IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 1994 Term

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No. 21691

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STATE OF WEST VIRGINIA,
Plaintiff Below, Appellee

v.

CHARLES WALLS,
Defendant Below, Appellant

Appeal from the Circuit Court of Logan County
Honorable Eric H. O'Briant, Judge
Criminal Indictment No. 91-F-63

AFFIRMED

Submitted: January 19, 1994
Filed: May 27, 1994

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Attorney for the Appellee

Kelly Gilmore Codispoti
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Logan, West Virginia
Attorney for the Appellant

The Opinion of the Court was delivered PER CURIAM.

JUSTICE MILLER and JUSTICE WORKMAN dissent and reserve the right

to file dissenting opinions.

SYLLABUS BY THE COURT

1. "'To warrant interference with a verdict of guilt on the ground of insufficiency of evidence, the court must be convinced that the evidence was manifestly inadequate and that consequent injustice has been done.' Syl. Pt. 1, in part, State v. Starkey, 161 W.Va. 517, 244 S.E.2d 219 (1978)." Syllabus Point 1, State v. Triplett, 187 W. Va. 760, 421 S.E.2d 511 (1992).

2. "There exists in the trial of an accused a presumption of sanity. However, should the accused offer evidence that he was insane, the presumption of sanity disappears and the burden is on the prosecution to prove beyond a reasonable doubt that the defendant was sane at the time of the offense." Syllabus Point 2, State v. Milam, 163 W. Va. 752, 260 S.E.2d 295 (1979).

3. "When lay witnesses testify about a person's mental condition, the following factors are to be considered: (1) the witnesses' acquaintance with the person and opportunity to observe the person's behavior; (2) the time during which the observation occurred; and (3) the nature of the behavior observed." Syllabus Point 7, State v. McWilliams, 177 W.Va. 369, 352 S.E.2d 120 (1986).

Per Curiam:

Charles Walls appeals his June 19, 1992, jury conviction in the Circuit Court of Logan County of first degree murder without a recommendation of mercy and malicious assault. The circuit court sentenced the defendant to life imprisonment for the murder conviction and to a concurrent term of two-to-ten years for the malicious assault conviction. The defendant's sole error is that the State failed to prove his sanity beyond a reasonable doubt.

The evidence shows that on the day of the murder, December 19, 1990, the defendant, age 36, was visiting the home of his mother and stepfather, Charlotte and Ernest Adkins. The defendant's sister, Diana Vance, who earlier had borrowed his car, returned it to the Adkins' house. The defendant then offered to take her to her house, and she agreed. They left about 6:00 p.m.

Later, the defendant returned to his mother's house where he ate dinner, along with his brother and stepfather. They then proceeded to the living room to watch television. The defendant left the room and returned with a hammer, which he placed next to the chair where he was seated. When his brother left the house, the defendant followed him into the kitchen to say goodbye. The

defendant's mother, who had noticed him staring at his stepfather during dinner, took the hammer out of the room. She then came back into the living room.

The defendant returned to the living room and continued to watch television. Shortly thereafter, according to Mrs. Adkins, the defendant went "out of his mind." He tore the phone off the wall and hit Mr. Adkins with it. Mrs. Adkins jumped between the defendant and Mr. Adkins. The defendant hit her and knocked her into a door. She was momentarily dazed. Upon regaining her senses, she discovered that the defendant had her husband down on the floor. She jumped between them and recalled the defendant looking at her wildly and saying "this is the son of a bitch that killed my son." He knocked his mother back against the door.

Realizing that the defendant was too strong for her, Mrs. Adkins went to the kitchen where she got the hammer. The defendant grabbed the hammer away from her as she was attempting to raise it. A struggle ensued and she wrestled him to a small couch. However, the defendant knocked Mrs. Adkins unconscious. When Mrs. Adkins

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There was no evidence that the stepfather had killed the defendant's son. The defendant, who is divorced, does have a son who lives with his ex-wife.

regained consciousness, she escaped through a back door and went to the home of a neighbor, Perry Harvey. Once there, she begged him to shoot her son in order to save her husband. Mr. Adkins died as a result of the attack, having been beaten to death with the hammer.

