror could postpone the surgery. The juror postponed the appointment, the jury deliberated, and Keaton was convicted. Defense counsel learned the precise remarks approximately two months after trial and did not move for relief in the circuit court. The Supreme Court of Appeals reversed and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for a new trial and further proceedings consistent with the opinion.

CASES CITED

- State v. England, 180 W. Va. 342, 376 S.E.2d 548 (1988)
- State v. Hicks, 198 W. Va. 656, 482 S.E.2d 641 (1996)
- State v. Mills, 211 W. Va. 532, 566 S.E.2d 891 (2002)
- State v. Walker, 207 W. Va. 415, 533 S.E.2d 48 (2000)
- State v. Green, 163 W. Va. 681, 260 S.E.2d 257 (1979)
- State v. Boyd, 160 W. Va. 234, 233 S.E.2d 710 (1977)
- People v. Rodgers, 756 P.2d 980 (Colo. 1988) (en banc)
- People v. Rodgers, 734 P.2d 145 (Colo. Ct. App. 1986)
- Villarreal v. State, 860 S.W.2d 647 (Tex. Ct. App.—Waco 1993)
- Cunningham v. Zant, 928 F.2d 1006, 1019 (11th Cir. 1991)
- State v. Thompson, 118 N.C. App. 33, 454 S.E.2d 271 (1995)
- People v. Herrero, 324 Ill. App. 3d 876, 756 N.E.2d 234, 258 Ill. Dec. 252 (2001)
- State v. Wotring, 167 W. Va. 104, 279 S.E.2d 182 (1981)
- State v. Flipppo, 212 W. Va. 560, 575 S.E.2d 170 (2002)
- State v. Blair, 158 W. Va. 647, 214 S.E.2d 330 (1975)
- State v. Crabtree, 198 W. Va. 620, 482 S.E.2d 605 (1996)
- Scott v. McGhee, 174 W. Va. 296, 324 S.E.2d 710 (1984)
- State v. Swafford, 206 W. Va. 390, 524 S.E.2d 906 (1999)

- State v. Guthrie, 194 W. Va. 657, 461 S.E.2d 163 (1995)
- State v. Haddox, 166 W. Va. 630, 276 S.E.2d 788 (1981)
- State v. Atkins, 163 W. Va. 502, 261 S.E.2d 55 (1979)

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