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Fullwood v. Lee

290 F.3d 663 (4th Cir. 2002)

I. Introduction

Michael Lee Fullwood (“Fullwood”) and Diedre Waters (“Waters”) were in a relationship for over three years and shared a daughter, Michelle. In 1985, the relationship began to dissolve and Fullwood began threatening to kill Waters. On March 29, 1985, the strain in the relationship culminated in a bloody killing.¹

Waters was employed as a day care worker for Michael (“Mr. Hawks”) and Camille Hawks (“Mrs. Hawks”). Before Mrs. Hawks left for work that day, Waters received phone calls from Fullwood and his mother. Waters told Fullwood’s mother that she took a warrant out on Fullwood because he was threatening to cut off her head and to cut out her heart. An hour after Mrs. Hawks left the house, Robin Ferrell (“Ferrell”) arrived at the day care to drop off her child. Ferrell tried to open the front door, but found it locked. She noticed that the window was broken, and she heard the children crying. Ferrell called Mrs. Hawks and was able to get the children out of the house through the window.²

Mr. Hawks returned to the house. He and Ferrell went into the house and found Waters, “completely covered with blood,” lying dead on the living room floor.³ Fullwood lay across her lap. The police found blood from Fullwood and Waters all over the house. The autopsy on Waters’s body revealed twenty-four wounds, mostly slash wounds, two of which were capable of causing death. Fullwood was in shock upon arrival in the emergency room. He had a stab wound in his abdomen and superficial cuts on his wrists and neck. The doctor treating Fullwood believed that the wounds were self-inflicted.⁴

During the guilt phase of the trial, the State alleged that Fullwood broke into the house despite Waters’s attempts to prevent him from entering. Waters struggled to keep Fullwood away from her, but eventually he managed to stab her to death. The defense conceded that Fullwood killed Waters and requested “a verdict of guilty of second degree murder.”⁵ Defense counsel asserted that Fullwood was emotionally troubled, that Waters stabbed him, and that he did not “premeditate or deliberate” the killing.⁶ The psychologist for the defense testified that Fullwood’s IQ was low and that Waters and Michelle were “the founda-

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1. Fullwood v. Lee, 290 F.3d 663, 671 (4th Cir. 2002).
 2. *Id.* at 671-72.
 3. *Id.* at 672.
 4. *Id.* at 672-73.
 5. *Id.* at 673.
 6. *Id.*

tion of [Fullwood's] life." The defense argued that Fullwood could not handle "his perception" that Waters was leaving him and taking their daughter with her.⁷

The jury found Fullwood guilty of first-degree murder. In the sentencing phase, the jury determined that the State proved the presence of the "especially heinous, atrocious, or cruel" aggravating factor and that the seven mitigating factors did not outweigh the aggravating factor, and therefore recommended a sentence of death.⁸ On direct appeal, the Supreme Court of North Carolina affirmed Fullwood's conviction and sentence.⁹ The United States Supreme Court vacated Fullwood's sentence and remanded the case to the Supreme Court of North Carolina for reconsideration. On remand, the Supreme Court of North Carolina held that the jury was given improper instructions and remanded the case for a new capital sentencing proceeding. At the resentencing hearing, the jury decided that the aggravating factor was present and that the mitigating circumstances did not outweigh the aggravating factor. Fullwood appealed his sentence and the Supreme Court of North Carolina affirmed the sentence. The United States Supreme Court denied Fullwood's petition for a writ of certiorari.¹⁰

Fullwood filed a Motion for Appropriate Relief ("MAR") in state court seeking post-conviction relief. The Buncombe County Superior Court concluded that an evidentiary hearing was unnecessary and denied Fullwood's request. Fullwood petitioned the Supreme Court of North Carolina for a writ of certiorari to review the state court's denial, but was rejected. Fullwood then petitioned the federal district court for relief. The district court determined that the issues Fullwood raised did not necessitate a hearing.¹¹

Fullwood appealed to the United States Court of Appeals for the Fourth Circuit raising five claims for relief. Fullwood contended that he was not given a fair trial at his resentencing, as guaranteed by the Due Process Clause, because the jury was subject to improper contact with third parties and considered extraneous information that neither was introduced at trial, nor provided by the court.¹² Fullwood also argued that the State, violating *Brady v. Maryland*,¹³ failed to disclose to the defense one of Fullwood's statements to the police.¹⁴ Fullwood's third argument was that he received ineffective assistance of counsel because his attorney had a conflict of interest.¹⁵ Fourth, Fullwood asserted that

7. *Fullwood*, 290 F.3d at 673.

