

STATE OF TENNESSEE V. SUSAN JO WALLS*

JOHN “JACK” MITCHELL III AND JAKE OLD

Though the facts within *State v. Walls* are unusual, this case ultimately turns on fundamental rules of evidence and procedure. Susan Walls was implicated in a conspiracy to murder her husband, Larry Walls, Sr.¹ Susan Walls had met with her daughter, son-in-law, and friends in the days leading up to Larry Walls’s death.² The group conspired to murder Larry Walls, apparently as retribution for his abusive behavior towards them.³ The conspiracy called for Susan Walls and other family members to take her grandchildren to Chuck E. Cheese while two friends, Sean Gerhardt and Jason Starrick, actually carried out the physical act of murdering Larry Walls.⁴

On the day of the homicide, Susan Walls arrived home to the scene of her husband’s death and called 9-1-1; she reported to the call-taker that it appeared that a burglary had taken place at her home—and made no mention of the homicide.⁵ The crime scene was described as gruesome, with blood on the walls, floor, and furniture around the victim.⁶ The TBI agent responsible for investigating the scene said it looked staged and that the 9-1-1 call seemed odd.⁷ Ultimately, agents uncovered evidence pointing to the murder-for-hire conspiracy.⁸ Susan Walls was charged with First Degree Murder and Conspiracy to Commit Murder.⁹

At trial, Susan Walls experienced some health problems during closing arguments.¹⁰ A paramedic was called and Walls was reported to have very high blood pressure levels.¹¹ After she was transferred to a hospital, the trial court judge mentioned the possibility of instructing the jury without Susan Walls present, but defense counsel objected to any further action without the defendant present; as a result, the parties and the Court waited to proceed with the case.¹² During the period of delay, the State prosecutor and defense counsel discussed how to move forward with proceedings; defense counsel

* *State v. Walls*, 537 S.W.3d 892 (Tenn. 2017).

¹ *State v. Walls*, 537 S.W.3d 892, 895-96 (Tenn. 2017).

² *Id.* at 895.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 894-95.

⁶ *State v. Walls*, 537 S.W.3d 892, 895 (Tenn. 2017).

⁷ *Id.* at 894.

⁸ *Id.* at 895-97.

⁹ *Id.* at 897.

¹⁰ *Id.* at 897.

¹¹ *State v. Walls*, 537 S.W.3d 892, 897 (Tenn. 2017).

¹² *Id.*

stated that, “the best thing to do would be to adjourn until tomorrow and start fresh in the morning.”¹³ There was no further discussion on the matter.¹⁴

Susan Walls returned from the hospital approximately two and a half hours later and the jury began deliberating at 7:13 p.m.¹⁵ Guilty verdicts were returned at 1:05 a.m. the following morning.¹⁶ Walls was sentenced to life in prison and 21 years for each offense.¹⁷ She appealed her convictions on several grounds, including the trial court’s decision to allow the jury to deliberate late into the night.¹⁸ The Tennessee Court of Criminal Appeals reversed the convictions based on the late-night jury deliberations.¹⁹ After the State appealed, the Tennessee Supreme Court heard the case to consider the following issues: (1) whether Walls sufficiently preserved review of late-night jury proceedings; (2) if so, whether the appellate court could apply a plain error review instead; and (3) the proper standard of review for determining whether a trial court erred in allowing late-night jury deliberations.²⁰

The Supreme Court ultimately held that Walls did not preserve the issue of late-night proceedings.²¹ Further, the Court decided that plain error review was not available as an avenue of relief for Walls because the defense never asserted plain error as a basis of review.²² The Court also held that the standard of review in determining whether a trial court errs in allowing late-night jury deliberations is abuse of discretion.²³ The Court’s last holding—regarding the proper standard of review—was addressed in a concurring opinion by Justice Sharon Lee, who called the majority’s decision an “advisory opinion.”²⁴

The Court began its analysis by determining whether or not a statement of concern by defendant’s counsel about the jury beginning deliberations after seven o’clock in the evening rose to the level of a contemporaneous objection.²⁵ Because the trial judge did not respond to counsel’s comment, and no further discussion was had on the record, the Court concluded this issue was waived.²⁶ Counsel also had argued in his motion for new trial that an elderly juror exhibited fatigue during the night, but neither brought it to the judge’s attention during the trial, nor did he call the juror as a witness at the hearing to testify about the effects of the late-night proceedings.²⁷

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *State v. Walls*, 537 S.W.3d 892, 898 (Tenn. 2017).

