

## “THE FEDERAL CORNER”

Judge Robert C. Nalley Finally Gets His Comeuppance

Buck Files

This column is about Robert C. Nalley, a Maryland state judge who committed a federal criminal offense in a courtroom where he was hearing pre-trial matters before jury selection began. You will see in real time what the judge does and how it impacted the defendant, Delvon King-Ali, who was standing before him. \* \* \* \* [Please insert YouTube] Then, we will look at what took place in the federal system as Nalley is prosecuted and sentenced for this offense.

My research for this column consisted of reviewing newspaper articles about these events, searching for a YouTube video, locating the case on Pacer, reviewing all the documents that were not filed under seal, obtaining a copy of the 39 page statement of facts from the sentencing hearing and reviewing it for excerpts to include in this column.

The Facts as Reported in the February 1, 2016, Edition of *The Washington Post*  
“Former Charles Judge Charged” by Ruben Castaneda

On July 23, 2014, Nalley was presiding over jury selection in a case involving King, who was charged with three gun offenses in connection with a November 2013 traffic stop in Waldorf. According to court papers, King, a passenger in the car, was carrying a loaded handgun.

Prospective jurors had not yet been brought into the courtroom when King, who was acting as his own attorney, tried to assert what he believed was a legal argument and cited ‘principles of common right and common reason,’ according to a court transcript. (King considered himself a ‘sovereign citizen’ and did not believe the government’s laws applied to him.)

‘Stop,’ Nalley said. King continued speaking, according to the transcript. Nalley ordered Charles County Deputy Sheriff Charles P. Deehan to shock King. ‘Do it,’ Nalley told the deputy. ‘Use it.’ Twice, Deehan pushed a button to administer an electrical shock to King’s ankle, to no effect, the deputy later told a sheriff’s investigator. Deehan ‘hit the button a third time and King went down to the ground,’ according to the sheriff’s report by Sgt. Patti Garino, which was obtained through a Maryland public records request.

The court transcript described King’s reaction: ‘(DEFENDANT SCREAMS).’

Authorities summoned paramedics, who examined King and determined he was not seriously injured, according to Garino’s report. Nalley then proceeded with the case and a jury convicted King of the gun charges. King then agreed to let Michael Beach, the chief public defender in Charles County, represent him. Beach filed a motion for a new trial, asserting that King’s rights to a fair trial were violated because the sheriff’s office outfitted him with a Stun-Cuff without a

judicial hearing, and that the use of the Stun-Cuff limited his ability to represent himself because he was in fear of being electrocuted again.

In November 2014, prosecutors and Beach resolved King's gun charges with a probation before judgment agreement, in which the defendant avoids a criminal conviction if he abides by conditions imposed by the court. The agreement called for King to spend two years in jail, most of which he had already served, and Beach withdrew the motion for a new trial.

As part of her investigation, Garino took statements from a dozen witnesses, including Nalley, according to her report. Nalley told Garino that King was citing case law that was irrelevant. When he asked both sides whether they had any questions for prospective jurors, King was 'rude' and 'non-responsive,' Nalley told Garino. King was 'preventing us from the court proceeding,' Nalley told Garino, explaining why he ordered Deehan to shock the defendant. After Deehan administered the shock, King returned and behaved appropriately, Nalley said.

King's case was originally not assigned to Nalley, but to Circuit Court Judge Amy J. Bragunier, the chief administrative judge in Charles County Circuit Court. On the day of the incident, King appeared before Bragunier for jury selection. Bragunier told Garino that King was 'belligerent' and was speaking over her, according to Garino's report. She directed a court security officer to take King to Nalley for jury selection and to 'Let Judge Nalley know he is acting up.'

\* \* \*

About a month after the incident became public, in September 2014, the Court of Appeals of Maryland, the state's highest court, banned Nalley from the bench. The court did not state why, but said it had found 'good cause' to take the action.

The alleged civil rights violation is not the first crime Nalley has been charged with. On Aug. 10, 2009, Nalley deflated the tire of a 2004 Toyota Corolla that was parked in a restricted area near the La Plata courthouse. Charles County sheriff's deputies witnessed the incident, and one of them recorded it. The judge placed a pen or other sharp instrument into the tire's valve to release the air. Nalley considered the spot his; it turned out the car belonged to a woman on the courthouse cleaning crew who parked there because she did not want to walk through the courthouse parking lot at night.