8. *Id.* at 673-74; see N.C. GEN. STAT. § 15A-2000(e)(9) (2001).

9. *Fullwood*, 290 F.3d at 674.

10. *Id.* at 674-75.

11. *Id.* at 675.

12. *Id.*

13. 373 U.S. 83 (1963).

14. *Fullwood*, 290 F.3d at 684; see *Brady v. Maryland*, 373 U.S. 83, 87 (1963) (holding "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution").

15. *Fullwood*, 290 F.3d at 687. One of Fullwood's original attorneys subsequently became an

the trial court's exclusion of mitigating evidence on state evidentiary grounds resulted in a constitutional error.¹⁶ Finally, Fullwood argued that "the jury instructions were unconstitutionally vague under the Eighth Amendment."¹⁷

II. Holding

The Fourth Circuit partially reversed the district court's order.¹⁸ Specifically, the court found the following: (1) that Fullwood was entitled to an evidentiary hearing based on an assertion that a juror was influenced by her husband in voting for the death sentence; and (2) that Fullwood was entitled to an investigation, in the evidentiary hearing, of allegations that the jury considered extraneous information regarding Fullwood's prior death sentence.¹⁹ The court affirmed the district court's denial of a writ for the remaining claims.²⁰ Fullwood failed to prove a violation of his rights regarding the jury's speculation that any decision it made would be appealed and the likelihood that Fullwood would be entitled to parole if a life sentence was recommended.²¹ Fullwood also failed to show that the state court's decision regarding his *Brady* claim was contrary to law.²² Fullwood's conflict of interest/ineffective assistance of counsel claim failed because he presented no evidence showing that the conflicted attorney had worked on his resentencing.²³ Neither did Fullwood demonstrate that the exclusion of his mother's testimony about his brother's death affected the jury's sentence.²⁴ Lastly, the jury instructions used were constitutionally sufficient under prior precedent.²⁵

III. Analysis

The Fourth Circuit began its analysis by reiterating that the Sixth Amendment guarantees a criminal defendant the right to an impartial jury.²⁶ A failure to afford such a jury results in a violation of due process.²⁷ The United States Supreme Court stated that Sixth Amendment concerns are raised when private

assistant district attorney in the office that prosecuted his second sentencing hearing. *Id.*

16. *Id.* at 691.

17. *Id.* at 693.

18. *Id.* at 675.

19. *Id.* at 671.

20. *Id.* at 683-84.

21. *Fullwood*, 290 F.3d at 695.

22. *Id.* at 687.

23. *Id.* at 690.

24. *Id.* at 693.

25. *Id.* at 694.

26. *Id.* at 677; U.S. CONST. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.")

27. *Fullwood*, 290 F.3d at 677.

communications take place between a juror and an outside party.²⁸ These communications are suspicious because they are not subject to “full judicial protection of the defendant’s right of confrontation, of cross-examination, and of counsel.”²⁹ “Extrajudicial remarks” may interfere with the defendant’s right to a fair trial.³⁰

The Fourth Circuit stated that habeas relief will be granted if the jury misconduct had a “substantial and injurious effect or influence in determining the jury’s verdict.”³¹ If the court is in “grave doubt” as to the harmlessness of an error, the habeas petitioner must prevail.³² The Fourth Circuit clarified that “grave doubt” is present when the court is in “virtual equipoise” as to the harmlessness of the error.³³ The Fourth Circuit relied on this standard to evaluate Fullwood’s claim. Fullwood supported his claim with the post-trial affidavit of a juror, Laura Booth (“Booth”), who served on the resentencing jury.³⁴ Booth’s affidavit included allegations that the Fourth Circuit divided into two categories: (1) “undue influence or pressure upon a juror by a nonjuror,” and (2) jury consideration “of information not presented by the parties or the court during trial.”³⁵ The court analyzed each claim sequentially.³⁶

