IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA

Respondent,

v.

QUENTON A. SHEFFIELD,

Petitioner .

Supreme Court Case No.: 21-0114
Case No.: 19-F-107
Circuit Court of Cabell County

REPLY BRIEF

Robert F. Evans
Appellate Counsel
W. Va. Bar No.: 13610
Public Defender Services
Appellate Advocacy Division
One Player's Club Drive, Suite 301
Charleston, WV 25311
Phone: (304)558-3905
Fax: (304)558-1098
roberte@pdc7.org

Counsel for Petitioner

A Cabell County jury convicted Petitioner of three offenses.[1] During deliberations of the guilt phase of Petitioner's bifurcated trial, the lower court dismissed a sitting juror and replaced her with an unsworn discharged alternate juror.[2] While conceding that the lower court did commit error by violating Rule 24 of the West Virginia Rules of Criminal Procedure, the Respondent argues that any error committed by the lower court regarding the recall and substitution of the unsworn alternate juror was harmless.[3] Petitioner does not agree that harmless error analysis applies to his case; however, assuming that such analysis does apply, the lower court's errors were not harmless beyond a reasonable doubt. Therefore, Petitioner's convictions require reversal.

The lower court attempted to overcome any prejudice to Petitioner by questioning both the discharged alternate juror[4] and the remaining seated jurors.[5] That court made further attempts to overcome prejudice by instructing the reconstituted jury to begin deliberations anew.[6] The Respondent argues that this Court should examine how the federal courts address violations of the federal version of Rule 24, and that those courts apply a harmless error analysis to such violations.[7]

Petitioner disputes that harmless error analysis is appropriate; however, should this Court rule otherwise, the lower court's attempts here are insufficient to pass harmless error analysis. The Respondent cites six (6) federal cases as the basis for harmless error analysis;[8] however, those cases either (1) are inapplicable to

---

[1] A.R. 1891-96.
[2] A.R. 1711-34.
[3] *See* Resp't Br. 7-14.
[4] A.R. 1714-16.
[5] A.R. 1716-29.
[6] A.R. 1733-34.
[7] *See* Resp't Br. 7-14.
[8] Resp't Br. 12.

Petitioner's case, or (2) further underscore the lower court's insufficient attempt to overcome prejudice to Petitioner. *United States v. Gambino* has no bearing on this case, as the court in that case retained two alternate jurors that were substituted.[9] Both *United States v. Huntress*[10] and *United States v. Josefik*[11] are distinguishable because in those the defendants *consented* to post-submission substitution of the alternate juror. The remaining cases share a *stark* distinction with Petitioner's case: the alternates, even if discharged, were instructed *not* to discuss the case with anyone.[12] Further, the federal courts echoed that the error would be harmless when "the trial court has used safeguards to neutralize the possible prejudice to the defendant."[13] Those safeguards included the trial court: (1) questioning the prospective alternate juror about exposure to improper outside sources; (2) questioning the remaining jurors on the ability to put prior deliberations aside and begin them anew; and (3) instructing the reconstituted jury to begin deliberations anew.[14] Other factors the federal courts consider are the period of time between discharge and re-impaneling of the alternate juror, and length of time for both the old and new deliberations.[15]

In Petitioner's case, the lower court *attempted* to overcome any prejudice; however, those attempts were insufficient. The lower court *did* ask the alternate