The defendant left the scene of the murder. The next morning at 6:04 a.m., the defendant passed a marked Virginia state police car while traveling south on Interstate 81. Trooper Michael Dean Spangler of the Virginia Department of Public Safety turned on his emergency lights and siren. The defendant gave a right-turn signal, pulled over to the emergency lane, and slowed down to approximately fifteen miles per hour. The defendant then gave a left-turn signal, accelerated back onto the interstate, and waved at the trooper.

A high speed chase ensued. Trooper Spangler chased the defendant at an average speed of 107 miles per hour. When the defendant became caught in traffic, he passed cars by driving on the median or in the emergency lane. The defendant was apprehended after he and Trooper Spangler approached tractor trailers in both the right- and left-hand lanes. When the defendant attempted to go around the trucks in the emergency lane, Trooper Spangler blocked

his path. The defendant attempted to drive through the median, but drove over a culvert and wrecked.

After the wreck, Trooper Spangler approached the defendant and found he had injured his back and knee. Trooper Spangler informed the defendant that he would be extradited to West Virginia on a homicide charge. He then accompanied the defendant to the hospital. Trooper Spangler testified that the defendant responded appropriately to the questions he asked and appeared to recognize him as a police officer.

Whether the defendant is correct in his assignment of error that the State failed to prove sanity beyond a reasonable doubt depends on the sufficiency of the evidence. As this Court stated in Syllabus Point 1 of State v. Triplett, 187 W. Va. 760, 421 S.E.2d 511 (1992):

> "'To warrant interference with a verdict of guilt on the ground of insufficiency of evidence, the court must be convinced that the evidence was manifestly inadequate and that consequent injustice has been done.' Syl. Pt. 1, in part, State v. Starkey, 161 W.Va. 517, 244 S.E.2d 219 (1978)."

In this jurisdiction, a presumption of sanity exists until a defendant presents evidence of insanity. This Court has stated

in Syllabus Point 2 of State v. Milam, 163 W. Va. 752, 260 S.E.2d 295 (1979):

> "There exists in the trial of an accused a presumption of sanity. However, should the accused offer evidence that he was insane, the presumption of sanity disappears and the burden is on the prosecution to prove beyond a reasonable doubt that the defendant was sane at the time of the offense."

At trial, the defendant introduced expert testimony that raised the issue of insanity at the time the acts were committed. W. Joseph Wyatt, Ph.D., a psychologist, testified to the effect that the defendant was insane at the time of the crime and did not appreciate his actions at the time. Dr. Wyatt diagnosed the defendant as suffering from paranoid schizophrenia and as a drug and alcohol abuser. He also diagnosed an antisocial personality disorder. He did not base his finding that the defendant was not criminally responsible on the antisocial personality disorder diagnosis.

Patricia Williams, M.D., a board-certified psychiatrist, testified that the defendant suffered from paranoid schizophrenia and was not criminally responsible due to his psychosis. She examined the defendant while he was in Weston State Hospital. Robert Rush, Ph.D., a court-appointed psychologist who made the initial

examination of the defendant at Weston State Hospital, testified that he initially did not believe the defendant was criminally responsible. However, at the time he rendered a psychological assessment, he deferred an opinion on the defendant's criminal responsibility and recommended a reevaluation in six months. He did not perform the reevaluation.

The defendant also called Lilian Thambidurai, M.D., a board-eligible psychiatrist, who did not give an opinion in regard to the defendant's sanity. Rather, Dr. Thambidurai testified about the defendant's occasional visits at the Logan Mingo Mental Health Center. The defendant was referred to the center following abuse of cocaine and alcohol. When Dr. Thambidurai first saw the defendant in January of 1988 she felt that the defendant was in touch with reality.