A. *Third Party Influence or Pressure*

Fullwood relied on Booth’s affidavit to allege that a juror, Joyce Austin (“Austin”), was “strongly influenced by . . . her husband [who] was strongly pro-death penalty.”³⁷ According to the affidavit, Austin told jury members, throughout the trial and during deliberations, that her husband told her to convict Fullwood and sentence him to death.³⁸ Booth also opined that the pressure Austin’s husband placed upon her caused Austin to vote for death.³⁹ Fullwood contended that this third party influence affected the jury’s deliberations because it resulted in one juror choosing a sentence of death.⁴⁰ In the alternative, Fullwood argued that because he presented evidence showing that a juror was

28. *Id.* (citing *Parker v. Gladden*, 385 U.S. 363, 364 (1966)).

29. *Id.* (quoting *Parker*, 385 U.S. at 364).

30. *Id.*

31. *Id.* at 679 (quoting *Fitzgerald v. Greene*, 150 F.3d 357, 365 (4th Cir. 1998)).

32. *Id.* (quoting *O’Neal v. McAninch*, 513 U.S. 432, 436 (1995)).

33. *Fullwood*, 290 F.3d at 679 (quoting *O’Neal*, 513 U.S. at 435).

34. *Id.* at 676.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Fullwood*, 290 F.3d at 676.

40. *Id.*

subjected to third party opinions, he was entitled to an evidentiary hearing on this issue.⁴¹

The Fourth Circuit determined that the Booth affidavit could not be used to impeach the jury.⁴² The court stated that in past cases the court has held that "a juror's mental process in connection with the verdict" cannot be relied upon to invalidate a sentence.⁴³ A juror may testify to whether outside information was received by the jury or whether prejudicial information was brought to the jury's attention.⁴⁴ North Carolina law imposes these same rules with regard to juror testimony used to impeach a verdict.⁴⁵ The Fourth Circuit rejected Fullwood's argument that he introduced evidence that an improper external influence resulted in a death sentence and that he was entitled to habeas relief.⁴⁶

The Fourth Circuit examined whether Fullwood was entitled to an evidentiary hearing based on the allegation that Austin was influenced to vote for the death penalty by her husband.⁴⁷ The court stated that a district court is not permitted to grant an evidentiary hearing if the petitioner did not "develop the factual basis of a claim" in state court unless certain statutory requirements are satisfied.⁴⁸ The Fourth Circuit reiterated that the district court is permitted to hold an evidentiary hearing if "the petitioner alleges additional facts that, if true, would entitle him to relief."⁴⁹ Petitioner must also establish one of six factors stated in *Townsend v Sain*.⁵⁰

The Fourth Circuit concluded that Fullwood satisfied at least one of the *Townsend* factors because he raised allegations of improper external influences on the jury and was not afforded a hearing on the issue.⁵¹ The court determined that Fullwood alleged facts indicating that he may have been denied twelve impartial jurors.⁵² That allegation might entitle him to relief.⁵³ The court remanded the issue for an evidentiary hearing on whether the contact between Austin and her

41. *Id.*

42. *Id.* at 680.

43. *Id.* at 679-80 (quoting *United States v. Cheek*, 94 F.3d 136, 143 (4th Cir. 1996)).

44. *Id.* at 680 (quoting FED. R. EVID. 606(b)).

45. *Fullwood*, 290 F.3d at 680; N.C. GEN. STAT. § 15A-1240 (2001) (stating that "no evidence may be received to show the effect of any statement, conduct, event, or condition upon the mind of a juror or concerning the mental processes by which the verdict was determined").

46. *Fullwood*, 290 F.3d at 680.

47. *Id.* at 680-81.

