

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

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COMMON PLEAS COURT
FRANKLIN CO. OHIO

STATE OF OHIO,

PLAINTIFF,

CASE NO. 96 CR - 12 - 6787

-VS-

ROBERT J. CAULLEY,

JUDGE MARTIN (By Assignment)

DEFENDANT.

ENTRY

A hearing on defendant's motion for a new trial was granted and held on the morning of October 19, 2011. The issues have been fully briefed by the parties and the matter is now ready for decision by the court.

While the legal issues are in places in contention, the facts by-and-large are not. The parents of the defendant were found bludgeoned to death the 16th of January, 1994. The physical evidence was scant; there were reports of a couple of youths in the area bragging about the crime, but this was discounted and the attention of the authorities turned to the defendant, Robert Caulley, who had found and reported the incident .

A trial was commenced in September of 1997. The defendant had given a confession earlier in that year, after having moved to Texas for new employment. The confession, though contested, was admitted into evidence at trial and used to convict the defendant of the lesser crimes of manslaughter and murder (non-capital).

The defendant's wife, now Celeste Bowman, returned from Texas in the spring of 1997 and started assisting Caulley's trial attorney, Jim Owen, in the preparation of the defendant's trial. However, based upon the testimony at hearing of the investigating assistants, the family and the ex-wife, her work with defense counsel appeared to be as much a distraction as it was a help. An affair, involving Celeste Bowman and Jim Owen, developed during the time that the defense of the trial was being prepared and continued on during the trial and later.

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At the hearing on the motion for a new trial, members of the defendant's family testified that they were not satisfied with counsel's attention to the case and communication with them about the progress with the case, the DNA research and the investigation generally.

Of particular importance was the evidence offered by investigators Martin Yant and Felicia Crawford tending to show that preparation for the case was tardy and insufficient. The long-standing working relationship of Yant with Atty. Owen had run into difficulties and he had insufficient attention and guidance from counsel to effectively continue to work with him on the case. Yant resigned from further work on the case before the trial commenced.

Yant pointed out that Owen often canceled meetings with him and neglected his work on the case. He observed that this was the only one of the several cases he worked on with Owen in which counsel's work was deficient.

Celeste Bowman's testimony explained the cause for Owen's lack of attention to the trial: dinners together, long drives in the evenings and numerous liaisons at different places. Half their time together was not spent on the defendant's case. Ms. Crawford's complaints about counsel's performance are equally serious. Just days before the start of the trial she was given a list of over 260 names to interview in preparation for the defense. This was imposing an impossible task.

The defense has shown that trial preparation was not timely completed, and this in the court's opinion made a substantial difference in the outcome of the trial. DNA tests were not done and the results may have raised some doubt about the case to the jury. Two youngsters, Shawn Moore and Ricky Nelson, had reportedly made statements implicating themselves in the murders of defendant's parents.

Owen decided by the time of opening statements to attempt to bring this testimony in and told the jury he would produce evidence of another theory of the case, one which could exonerate Caulley. He had not sufficiently investigated the evidentiary law and what he could show by way of the two youngsters. The jury's expectations were doubtlessly raised, but then, when he switched tactics and decided not to try to offer this proof during the trial, Owen's credibility and the defendant's case must have suffered greatly in the jurors' minds. With proper pretrial motions this issue should have been resolved well before pretrial.

This was clearly a difficult case for the prosecution to take to trial. Three years passed before the police authorities went to Texas and obtained defendant's confession thus getting enough evidence to take to a grand jury. The jury verdict was guilty on lesser offenses and then only arrived at after three days of deliberation.

The first question presented by the defendant's motion for a new trial is whether the romantic affair between the defendant's wife and defendant's trial attorney adversely affected his representation. The court can only conclude that it did. Counsel spent inordinate amounts of time with Celeste Bowman and shunned the rest of his investigators and assistants, leading to mistakes such as the one at pretrial discussed above. In a close case such as this, such a faux pas in and of itself could, if avoided, have led to a different verdict.

Counsel for the defendant in her brief goes to considerable length describing how the trial counsel neglected his work, how he was tardy in his preparation, how his efforts seemed to be directed more at concealing the affair than working with his staff to ready an effective defense. The court finds counsel had been distracted to an extent that greatly hindered his preparation and trial performance.

Indeed, in a conflict of interest case as we have here, it is not unreasonable to conjure up scenes where a jury could detect a less than zealous representation by counsel though the tone of voice, etc. might not appear on the written record. Twelve sets of eyes and ears are very difficult to deceive. Divided loyalties may be detected and may result in doubt in a juror's mind. Given such intangibles, the conflict and adverse effect being shown, prejudice must be presumed. *State v. Hawkins* (1993) 66 Ohio State 3d 339.

A second approach to this case rests on the authority of *People v. Singer* (1990) 226 Cal. App. 3d 23 from California and related cases. The defense argues that conflicts of interest may at times be so egregious as to require automatic reversal.

If the issue here were a motion for a mistrial made during the original trial, this court has stated to counsel that it would have no hesitation in granting the motion, barring a strong and knowing objection by the defendant himself. Counsel's loyalty was divided between defendant and defendant's wife; Owen had no co-counsel to intervene; and defendant's life was at risk. For the state to suggest that the defendant would want the case to continue under these circumstances is risible.

The burden of a new trial was mandatory then and in fairness should be so now. The integrity of the legal system would have demanded a new trial in 1997 and it demands it now on this motion for a new trial.

The court is well aware that this is not a proceeding on an ethics violation, but that does not make the ethics code irrelevant. The purposes of the code are not to be cast aside here. He should have had available to him "zealous" representation and instead got, unknowingly to defendant, divided loyalties of his lawyer shared with his wife. Certainly, the people of Ohio could take no satisfaction under such circumstances in a verdict of guilty as charged with death specifications. In that event, the question again might have been a mistrial.

In conclusion, the decision in this case approaches the edges of the law in this state and, fortunately, the law in this state has rarely been required to be applied to this set of facts and indeed this decision may well be limited in its scope to the specific facts of this case.

This motion for a new trial should be, and hereby is, granted. A new trial should be held without undue delay.

IT IS SO ORDERED.

John D. Mastri

CC:

Atty. Seth L. Gilbert

Atty. Kimberly S. Rigby