Dr. Thambidurai next saw the defendant on June 7, 1989, after his release from Huntington State Hospital. It was her impression at that time that the defendant had suffered an acute psychotic episode that resulted in his hospitalization at Huntington State Hospital. He had been given two prescriptions, one for treating a psychotic illness, the other for depression and nervousness. At the defendant's visit on June 7, 1989, Dr.

Thambidurai believed that he was neither paranoid nor depressed.

After seeing the defendant on February 27, 1990, Dr. Thambidurai's impression was that the defendant suffered from alcohol abuse and depression with psychotic features. She recommended that he continue with his two prescriptions. The defendant was last seen by Dr. Thambidurai on April 3, 1990. He complained of hearing voices, but she found him to be without any overt psychosis or depression. She advised the defendant to stay on the same medication.

Eguardo Rivera, M.D., a general practitioner, saw the defendant on December 18, 1990, the day before the murder, at the Logan Medical Foundation clinic. Dr. Rivera diagnosed the defendant as suffering from depression and psychosis. During the examination, the defendant was conversant and somewhat calm. The defendant knew where he was and with whom he was talking. Dr. Rivera opined there was no emergency and defendant could safely return home. He contacted Logan Mingo Mental Health Center and an appointment was scheduled for forty-eight hours later. Dr. Rivera was not asked about the defendant's state of sanity at the time he committed the crimes.

The State relies on Dr. Thambidurai's observations of the defendant during his various visits, as well as Dr. Rivera's observations the day before the murder, to support its claim that there was sufficient evidence to show the defendant was sane. Even though they did not give expert testimony on the sanity issue, their testimony had some relevance, at least the same as that of a lay person.

The State also points to the testimony of the defendant's sister, whom he had driven home the same evening as the murder. She stated that he appeared normal. A neighbor, Perry Harvey, who had known the defendant for nineteen or twenty years, testified he had frequently seen the defendant and never observed any unusual behavior.

Finally, the Virginia state trooper who arrested the defendant testified that after the arrest the defendant seemed to respond to his initial questioning in a normal fashion. He noticed no unusual behavior after the arrest.

We recognized in Syllabus Point 7 of State v. McWilliams, 177 W.Va. 369, 352 S.E.2d 120 (1986), that lay persons could give opinions as to the mental condition of a defendant:

> "When lay witnesses testify about a person's mental condition, the following factors are to be considered: (1) the witnesses' acquaintance with the person and opportunity to observe the person's behavior; (2) the time during which the observation occurred; and (3) the nature of the behavior observed."

See also Syllabus Point 4, State v. Fugate, 103 W. Va. 653, 138 S.E. 318 (1927).

In this case, there were three experts who opined that the defendant was not criminally responsible. However, Dr. Thambidurai, who had seen the defendant on several occasions over a two-year period, the last being April 3, 1990, determined that the defendant did not suffer from schizophrenia. The existence of schizophrenia was the substantial basis of the other experts' opinions that the defendant was not criminally responsible. Furthermore, Dr. Rivera testified that the defendant appeared calm and was conversant the day before the attack.

There were also observations from lay witnesses who indicated that the defendant appeared normal to them. His sister

spoke about his condition immediately before the attack when he drove her home. The Virginia state trooper gave his observation of the defendant at the time he was arrested.

This case is not like State v. Milam, supra, where there was no testimony that rebutted the defendant's insanity testimony. Nor is it like State v. McWilliams, supra, where the only evidence presented by the State consisted of several individuals who saw the defendant for a brief period shortly before he committed the homicide. Arrayed against this rather meager lay evidence in McWilliams was the conclusive testimony of the defendant's psychiatrist, Dr. Patricia Williams. She described his condition and diagnosed him as being a paranoid schizophrenic.

Consequently, it is the opinion of this Court that in this case there was sufficient evidence for the jury to conclude that the defendant was sane beyond a reasonable doubt. For the foregoing reasons, the judgment of the Circuit Court of Logan County is affirmed.

Affirmed.