48. *Id.* at 681 (quoting 28 U.S.C.A. § 2254(e)(2) (2002)).

49. *Id.* (quoting *McCarver v. Lee*, 221 F.3d 583, 598 (4th Cir. 2000)).

50. *Id.*; *Townsend v. Sain*, 372 U.S. 293, 313 (1963) (stating six factors, one of which petitioner must establish to receive an evidentiary hearing).

51. *Fullwood*, 290 F.3d at 681.

52. *Id.*

53. *Id.*

husband denied Fullwood a fair trial and had a "substantial and injurious effect" on the verdict.⁵⁴

B. Information Not Presented by the Parties or the Court

Fullwood relied on the Booth affidavit to argue that the jury had become aware that he was sentenced to death previously and that the original death sentence was reversed because of technicalities.⁵⁵ The Fourth Circuit held that this allegation implicated Fullwood's Sixth Amendment right "to an impartial jury that arrives at a verdict 'based upon the evidence developed at trial.'"⁵⁶ The court stated that Fullwood's allegations must show that "extraneous prejudicial information" was improperly presented to the jury and whether the information "had substantial and injurious effect or influence in determining the jury's verdict."⁵⁷

The Fourth Circuit determined that Fullwood made a sufficient showing that the facts were "extraneous, prejudicial" and improper, therefore warranting an evidentiary hearing.⁵⁸ Although Fullwood did not specify the source of the facts, the Fourth Circuit concluded that the information was "extraneous" because it was not disclosed during trial and was not general information the jurors would possess.⁵⁹ The Fourth Circuit concluded that during Fullwood's evidentiary hearing, the district court should "explore" Fullwood's allegations that the jury considered prejudicial information not introduced during trial.⁶⁰ The Fourth Circuit decided that the insufficiency of the facts did not allow for a determination of whether the facts "had substantial and injurious effect or influence in determining the jury's verdict," and therefore, the district court must also develop this issue during the evidentiary hearing.⁶¹

C. General Outside Information

Fullwood supported his claim with two additional allegations found in Booth's affidavit, including that the jury discussed Fullwood's right to appeal and his parole eligibility.⁶² The Fourth Circuit determined that Fullwood did not make a sufficient showing on this issue to entitle him to an evidentiary hearing.⁶³ The court found that the information regarding the jury's awareness that Fullwood would appeal any decision imposed was "commonly known informa-

54. *Id.* at 682.

55. *Id.*

56. *Id.* (quoting *Irvin v. Dowd*, 366 U.S. 717, 722 (1961)).

57. *Fullwood*, 290 F.3d at 682 (quoting *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993)).

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.* at 683.

62. *Id.*

63. *Fullwood*, 290 F.3d at 683.

tion."⁶⁴ As well, the court stated that since Booth had an extensive legal background, she was knowledgeable about the legal process.⁶⁵ Fullwood failed to show that the jury learned about Fullwood's possible parole "from an outside source during trial" or from Booth.⁶⁶ The court concluded that this information did not qualify as "extraneous matter" because almost all jurors have preconceived notions about the legal process.⁶⁷ Therefore, the Fourth Circuit concluded that Fullwood was not entitled to relief "on his Sixth Amendment claim that the jury improperly considered his parole eligibility and the possibility that he might appeal."⁶⁸

IV. Application in Virginia

The Fourth Circuit reiterated principles upheld by the Supreme Court relating to jury misconduct and potentially questionable verdicts. Counsel in *Fullwood* acted correctly by conducting post-trial interviews of the jury members. The importance of jury polling or post-trial interviews of jurors is evidenced in *Powell v Commonwealth*.⁶⁹ The Supreme Court of Virginia reversed Powell's capital conviction for murder based on robbery because polling of the jurors after the guilt phase established that the jury had relied on the rape predicate.⁷⁰ It is essential that capital defense practitioners request that the jury be polled on more than the basic verdict. In the event of alternative capital predicates in the indictment, polling can be used to identify the predicate supporting the conviction.

