

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA
DIVISION NO. 2

STATE OF WEST VIRGINIA
Vs.

FELONY NO. 09-F-125

BEN CHASE SKIDMORE

POST-TRIAL MOTION ORDER
Denying Motion to Set Aside Verdict or Grant New Trial

On May 20, 2010, the State of West Virginia appeared by Prosecuting Attorney Marcia Ashdown and Assistant Prosecuting Attorney Perri DeChristopher. The defendant participated in the hearing by video conference set up and was represented by his attorney, Raymond H. Yackel. The parties appeared before the Honorable Russell M. Clawges, Jr. for a post-trial motion hearing on the defendant's Motion to Set Aside Jury Verdict or to Grant a New Trial.

In order to preserve the record, Mr. Yackel lodged an objection regarding Mr. Skidmore not being present in person for the hearing and having to participate by video conferencing. The Court proceeded with the hearing, finding Mr. Skidmore's presence by video conference to be sufficient.

Counsel for the defendant then presented his arguments in support of the written motion that had been previously filed, and the State responded orally and by reference to its written response.

After due consideration of the arguments and of the record in this case, the Court first stated generally that the Court affirms any and all trial and pre-trial rulings, finding them to have been proper and based upon correct interpretations of caselaw and rules of evidence and procedure. Specifically then, the Court ruled upon the issues raised by the defendant as follows:

1. The Court found that the evidence of premeditation and deliberation as presented by the State was sufficient as a matter of law, in that the State presented a prima facia case supporting those elements of proof. The factual findings regarding premeditation and

deliberation were then properly within the province of the jury. The Court found that the jury's conviction of the defendant on the charge of first degree murder, which requires evidence of premeditation and deliberation, was sufficiently supported by the evidence. Accordingly, the Court ruled that the verdict would not be set aside and new trial would be granted with respect to this ground.

2. The defendant claims that the Court erred in giving an intoxication instruction that allowed the jury to find that premeditation and deliberation could be negated by their finding that the defendant had been "grossly intoxicated" at the time of the commission of the crime. At trial, the Court found from the evidence presented by the defendant and by the State, that the defendant and others had been drinking alcohol on the day of the murder, was sufficient to support an instruction regarding intoxication as a defense to first degree murder. However, having determined that an intoxication instruction was justified, the Court was obligated to correctly charge the jury regarding the degree of intoxication that could eliminate the elements of premeditation and deliberation. The Court's instruction was derived from the W.Va. Supreme Court's caselaw.

The Court found that, in its entirety, the evidence supported the jury's verdict, which necessarily incorporated the jury's belief that the defendant's degree of intoxication was not of a magnitude to cause him to be unable to premeditate and deliberate.

3. In contrast to the defendant's argument that bifurcation of the trial into guilt and penalty phases should not have been ordered, the Court observed that bifurcation is permitted by West Virginia caselaw and that the decision to grant a motion for bifurcation by either the State or the defendant is discretionary with the trial court. In granting the State's motion for bifurcation the Court agreed that the evidence of the defendant's prior murder charge/homicide conviction would not be admissible in the guilt phase of the trial, but would be relevant and

admissible for sentencing issues. The Court noted that West Virginia law vests the jury with the determination of the sentence in a case of first degree murder. Much as the sentencing court in other types of felony cases is provided with information that is not relevant and admissible in a defendant's trial but is appropriate for the court to know at sentencing, the jury is in the same position when called upon to render an informed sentencing decision on a conviction for first degree murder. Therefore, the Court found that, not only was the decision to bifurcate the trial approved caselaw and appropriate with respect to the particulars of this case, but that the State presented lawful and circumscribed evidence regarding the defendant's prior conviction.

Accordingly, for the reasons stated herein, the Court DENIED the defendant's motion to set aside the verdict and to grant a new trial.

The Court then advised the defendant as to his appellate rights and the time frame that apply to filing a petition for appeal to the West Virginia Supreme Court of Appeals.

A copy of this Order shall be provided to North Central Regional Jail (by fax); to Robert Arnold, Division of Corrections, Parole Services, 215 West Main Street, Clarksburg, WV 26301; to the West Virginia Division of Corrections, attn: Diann Skiles, 112 California Ave., Bldg. 4, Room 300, Charleston, WV 25305; to Raymond Yackel; and to the Prosecuting Attorney.

ENTER: May 24, 2010



JUDGE

ENTERED May 24 2010
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JEAN FRIEND, CLERK