

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA,

Respondent,

v.

**Supreme Court No. 12-0887
Circuit Court No. 11-F-060 (Wayne)**

CLINTON DOUGLAS SKEENS,

Petitioner.

PETITIONER'S REPLY BRIEF

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REPLY ARGUMENT

I. The Trial Court's Refusal To Instruct On Voluntary Manslaughter Denied Mr. Skeens His Constitutional Due Process Rights To Present A Defense To The Murder Charge, That He Was Only Guilty Of Voluntary Manslaughter Because There Was Substantial Evidence He Acted Without Malice Due To His Mental Illness.

The State argues Mr. Skeens was not entitled to an instruction on voluntary manslaughter because there was no evidence he acted without malice. Brief of Respondent (State's Brief), 12, 17-20. The fundamental flaw in the State's argument is that it completely fails to acknowledge and address this Court's case law, cited in Petitioner's Brief, at 15-16, indicating that evidence of a defendant's insanity negates malice. For example, in *State v. Jenkins*, 191 W.Va. 87, 94, 443 S.E. 2d 244, 251 (1994), the Court stated that an inference of malice from the use of a deadly weapon is permissible as long as "the evidence does not show that the defendant had an excuse, justification, or provocation." The presence of any of these elements "will reduce the homicide to something less than murder." *Id.* As examples of situations that would negate malice, the Court noted killings resulting from provocation, the heat of passion, self-defense, or insanity. *Jenkins*, 191 W.Va. at 94-95, 443 S.E. 2d at 251-52 (emphasis added) ("A similar type defense arises when a defendant claims that he lacks criminal responsibility because of his insanity."). Thus, where, as here, the defendant's actions resulted from his mental illness and psychosis, such evidence negates the element of malice required for murder. In that circumstance, an instruction on voluntary manslaughter is warranted.

Similarly, in *State v. Miller*, 197 W.Va. 588, 609, 476 S.E. 2d 535, 556 (1996), the Court recognized that a defendant's defense that the homicide was the result of incapacity due to intoxication is "incompatible with malice." It necessarily follows that a homicide, such as the one here, that is the result of the defendant's incapacity due to his mental illness and psychosis,

is likewise incompatible with malice. *See* cases supporting this conclusion in Petitioner's Brief, at 21-22.

This analysis is further consistent with this Court's definition of malice as the "intentional doing of a wrongful act without just cause or excuse..." *State v. Burgess*, 205 W.Va. 87, 89, 516 S.E. 2d 491, 493 (1999) (quoting Black's Law Dictionary 956 (6th ed. 1990)); and that malice "implies a mind under the sway of reason." *State v. Bongalis*, 180 W.Va. 584, 587, 378 S.E. 2d 449, 452 (1989) (quoting *State v. Morris*, 142 W.Va. 303, 314, 95 S.E. 2d 401, 408 (1956)). If, as Dr. Miller testified, Mr. Skeens killed Coach Jarrell because of a psychotic delusion that Jarrell was killing his family, A.R. Vol. X, pp. 102-03, Mr. Skeens' mind was certainly not under the sway of reason. Mr. Skeens could not be rational and psychotic at the same time. The State's contention that malice is merely evidenced by the large number of stab wounds Mr. Skeens inflicted, State's Brief, 12, is prosecutorial hyperbole without legal analysis. The focus of malice is a person's reasoning for committing the criminal act; here, Mr. Skeens used psychotic reasoning in committing his actions.

While the State admits Dr. Miller testified Mr. Skeens was psychotic or suffered from a psychotic delusion at the time of the homicide, the State contends Dr. Miller did not testify Mr. Skeens' mental condition prevented him from forming malice; and that Dr. Miller testified Mr. Skeens had the capacity to formulate malice. State's Brief, 17-20. Mr. Skeens may have had the capacity to form malice, but given Dr. Miller's testimony he acted as a result of a psychotic mental illness, the issue of malice becomes a factual question that should have been decided by the trier of fact, the jury. Moreover, Dr. Miller is not a lawyer and cannot be expected to be familiar with this Court's case law, as noted above, indicating that a defendant's insanity negates malice. Otherwise, Dr. Miller would have expressed a different opinion as Dr. Miller testified

and indicated in his report that Mr. Skeens' was legally insane at the time of the homicide. (A.R. Vol. X, p. 26) (A.R. Vol. XII, p. 29). On the other hand, the trial court should have been aware of the above case law indicating that evidence of insanity negates malice; and that Dr. Miller's and Mr. Skeens' testimony that Skeens killed Coach Jarrell due to his psychotic delusion that Jarrell was raping and killing his family members was evidence of an absence of malice, and required an instruction on voluntary manslaughter. *See State v. McGuire*, 200 W.Va. 823, 836, 490 S.E. 2d 912, 925 (1997), where this Court determined the defendant was properly convicted of voluntary manslaughter in the death of her child as her actions were not malicious because she believed it was her only option under the circumstances.

