

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia v. Garland Murray

No. 12-1535 (Kanawha County 11-F-606) · No. No. 12-1535 · Decided December 2, 2013

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed Garland Murray's convictions for nighttime burglary, first-degree murder, and attempted kidnapping. The court rejected claims concerning self-representation, absence during jury communications, compulsory process, character and other-acts evidence, ineffective assistance of counsel, hearsay, and an eyewitness-reliability instruction. The court issued the decision as a memorandum decision under Rule 21 and found no substantial question of law or prejudicial error.

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	December 2, 2013
DOCKET	No. 12-1535
DISPOSITION	affirmed
PROCEDURAL POSTURE	Garland Murray appealed his convictions and recidivist-enhanced sentences for nighttime burglary, first-degree murder, and attempted kidnapping on constitutional and evidentiary grounds.
STANDARD OF REVIEW	Rulings concerning a new trial and the existence of reversible error are reviewed for abuse of discretion; underlying factual findings are reviewed for clear error; and questions of law are reviewed de novo. Evidentiary rulings, application of the Rules of Evidence, formulation of jury instructions, and refusal to give a requested instruction are generally reviewed for abuse of discretion. Unpreserved evidentiary error is reviewed under the plain-error doctrine.
PRECEDENTIAL VALUE	Published memorandum decision; the source states that disposition by memorandum decision was appropriate under West Virginia Rule of Appellate Procedure 21.

PARTIES

Garland Murray v. State of West Virginia

TOPICS

criminal procedure

right to counsel

ineffective assistance

hearsay

appellate procedure

PRACTICE AREAS

criminal procedure

constitutional criminal procedure

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether Murray timely and unequivocally invoked his constitutional right to waive counsel and represent himself.
2. Whether Murray was prejudiced by his absence when the trial court answered jury questions during deliberations.
3. Whether the refusal to call Murray's brother as a defense witness violated Murray's right to compulsory process.
4. Whether evidence concerning Murray's nickname, an allegedly stolen car, and prior drug purchases was impermissible character or other-acts evidence under West Virginia Rules of Evidence 404(a) and 404(b).
5. Whether Murray's ineffective-assistance claim could be resolved on direct appeal.
6. Whether text messages admitted at trial constituted inadmissible hearsay.
7. Whether the trial court abused its discretion by refusing to give a cautionary instruction concerning eyewitness reliability.

HOLDINGS

1. A defendant must assert the desire to represent himself in a timely and unequivocal manner. Murray's statement that he would rather represent himself, followed by a request for new appointed counsel and later an acknowledgment that his counsel problems were resolved, was not an unequivocal invocation of self-representation.
2. A defendant's absence at a critical stage is not reversible error where there is no possibility of prejudice. Murray failed to show prejudice from his absence while the court answered the jury's questions.
3. The record did not establish a violation of Murray's right to compulsory process because defense counsel made a tactical decision not to call his brother as a witness.
4. The admission of Murray's nickname did not constitute plain error, and evidence concerning the car and Murray's prior drug purchases was intrinsic to the charged crimes rather than subject to suppression under Rule 404(b).
5. The court declined to decide Murray's ineffective-assistance claim on direct appeal because the record was not sufficiently developed.

6. The trial court did not abuse its discretion by admitting the text messages because the messages were admissible under applicable hearsay principles, including statements of a party or coconspirator, evidence offered for a non-hearsay purpose, and the present-sense-impression and then-existing-condition exceptions.
7. The trial court did not abuse its discretion by refusing Murray's requested cautionary instruction on eyewitness reliability because the eyewitness knew Murray and his codefendant for a considerable period.

KEY QUOTATIONS

“A defendant has a right to self-represent, but he must voice that desire in a timely and unequivocal manner.”
(at 2)

“It is the extremely rare case when this Court will find ineffective assistance of counsel when such a charge is raised as an assignment of error on a direct appeal.” (at 4)

“Other act evidence is intrinsic when the evidence of the other act and the evidence of the crime charged are inextricably intertwined or both acts are part of a single criminal episode or the other acts were necessary preliminaries to the crime charged.” (at 5)

FACTUAL BACKGROUND

On April 20, 2010, Garland Murray and his brother entered the home of Gregory and Ebony Poole, forced Ebony Poole outside, and took Gregory Poole away in a vehicle. Gregory Poole was later seen being chased, shots were fired, and his body was found the next morning with three gunshot wounds. The State's evidence included Ebony Poole's eyewitness testimony, text messages and cell-phone calls, and evidence that Murray knew the decedent through prior drug purchases.

PROCEDURAL HISTORY

Murray was indicted with his brother on multiple burglary, murder, kidnapping, and drug-related counts. Before trial, the drug-related counts were resolved by plea agreement, and Murray proceeded to trial, where the jury convicted him of nighttime burglary, first-degree murder with mercy, and attempted kidnapping. A subsequent recidivist proceeding resulted in an enhancement of his sentences. The Circuit Court of Kanawha County entered the sentencing order on December 4, 2012, and the Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Vance, 207 W. Va. 640, 535 S.E.2d 484 (2000)
- State v. Sheppard, 172 W. Va. 656, 310 S.E.2d 173 (1983)
- Faretta v. California, 422 U.S. 806 (1975)

- Watson v. Black, 161 W. Va. 46, 239 S.E.2d 664 (1977)
- State ex rel. Redman v. Hedrick, 185 W. Va. 709, 408 S.E.2d 659 (1991)
- State v. Triplett, 187 W. Va. 760, 421 S.E.2d 511 (1992)
- State v. Jessie, 225 W. Va. 21, 689 S.E.2d 21 (2009)
- State v. Huffman, 141 W. Va. 55, 87 S.E.2d 541 (1955)
- State ex rel. R.L. v. Bedell, 192 W. Va. 435, 452 S.E.2d 893 (1994)
- State v. Harris, 230 W. Va. 717, 742 S.E.2d 133 (2013)
- State v. Rodoussakis, 204 W. Va. 58, 511 S.E.2d 469 (1998)
- State v. Miller, 194 W. Va. 3, 459 S.E.2d 114 (1995)
- State v. LaRock, 196 W. Va. 294, 470 S.E.2d 613 (1996)
- Strickland v. Washington, 466 U.S. 668 (1984)
- Tennant v. Marion Health Care Foundation, Inc., 194 W. Va. 97, 459 S.E.2d 374 (1995)
- State v. Hinkle, 200 W. Va. 280, 489 S.E.2d 257 (1996)