¹⁷ *Id.* at 896.

¹⁸ *Id.* at 897.

¹⁹ *State v. Walls*, No. M2014-01972-CCA-R3-CD, 2016 Tenn. Crim. App. LEXIS 263, *43-*46, *85 (Crim. App. Apr. 7, 2016). *See also* *State v. Walls*, 537 S.W.3d 892, 897 (Tenn. 2017).

²⁰ *Walls*, 537 S.W.3d at 899, 904-05.

²¹ *State v. Walls*, 537 S.W.3d 892, 903-04 (Tenn. 2017).

²² *Id.* at 901.

²³ *Id.* at 904-05.

²⁴ *Id.* at 906 (Lee, J. concurring).

²⁵ *Walls*, 537 S.W.3d at 897-99 (Tenn. 2017).

²⁶ *State v. Walls*, 537 S.W.3d 892, 899-901 (Tenn. 2017).

²⁷ *Id.* at 900.

Because counsel made no objection to the late-night deliberations, the issue was deemed to be waived.²⁸ The Court still considered whether or not relief was warranted based on plain error.²⁹ The Court, in *State v. Martin*, previously held that an appellate court will grant relief for plain error only if: (a) the record clearly establishes what occurred in the trial court; (b) a clear and unequivocal rule of law has been breached; (c) a substantial right of the accused has been adversely affected; (d) the accused did not waive the issue for factual reasons; and (e) consideration of the error is "necessary to do substantial justice."³⁰

The Court declined to apply plain error to the facts of this case—nor was it asserted or argued for by defendant—finding it inapplicable because of a lack of clear and unequivocal law on the subject.³¹ Because it found the standard of review for late-night judicial proceedings to be unclear, the Court resolved the issue by holding that the appropriate standard of review is abuse of discretion.³² Justice Lee’s concurring opinion was critical of the majority for not simply ending its analysis upon determining that the defendant was not entitled to a new trial, instead choosing to overreach and address the appellate standard of review.³³ However, her criticism seems misplaced in light of the majority’s stated purpose of establishing the proper standard of review under the Court’s supervisory authority.

Of particular importance for any trial attorney is that this case highlights why it is far better to make a clear objection, on the record and contemporaneous with any error, real, perceived, or even suspected. Absent plain error by the trial judge, a failure to object is usually fatal on appeal.³⁴ An appeals court may infer an objection without counsel uttering the word “objection,” but the risk inherent in this tactic is unnecessary.³⁵ The worst that can happen upon making an objection is the judge chooses to overrule it, but doing so is valuable in that it preserves the issue for appeal. This fact can easily be forgotten in the controlled chaos of a trial, but zealously representing a client requires an attorney to pay particular attention to the details—and safeguarding the client’s options in the event of an unfavorable verdict is one of the most critical.

²⁸ *Id.*

²⁹ *Id.* at 900-01.

³⁰ 505 S.W.3d 492, 504 (Tenn. 2016).

³¹ *State v. Walls*, 537 S.W.3d 892, 901-04 (Tenn. 2017).

³² *Id.* at 904-05.

³³ *Id.* at 906-07 (Lee, J. concurring).

³⁴ “In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection if the specific ground was not apparent from context[.]” Tenn. R. Evid. 103(a)(1).

³⁵ “Generally, failure to make a timely, specific objection in a trial court prevents a litigant from challenging the introduction of inadmissible evidence for the first time on appeal.” *Welch v. Bd. Of Prof'l Responsibility for the Supreme Court of Tenn.*, 193 S.W.3d 457 (Tenn. 2006). *See also* Tenn. R. Evid. 103.