The Fourth Circuit's conclusion that Fullwood was not entitled to relief on his claim that the "jury improperly considered his parole eligibility and the possibility that he might appeal," is questionable in light of *Simmons v South Carolina*⁷¹ and *Shafer v South Carolina*.⁷² In *Shafer*, the United States Supreme Court emphasized the holding of *Simmons*: the jury should be instructed that life means life without the possibility of parole when the defendant is parole ineligible and jury understanding of parole eligibility is paramount.⁷³ The jury's confu-

64. *Id.* at 683-84.

65. *Id.* at 684.

66. *Id.*

67. *Id.*

68. *Id.*

69. *Powell v. Commonwealth*, 552 S.E.2d 344, 355-63 (Va. 2001) (reversing defendant's capital murder conviction on multiple grounds, including that trial court gave incorrect instruction concerning gradation offense of rape).

70. *Id.* at 356-57. The jurors stated that they relied upon the gradation offense of rape for the capital offense. *Id.* at 352.

71. 512 U.S. 154 (1994).

72. *Simmons v. South Carolina*, 512 U.S. 154, 169 (1994) (holding that the jury should be instructed life means life without the possibility of parole when the defendant is parole ineligible); *Shafer v. South Carolina*, 532 U.S. 36, 53-54 (2001) (emphasizing the importance of the jury's understanding of parole eligibility).

73. *Shafer*, 532 U.S. at 39, 53-54.

sion regarding parole eligibility, as was the case in *Fullwood*, must be addressed by the courts.⁷⁴ Although *Shafer* does not directly impact Virginia capital defense because in Virginia an instruction on parole ineligibility is required, it does emphasize the importance of jury understanding on this matter.⁷⁵ In *Fullwood*, the Fourth Circuit stated that, absent particular allegations of misconduct, information regarding juror understanding of parole is considered "internal discussions" and cannot be used to impeach a verdict.⁷⁶ Practitioners should rely on *Shafer* and continue to request a *Simmors* instruction, to ensure that the jury is instructed that life means life without the possibility of parole.

The Fourth Circuit, in this case, clarified rules governing the use of juror affidavits as acceptable forms of evidence when impeaching a verdict.⁷⁷ The court previously stated that "a party seeking to invalidate a verdict may not rely upon evidence of 'a juror's mental process in connection with the verdict'"⁷⁸ and that jurors cannot testify as to the "mental processes in connection therewith."⁷⁹ Thus, the Booth affidavit relied on by *Fullwood* was rejected by the Fourth Circuit and did not entitle him to habeas relief.⁸⁰ Practitioners should note that the Fourth Circuit allowed the use of affidavits to make allegations that the jury considered outside information not introduced during trial.⁸¹ The court stated that allegations of this nature implicate a defendant's Sixth Amendment right "to an impartial jury that arrives at a verdict 'based upon the evidence developed at trial'" and thus entitled *Fullwood* to an evidentiary hearing.⁸²

V. Conclusion

In summary, *Fullwood* may be used by Virginia capital defense lawyers for three purposes. To combat defects in the jury process, practitioners should always request that the jury be polled or request to conduct post-trial jury interviews. Second, a request should be made that the jury be instructed that life means life without parole, and attention should be given to the jury's understanding of parole ineligibility. Finally, capital defense lawyers must be clear on the use of affidavits to attack verdicts. Practitioners may introduce this evidence knowing that it may not impeach the verdict, but it may afford the defendant an evidentiary hearing on other issues.

Priya Nath

74. See Kathryn Roe Eldridge, Case Note, 14 CAP. DEF. J. 89, 92 (2001) (analyzing *Shafer v. South Carolina*, 121 S. Ct. 1263 (2001)).

75. *Id.* at 91.

76. *Fullwood*, 290 F.3d at 684.

77. *Id.* at 679-80.

78. *Id.* at 680 (quoting *Cheek*, 94 F.3d at 143).

79. *Id.* (quoting FED. R. EVID. 606(b)).

80. *Id.*

81. *Id.* at 682.

82. *Fullwood*, 290 F.3d at 682 (quoting *Irin*, 366 U.S. at 722).