In downplaying Mr. Skeens' mental illness, the State fails to mention and/or completely ignores the fact that Mr. Skeens was hospitalized eight (8) times for his mental illness, a bipolar disorder, including two involuntary commitments, and that the trial court initially found him incompetent to stand trial. (A.R. Vol. X, p. 96-97, 104) (A.R. Vol. II, pp. 76-77). In arguing there was no evidence of an absence of malice, the State goes to great lengths to try to discount Mr. Skeens' bizarre behavior, *see* Petitioner's Brief, at 21 n. 3, show his rational behavior, argue he was malingering,¹ and argue that he knew exactly what he was doing. State's Brief, 16-17, 22-27. Those arguments, however, do nothing more than present a jury question on the element of malice as even the State admits in its brief that the testimony of both Dr. Miller and Mr. Skeens indicated Skeens killed Coach Jarrell as a result of Skeens' psychotic delusion and mental illness. *See* State's Brief, 17, 21. Because this testimony was substantial evidence Mr.

¹ Dr. Miller testified that Mr. Skeens was both psychotic and malingering. (A.R. Vol. X, p. 100). Dr. Miller said Mr. Skeens malingered when he was acutely ill, but when he was on his medication and doing well, he did not malingering (A.R. Vol. X, pp. 114-18). At the time of the offense, however, Mr. Skeens was manic and psychotic, according to Dr. Miller. (A.R. Vol. X, p. 105).

Skeens acted without malice, due to his mental illness, Mr. Skeens' requested instruction on voluntary manslaughter should have been given. *See* Syl. Pt. 1, *State v. Leonard*, 217 W.Va. 603, 619 S.E. 2d 116 (2005).

Finally, the State argues that the jury "didn't buy" the evidence and arguments that Mr. Skeens was psychotic because if they had, they would have convicted him of no more than second-degree murder. State's Brief, 15. This argument is fallacious. If the jury "bought" Mr. Skeens' arguments there was an absence of malice due to his psychosis, they would have had to acquit him, as the trial court did not give a voluntary manslaughter instruction. Given the jury's choice between conviction of first-degree murder and acquittal, it is quite evident the jury would not acquit Mr. Skeens, particularly given his confession to the killing and the status of the victim in the community. Thus, absent a voluntary manslaughter instruction, defense counsel could not effectively argue Mr. Skeens' actions resulting from his psychotic mental illness warranted a jury verdict less than murder.

II. The State Is Incorrect And The Trial Court Did Abuse Its Discretion In Denying Mr. Skeens His Requested Change Of Venue As There Existed A Present Hostile Sentiment Toward Mr. Skeens At The Time Of His Trial That Mandated A Change Of Venue.

The State is quick to assume that regardless of venue, Mr. Skeens was destined to be convicted. State's Brief, 29. However, this argument overlooks one key right – Mr. Skeens is entitled to a fair trial before his liberty is taken and the present hostile sentiment regarding this crime created a bias that could only be overcome by a change of venue. It is not sufficient for the jury to reach the "right" verdict if there was unfairness and bias in the process of reaching that verdict. Mr. Skeens is entitled to both a fair trial by an unbiased jury of his peers and a fair and unbiased verdict. Here, Mr. Skeens received neither. Additionally, based on the arguments

set forth by the State, it begs the question, if a verdict of guilty was a foregone conclusion, why bother with having the trial in the first place?

The State creates a red herring by insinuating that if the media covering this case wanted to be truly inflammatory, it would have reported that Mr. Skeens ate chili and ice cream after the homicide. State's Brief, 30. However, a present hostile sentiment was formed, in large part, because the victim was a beloved member of the community. The details of the crime were irrelevant as the public was dumbfounded as to why Coach Jarrell would be killed and grieved Coach Jarrell at a large memorial service at the high school. This memorial service reflects that this death impacted the entire community and thus, there was a present hostile sentiment necessitating the change of venue.

The State also is quick to suggest most jurors who reported media exposure stated their exposure had been at the time of the crime. State's Brief, 29-30. The State overlooks the reality that if people remember news from one-and-a-half years prior, it obviously had a significant effect on them. Most people do not remember how they celebrated their last birthday, let alone a news report regarding a person not related to them. Moreover, people reported remembering the fact that Mr. Skeens allegedly stabbed Mr. Jarrell, a fact that was to be determined by the jury based on the evidence presented at trial. Potential jurors should not start the trial process already assuming the manner of death as it is the jury's duty to determine the cause of death in rendering its verdict. The State adds that even if potential jurors have been exposed to media, it does not matter as most potential jurors stated they could follow the court's instructions. State's Brief, 32. This argument oversimplifies the analysis. People often believe and voice they are capable of overcoming bias, but are unable to fully put aside any bias when making decisions.

