

**JUDICIARY BOARD
CHURCH OF GOD IN CHRIST, INC.**

GABRIELLE D. BILAL]	
Petitioner/Appellee,]	
]	
v.]	BOB-2015-1
]	
BISHOP RUFUS KYLES, JR.]	
Texas Southeast]	
First Ecclesiastical Jurisdiction,]	
Church of God in Christ, Inc.]	
Respondent/Appellant.]	

ORDER

This Order is being issued pursuant to the filing of an appeal by appellant Bishop Rufus Kyles following a three day trial in the Board of Bishops' Chamber during the 108th International Holy Convocation. Following the trial, the Respondent timely filed this appeal wherein he raised various issues. However, the consideration of certain key issues is sufficient to dispose of this case.

This Court is charged with determining whether the appellant, Bishop Rufus Kyles, received a fair trial pursuant to the Constitution of Church of God in Christ, Inc. and Rules of the Board of Bishops.

Nothing in this opinion should be construed an assessment or adjudication of the ultimate question of respondent's guilt or innocence. This opinion is limited to an analysis of the presence or absence of procedural defects or misapplications of law.

I.

Certification, Function and Deliberation of Jurors

The first issue the court will consider pertains to the certification, function and deliberation of the jurors in this case. The Constitution of the Church of God in Christ, Inc. as recorded in Section D, paragraph (i) of the Official Manual and the Board of Bishops Rule 10(r) govern the trial of a Bishop. For a Bishop to be convicted of misconduct, the majority of bishops present and voting must so vote. (See Board of Bishops Rule 10(5) (r)).* Likewise, the sentence for said wrongdoing must be agreed upon by the majority of bishops present and voting. (See Board of Bishops Rule 10(q)).

The Board of Bishops certified the house at the beginning of each day of trial. On day one of the trial, the house was certified at 128 bishops. (See transcript of Day 1, Page 3, Lines 1-2). On day two, the house was certified at 141 bishops. (See transcript of Day 2, Page 3, Lines 2-3). On day three, the house was certified at 130 bishops. (See transcript of Day 3, Page 3, Line 1).

However, the trial record is silent as to any re-certifications of the house following recesses throughout the day (e.g. lunch, breaks). Additionally, there is no indication that each of the 128 bishops from day one was among the 141 of day two or the 130 of day three. In any event, it's clear that at least 13 of the bishops that heard the evidence on day two did not hear the evidence of the previous day. Moreover, at least 2 of the bishops present on the final day of trial did not hear the evidence of the first day of trial.

Furthermore, day three of the trial was also the day that deliberations took place. The only certification reflected in the record for that day is 130 bishops. At one point in the record, there was an indication that 99 bishops were present. However, the record does not reflect that the house was recertified at 99. Therefore, the reliability of this number is questionable. Accordingly, we must utilize the certified number of 130 when calculating what constitutes a majority. A minimum of 66 bishops (50% of 130 + 1) would have been needed to sustain a conviction and impose sentence. The record is silent as to the number of bishops that voted for conviction. That deafening silence renders a review impossible. In the absence of numbers, there is no way that this court can accurately calculate the existence or absence of a majority. If this court is unable to confirm the existence of a majority, it cannot affirm a conviction predicated thereupon. As for the penalty phase, the record reflects that 46 (+5) voted for removal from office.

Simple arithmetic clearly indicates that the sentence cannot stand as is does not reflect a majority of the certified number of bishops present. It is largely irrelevant, however, because without a valid conviction, the sentence cannot stand. As a result, both the conviction and the sentence must be vacated.

This court is at a loss as to why the specific voting results were not recorded and incorporated into the official record of these proceedings. The failure to do so denies the respondent fundamental fairness and impugns the integrity of our church's adjudicative process.

II.

Grievance Committee Members as Jurors

It appears from the record that bishops who served as grievance committee members also served as jurors. (See transcript of Day 2, Page 7, Line 6). For bishops to serve in this dual capacity denies the respondent due process and fundamental fairness.

First, the Grievance Committee members serve in an investigative capacity. As such, they are privy to information pertaining to the allegations that may or may not ultimately be admitted at trial. Additionally, their function is not merely to collect data, but they must evaluate that data. They not only determine whether charges should be brought, but they actually issue the charges. (See transcript of Day 1, Page 3, Lines 22-24; Page 4, Lines 1-5).

If they make a determination to issue charges, they have necessarily made preliminary assessments of the evidentiary value of the data collected and/or credibility of potential witnesses. How then can they as jurors reasonably be expected to adhere to the admonition of the Chairman to "listen with open minds and hearts and to consider all of the evidence fairly, and not make a decision until after the conclusion of the hearing" (See transcript of Day 1, Page 5, Lines 7-10)?