### The Procedural History of the Case

On January 31, 2016, the United States Attorney for the District of Maryland filed a one count Information charging the defendant with a violation of 18 U.S.C. § 242 (Deprivation of Rights Under Color of Law). On February 1, 2016, the defendant was arraigned before Chief Magistrate Judge William Connelly and a plea of guilty was entered by the defendant. On that same date, a plea agreement was signed by the parties and filed with the clerk. On March 25, 2016, a Sentencing Memorandum was filed by the government. On March 28, 2016, a

Sentencing Memorandum was filed by the defendant. On March 30, 2016, a second Sentencing Memorandum was filed by the defendant. On March 31, 2016, a third Sentencing Memorandum was filed by the defendant. On March 31, 2016, a sentencing hearing was held before Judge Connelly. Sentence was pronounced and a judgment was entered on that date.

### The Information

The United States Attorney for the District of Maryland charges that: On or about July 23, 2014, in the District of Maryland, the defendant, Robert C. Nalley, while acting under color of law as a judge of the Circuit Court for Charles County, Maryland, willfully deprived Victim 1 of the right, secured by the Constitution and laws of the United States, not to be deprived of due process of law, which includes the right not to be subjected to the unreasonable use of force and the right not to be subjected to force amounting to punishment by a government official. Specifically, rather than invoke alternative measures, the defendant ordered that a deputy sheriff in Charles County Circuit Court activate a stun-cuff worn by Victim 1, a pro se criminal defendant, in violation of Title 18, United States Code, Section 242.

### Paragraphs 9 and 10 of the Non-Binding Plea Agreement of the Parties

9. At the time of sentencing, the parties will jointly recommend a sentence of one year of probation. This Office and the Defendant will be free to argue for what each believes to be the appropriate conditions of that probation.

10. The parties reserve the right to bring to the Court's attention at the time of sentencing, and the Court will be entitled to consider, all relevant information concerning the Defendant's background, character and conduct.

### The Sentencing Hearing

At the sentencing hearing, the government was represented by AUSA Christi O'Malley, an obviously talented AUSA. The defendant was represented by a prominent Maryland and Washington, D.C. criminal defense lawyer who did *not* have a great day at the courthouse. In fairness, though, it would have been difficult for *any* lawyer to have done any better with the case than he did. His success was in being able to negotiate with the government for a joint recommendation of a probated sentence. We shall refer to that lawyer as Mr. Snerd.

Judge Connelly, who heard the case, runs a good court. No one who reads the statement of facts in this case could have anything other than a positive impression of him. He made it crystal clear that he had read and considered everything that had been furnished to him by the parties. I would guess that he is very popular with the lawyers of the Bar of the District Court of Maryland.

Ms. O'Malley offered the audio and video recordings of the events of July 23, 2014, and played them for the Court. I have chosen a few excerpts of her oral argument, which I thought to

be excellent -- and representative of the balance of her argument. To begin with, she focused on the facts of the case and in what these recordings showed:

MS. O'MALLEY: Your Honor, as the audio reflects Mr. King is at most verbally interrupting the proceedings by trying to offer his defense by challenging the jurisdiction of the court. But he doesn't raise his voice. He doesn't yell. He even addresses the Judge as sir on several occasions.

\* \* \*

MS. O'MALLEY: And I would point out for the record as is obvious from the video that at not one moment in that video is there any indication that there is a security threat to anyone in the courtroom. The sheriff deputy remains some distance from the Defendant the entire time until the activation of the stun cuff where he goes to move chairs in order to make sure that Mr. King doesn't get injured when he knows he's going to fall to the floor. And there is no, nothing other than standing and reading from papers. Now the audio also shows nothing other than verbal interruptions as Mr. King tries to make his arguments challenging the jurisdiction of the court and tries to repeatedly answer the question as to what he would like to be called during the proceedings.

\* \* \*

MS. O'MALLEY: In this case, as the video shows, Mr. King made no threatening movements. Mr. King did not threaten the safety of any court personnel. Mr. King did not try to flee. Mr. King did not even yell or show signs of agitation. And as the audio of the court proceeding shows it was Judge Nalley who became agitated. What Mr. King did was engage in perhaps a misguided attempt to verbally object to the jurisdiction of the court and did not always stop talking when the Judge was trying to talk. For that he got punished with about 50,000 volts of electricity shot through his body.

\* \* \*

Then, Ms. O'Malley anticipated the argument to be made by Mr. Snerd and rebutted it before he had the opportunity to make it:

MS. O'MALLEY: Unfortunately, the picture painted by Judge Nalley in his sentencing submission seems to suggest that Mr. King was an unruly defendant who was anxious and agitated and looking around him repeatedly. But that is directly contradictory to the video and audio evidence of the proceedings in this case.

\* \* \*

MS. O'MALLEY: Judge Nalley, through his sentencing memo, now tries to convince the Court that this conduct is somehow justified because of Mr. King's past or because shocking Mr. King actually made him more obedient to the Court after he was shocked. Both of these arguments are disturbing, show a lack of understanding for the gravity of the crime committed, and simply are contrary to

what the Constitution requires. A government official violates the Constitution when he interferes with an individual's due process rights through an order of the use of unreasonable force.