---

[9] 788 F.2d 938, 949 (3d Cir. 1986).
[10] 956 F.2d 1309, 1312 (5th Cir. 1992).
[11] 753 F.2d 585, 587 (7th Cir. 1985).
[12] *See United States v. Quiroz-Cortez*, 960 F.2d 418, 419 (5th Cir. 1992); *United States v. Hillard*, 701 F.2d 1052, 1055 (2d Cir. 1983); *United States v. Kopituk*, 690 F.2d 1289, 1306 (11th Cir. 1982).
[13] *People v. Burnette*, 775 P.2d 583, 589 (Colo. 1989).
[14] *See e.g., United States v. Guevara*, 823 F.2d 446 (11th Cir.1987); *United States v. Josefik*, 753 F.2d 585 (7th Cir.1985), cert. denied, 471 U.S. 1055, 105 S.Ct. 2117, 85 L.Ed.2d 481 (1985); *United States v. Hillard*, 701 F.2d 1052 (2d Cir.1983), cert. denied, 461 U.S. 958, 103 S.Ct. 2431, 77 L.Ed.2d 1318 (1983); *United States v. Kaminski*, 692 F.2d 505 (8th Cir.1982); *United States v. Phillips*, 664 F.2d 971 (5th Cir.1981), cert. denied, 457 U.S. 1136, 102 S.Ct. 2965, 73 L.Ed.2d 1354 (1982)).
[15] *See e.g., United States v. Guevara*, 823 F.2d 446 (11th Cir.1987).

juror if she had spoken to anyone about the case since her discharge,[16] and instructed the jury to begin deliberations anew.[17] Yet, the lower court *did not*: (1) swear the alternate juror in before questioning her; (2) ask the alternate juror if she had investigated the matter since her discharge; (3) ask the remaining jurors if they could put prior deliberations aside; or, (4) swear the alternate juror back in *at any point*.[18] Further, the alternate juror was discharged for at least eighteen (18) hours.[19] Finally, the jury deliberated for a longer period of time prior to the substitution than it did after the substitution.[20] When considering all of these facts together, this Court should reach a singular conclusion – the lower court's attempts to overcome prejudice were insufficient, and Petitioner's convictions require reversal.

Respectfully Submitted
QUENTON A. SHEFFIELD
By Counsel

Robert F. Evans
Appellate Counsel
W. Va. Bar No.: 13610
Public Defender Services
Appellate Advocacy Division
One Player's Club Drive, Suite 301
Charleston, WV 25311
Phone: (304)558-3905
Fax: (304)558-1098
roberte@pdc7.org
Counsel for Petitioner

---

[16] A.R. 1714-16.
[17] A.R. 1733-34.
[18] The Respondent asserts that this was merely a formality, and that the earlier swearing in was sufficient. Resp't Br. 15-17. This Court's ruling in *State v. Moore*, 57 W. Va. 146 S.E. 1015 (1905), in unison with Rule 24(c) of the West Virginia Rules of Criminal Procedure and W. Va. Code § 62-3-3 provide otherwise.
[19] The jury began deliberations at 3:00 PM on Monday, October 5, 2020. Juror Scott was discharged prior to deliberations beginning. The lower court took the case up again at 9:00 the next day, Tuesday, October 6, 2020. Therefore, Juror Scott was neither a member of the jury nor ordered by the lower court to refrain from any activity related to the case for *at least* eighteen (18) hours.
[20] The jury deliberated for one (1) hour and seven (7) minutes before the lower court became aware of the tainted juror issue, but for only forty-two (42) minutes once the jury was reconstituted. That forty-two (42) minute period included two interruptions during which the lower court answered jury questions.

CERTIFICATE OF SERVICE

I, Robert F. Evans, counsel for Petitioner, Quenton A. Sheffield, do hereby certify that I have caused to be served upon the counsel of record in this matter a true and correct copy of the accompanying *"Reply Brief"* to the following:

Scott E. Johnson
Assistant Attorney General
West Virginia Attorney General's Office
Appellate Division
812 Quarrier Street, Sixth Floor
Charleston, WV 25301

Counsel for the Respondent

by depositing the same in the United States mail in a properly addressed, postage paid, envelope on the 4th day of October 2021.

Robert F. Evans
Appellate Counsel
W. Va. Bar No.: 13610
Public Defender Services
Appellate Advocacy Division
One Players Club Drive, Suite 301
Charleston, WV 25311
(304) 558-3905
roberte@pdc7.org

Counsel for the Petitioner