Additionally, as investigators, they may be called upon to testify as to some portion of their investigation, in much the same way that a police officer is subject to be called upon to testify during the course of a criminal trial where he conducted some portion of the investigation.

In summary, not only does such a circumstance deny the respondent due process by tainting the jury pool, but it also compromises the legal process as it

allows for the potentiality of grievance committee members to serve both as jurors and as witnesses in the same proceeding.

III.

Arguing in Opening Statement/Standard of Proof

The next allegation to be addressed is whether allowing the plaintiff/prosecutor to argue during his opening statement was reversible error. It is fundamental that arguing during opening statements is improper. It is also fundamental that arguing during opening statements is generally not a basis for reversible error. However, in this case, the prosecutor did not merely argue in his opening but he effectively charged the jury which, of course, is improper. (See transcript of Day 1, Pages 17-19). In addition to charging the jury, he provided an inaccurate definition of the applicable standard of proof. (See transcript of Day 1, Page 16, Lines 2-5). The Chairman of the Board of Bishops correctly identified the standard of proof as that of Clear and Convincing Evidence. (See transcript of Day 1, Page 8, Lines 11-13). Furthermore, he correctly defined it. He explained that it requires a greater quantum of proof than the Preponderance of the Evidence standard, but less than the Beyond a Reasonable Doubt standard. (See transcript of Day 1, Page 8, Lines 13-22). In his opening statement, the prosecutor proclaimed that he was required to prove his assertions are more probably true than not true. (See transcript of Day 1, Page 16, Lines 2-5). That is the definition of the Preponderance of the Evidence standard. It is a lesser standard. Accordingly, it lowers the bar for the prosecutor. If the jury utilized the standard enunciated by the prosecutor, then the jury would have returned a verdict for conviction after only a finding of a preponderance of the evidence as opposed to the appropriate standard of clear and convincing evidence. The only way to be reasonably certain that the jurors would disregard the prosecutor's misrepresentations was to correct and disavow them at the time they were made.

Although the Chairman restated the applicable burden of proof and provided the proper definition thereof two days later immediately prior to retiring the jury for deliberations (See transcript Day 3, Page 102, Lines 17-24), he also repeated, in part, the inaccurate definition recited by the prosecuting attorney (See transcript Day 3, Page 103, Lines 2-6). Given that multiple standards of proof were provided to the jury, there is no way to ascertain if the jurors utilized the applicable

standard of Clear and Convincing Evidence or the lesser standard of Preponderance of the Evidence. As a result, the conviction cannot stand.

IV.

Removal as Pastor

The respondent also argued that he was illegally removed from his post as pastor. Pursuant to the Board of Bishops Rule No. 3, paragraph (b) “[I]f the Complaint is being brought against the Bishop for his conduct in his capacity as a pastor of a local congregation, the Complainant *must* certify in writing that the Complaint is being brought by a majority of the members of the local congregation. (Emphasis added).” A review of the record from the proceedings below reflects that no such certification was ever referenced, presented or made part of the record. Furthermore, the order entered by the Board of Bishops does not include any language that pertains to restrictions or reprimands pertaining to the Respondent’s role as Pastor. Accordingly, no action taken against him as Pastor can stand, as no charge was levied against him in that capacity and no order has been entered against him infringing upon his functioning in that role. Furthermore, any action taken against the respondent in his capacity as Pastor is void ab initio.

V.

Admission of Evidence of 20 year old trial

The final issue considered for review by this court is the admission of evidence of a charge from twenty years ago where the respondent was accused of similar offenses, but was ultimately exonerated. This court is unable to see the probative value of such evidence. Moreover, any probative value that it may have had was substantially outweighed by its prejudicial impact.

The respondent objected to the introduction of this information, albeit untimely. It is, however, axiomatic that the court may act in the absence of a properly preserved matter pursuant to the plain error doctrine. The plain error doctrine allows a reviewing court to review an error that was not properly preserved for appeal if the error is evident, obvious and clear and substantially effects the rights of the accused.

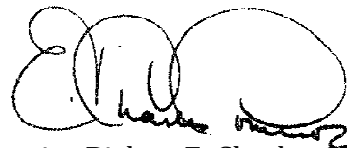
We find that such is the case here; it was plain error to allow the jurors to hear and consider that the respondent had been similarly charged over two decades ago.

For the foregoing reasons, the “Final Order and Judgment” of the lower court is vacated and the matter is remanded for a new trial.

Be it so ordered this 27th day of May 2016.



Chief Justice Thomas Jackson, Jr.
Judiciary Board
Church of God in Christ, Inc.



Justice Bishop E. Charles Connor
Secretary
Judiciary Board
Church of God in Christ, Inc.