\* \* \*

Even after hearing Ms. O'Malley's argument, Mr. Snerd followed his script:

MR. SNERD: As the Court knows from the submissions, Mr. King had had issues with Judge Bragunier a few moments before and Judge Bragunier had sent word to Judge Nalley that he was acting up and there was the history of what occurred that we played out in the papers.

\* \* \*

Mr. Snerd then argued for unsupervised probation with no special conditions of probation:

MR. SNERD: These are real, real punishments and make the imposition of a one-year sentence of probation the appropriate sentence in this matter. I don't believe that the Court needs to impose any special conditions. I would ask the Court in this case to impose a period of unsupervised probation with no other special conditions. There certainly is no need to supervise Judge Nalley. There is no need to impose any other special conditions because the punishment that has been most felt by him as a result of his decision in this matter has occurred by the loss of his judicial position and the fact that in the public these matters have been laid out in the manner in which they have.

\* \* \*

Mr. Snerd appeared to have added one of those "...before I sit down, I have one more thought" paragraphs to his argument. [NOTE: I have never had one of these work for me!]:

MR. SNERD: . . . one of the things I found particularly curious is that the judicial system has no training, or at least the State system had no training for judges to explain to them what this device was, what it does, anything to sensitize folks as to the, just the mechanical and electrical operation of it. It was a very curious thing to find that that device is available but the training and the sensitivity as to when to use it didn't seem to be there.

\* \* \*

Mr. Snerd inexplicably argued -- in spite of the facts -- that Nalley is a *fine* trial judge:

MR. SNERD: Judge Nalley, while you don't necessarily at the end of the day want him to be the one who is imposing a sentence on your client in a serious matter, *is an extraordinarily good example of a trial judge* who gives you a very fair trial, rules on objections without any preconceived notion one way or the other, listens to arguments, *is a fine trial judge*. (emphasis added)

\* \* \*

The victim, Mr. King-Ali, presented a victim impact statement during the proceedings. He could not have been more appropriate in his remarks to the Court which concluded with these emotional words:

MR. KING-ALI: This has been a very dehumanizing experience. What happened in Nalley's courtroom was an attempt to reduce me to an animal status. These acts of terror shall not go unpunished.

\* \* \*

After both sides had rested and closed, Judge Connelly began by giving his impression of what he observed from the recordings:

THE COURT: It is clear from looking at the tape that Mr. King-Ali was not responsive to the Court's direct instructions and questions. Mr. King-Ali was attempting to put on the record an objection to the jurisdiction of the court. This is something that I think all members of the Federal Court have experienced. I know I have several times. I do note from the tape that there was no attempt to flee from the courtroom. There was no assaultive behavior. Nor did Mr. King-Ali appear in any way to be physically disruptive. He was in essence not being responsive to the Judge in his questions.

\* \* \*

Judge Connelly responded to Mr. Snerd's argument concerning the lack of judicial training for stun cuffs:

THE COURT: I can advise you that in the federal system we do not have stun cuffs. The Marshal Service I think has tasers and in an appropriate circumstance a taser may be issued to a deputy in a courtroom. The decision whether to deploy a taser or not rests solely with the Marshal Service. It is not a judicial decision in the federal court.

\* \* \*

Judge Connelly responded to Mr. Snerd's argument requesting unsupervised probation:

THE COURT: Probation in the federal system is usually always supervised. And this probation *will* be supervised. (emphasis added)

\* \* \*

### The Sentence Imposed

Judge Connelly followed the joint recommendation of the parties and placed Nalley on probation for a term of one year and assessed a fine of \$5,000. He ignored Mr. Snerd's request for unsupervised probation with no conditions of probation and ordered that Nalley comply with 18 standard conditions of probation. Judge Connelly also ordered that Nalley attend and complete an anger management program, as directed by his probation officer.

*The Washington Post's* Report of Mr. King-Ali's Response to Nalley's Sentence  
"Ex-judge Gets Probation for Ordering Use of Electric Shock on Defendant"

By Ruben Castaneda

King said Connelly's sentence -- which was consistent with the plea agreement worked out by Nalley's defense attorney and federal prosecutors -- was too light. There was no justice here today.

My Thoughts

- Wow! What a great fact situation. My goal was to find a truly uncommon case for my 200<sup>th</sup> column or article -- and I believe that I did.
- This case should be required reading for Texas judges.
- As a criminal defense lawyer, I usually cheer for the defendant and his or her lawyer. In this case, I could not do that.