This argument relates back to Mr. Skeens' right to a fair trial as well – it is not just unfairness, but the appearance of unfairness and bias that must be avoided in order to promote confidence in the criminal justice system. Further evidence of this hostile sentiment toward Mr. Skeens was presented the day of his preliminary hearing, when members of the victim's family attacked Skeens. This case was so emotionally charged that it is difficult to imagine a juror could stay in a neutral, detached decision-making mode, no matter his or her best intentions, with so much grief surrounding this homicide. A hero had died and there was only one obvious suspect – Mr. Skeens. The desire for justice for Coach Jarrell could easily overwhelm even the most emotionally stable person and, as a result, that person may carry bias and dislike into the jury room. Therefore, the trial court abused its discretion in failing to grant a change of venue.

The death of Coach Jarrell was a significant loss to this community. While the trial occurred one and one-half years after the crime, people still mourned the loss of Mr. Jarrell and, of note, still referred to him as “coach.” Additionally, potential jurors reported remembering media accounts of this incident, including remembering the cause of death (by stabbing). His memory and his legacy had not been forgotten, greatly impacting the jurors' abilities to be fair and impartial. Further, the State highlights that the trial court excused a large number of jurors for cause. State's Brief, 34. It is rare to excuse approximately thirty (30) jurors for cause in a criminal case, thus reflecting the presence of a hostile sentiment and the need for a change of venue.

In determining a change of venue, the trial court must consider both the presence of a hostile sentiment toward the defendant and the ability of the members of the jury to be fair and impartial. *See* Syl. Pt. 1, *State v. Gangwer*, 169 W.Va. 177, 286 S.E.2d 389 (1982); Syl. Pt. 1, *State v. Goodman*, 170 W.Va. 13, 290 S.E.2d 260 (1981). In this regard, the State completely

fails to address and/or analyze the relevant law, cases cited in Petitioner's Brief, at 27-29, 32-33, opting to simply argue the facts did not require a change of venue.

In *State v. Derr*, 192 W.Va. 165, 172, 451 S.E.2d 731, 738 (1994), Justice Cleckley stated the issue is more than just whether jurors heard or remembered facts of the case prior to trial; it is about whether jurors have such fixed opinions that they are unable to fairly and impartially consider the evidence. In this matter, many people already had formed an opinion regarding whether Mr. Skeens was guilty. At the hearing on its motion for a change of venue, the defense argued that the media had saturated the county to such an extent that any eligible juror had already formed some opinion regarding Mr. Skeens and his behavior. (A.R., Vol. IV, p. 44). To further support their argument, defense counsel also submitted the results of a phone survey showing that about 85% of the potential jurors knew about the case, and that a significant number of potential jurors had developed a negative opinion of Skeens, i.e., 50% of those who had heard about the case. (A.R., Vol. IV, p. 36) (A.R., Vol. I, pp. 19-20). While the State highlights that during voir dire, the potential jurors never disclosed any disdain or hatred for Mr. Skeens, perhaps no one was brave enough to announce his or her disdain in open court. State's Brief, 34. However, the results of the phone survey strongly suggest that disdain did exist to such a point that the case required a change of venue.

During voir dire, thirty-two (32) jurors, or about half of the approximately sixty-four (64) jurors voir dired, were excused for cause. *See generally*, A.R., Vol. VI & VII. Two additional jurors were removed for cause at the start of trial, giving a total of thirty-four (34) jurors excused for cause. (A.R., Vol. VII, pp. 27-35, 42-45). In reviewing whether a denial of a change of venue was proper, the Court should consider the number of jurors excused for cause.

State v. Ginanni, 174 W.Va. at 582, 328 S.E.2d at 189. Here, that number is significant, supporting the need for a change of venue. Additionally, impaneling a jury free from exception is not conclusive proof that a change of venue was not necessary or warranted.² *Ginanni*, 174 W.Va. at 584, 328 S.E.2d at 191; *State v. Dandy*, 151 W.Va. 547, 564, 153 S.E.2d 507, 517 (1967); *State v. Siers*, 103 W.Va. 30, 33, 136 S.E. 503, 504 (1927).

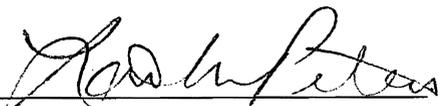
For all of the above reasons, the trial court abused its discretion in not granting Mr. Skeens a change of venue, impairing his right to a fair trial; therefore, Mr. Skeens' conviction must be overturned.

CONCLUSION

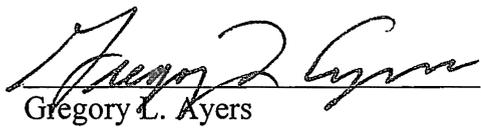
Mr. Skeens respectfully requests this Court reverse his conviction and sentence and remand this case to the circuit court for a new trial.

Respectfully Submitted,

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² Petitioner is neither conceding nor contending that the jury impaneled for his trial was not biased. Petitioner contends the opposite, that the jury contained bias despite efforts by the trial court to seat an impartial jury.



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CERTIFICATE OF SERVICE

I certify that I sent via U.S. Mail a copy of the foregoing Petitioner's Reply Brief to Counsel for Respondent, Benjamin Yancey, Assistant Attorney General, State Capitol Complex Building 1, Room W-435, Charleston, West Virginia 25305, this 21st day of October, 2013.



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