

ORIGINAL

IN THE SUPREME COURT OF OHIO

Supreme Court Case Number 10-1373

STATE OF OHIO

Appellee

v.

ASHFORD L. THOMPSON

Appellant

On Appeal from the Summit
County Court of Common Pleas
Case No. CR 08 07 2390

CAPITAL CASE

STATE'S RESPONSE TO MOTION FOR RECONSIDERATION/REHEARING

SHERRI BEVAN WALSH

Prosecuting Attorney

RICHARD S. KASAY #0013952 (*Counsel of Record*)

Assistant Prosecuting Attorney
Appellate Division
Summit County Safety Building
53 University Avenue, 6th Floor
Akron, Ohio 44308
(330) 643-2800
Fax (330) 643 2137
Email: kasay@prosecutor.summitoh.net

Counsel for Appellee, State Of Ohio

KIMBERLY S. RIGBY #0078245

Assistant State Public Defender

RACHEL TROUTMAN, #0076741

Assistant State Public Defender

Isa Mauch, #0083500

Assistant State Public Defender

Office of the Ohio Public Defender
250 East Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394

Counsel for Appellant Ashford L. Thompson

FILED
NOV 14 2014
CLERK OF COURT
SUPREME COURT OF OHIO

RECEIVED
NOV 14 2014
CLERK OF COURT
SUPREME COURT OF OHIO

IN THE SUPREME COURT OF OHIO

Supreme Court Case Number 10-1373

STATE OF OHIO

Appellee

v.

ASHFORD L. THOMPSON

Appellant

On Appeal from the Summit
County Court of Common Pleas
Case No. CR 08 07 2390

CAPITAL CASE

STATE'S RESPONSE TO MOTION FOR RECONSIDERATION/REHEARING

Appellee State of Ohio requests that this Court deny Appellant's Motion for Rehearing and/or Reconsideration. Reasons are more fully set forth in the attached Memorandum in Opposition.

Respectfully submitted,

SHERRI BEVAN WALSH
Prosecuting Attorney



RICHARD S. KASAY

Assistant Prosecuting Attorney
Appellate Division
Summit County Safety Building
53 University Avenue, 6th Floor
Akron, Ohio 44308
(330) 643-2800
Reg. No. 0013952

COUNSEL FOR APPELLEE
STATE OF OHIO

MEMORANDUM IN OPPOSITION

This Court affirmed appellant's convictions and death sentence. *State v. Thompson*, Slip Opinion 2014-Ohio-4751. Six Justices agreed that the convictions were in accord with law. One Justice believed that the State did not prove one capital specification (R.C. 2929.04(A)(3)). That Justice, who opposes the death penalty in all cases, and two other Justices, believed that the death sentence was not in accord with law pursuant to this Court's independent weighing authority.

A.

Appellant's first argument is that Justices French and Kennedy, who both agreed that the convictions and death sentence were proper, should recuse themselves from hearing the merits of appellant's motion.

Appellant accuses those two Justices, at a minimum, of fostering an appearance of bias and impropriety because both were running for re-election and in Justice French's case an independent entity ran a commercial favorably disposed to her record in death penalty cases. Appellant theorizes that the ad put Justice French in "an arduous spot" since a vote against a death sentence would be at variance with the ad. Appellant does not care if Justice French had a thought about appellant's perceived conflict, or apparently, if she knew about the ad at all because in appellant's view, the public would very likely perceive that his case directly corresponded to the campaign. Appellant thus inflates without any proof at all the independent ad to the primary message the Justice's campaign sought to foster.

Appellant's argument against both Justices focuses on support from the FOP and presumably other law enforcement groups.

Appellant theorizes that both Justices had to overcome “the incredible pressure” of the last week of the campaign and strive to suppress awareness of the potential electoral consequences of their decision in his case. Appellant appears to give the Justices the benefit of the doubt on that score but still maintains that public confidence in their impartiality was undermined by the timing of the release of the decision (six days before the election).

Appellant goes on to advise this Court not to release “closely watched” cases (as he presumes his was) where the release will raise a specter of undermining public confidence in judicial impartiality. Appellant provides no definition of a “closely watched” case.

Since a Justice’s entire voting record is examined by partisans on both sides during an election, it is difficult to imagine when appellant believes “closely watched” decisions should be released. But certainly not six days before Election Day.

Appellant first assumes that Justices French and Kennedy were impartial but then veers towards accusing them of actual bias based on the views of retired Justice John Paul Stevens.

Left unaddressed by appellant is the inescapable corollary to his arguments. If the campaigns left the public with the impression that the Justices would vote their ads, the Justices had no business staying in the case at all. *See* Motion at page 7, John Paul Stevens address. Appellant’s premise must be that the campaigns were so infused with “tough on crime” rhetoric that a considerable percentage of the voting public was aware of that position and anticipated that the Justices would act accordingly. There is no evidence that appellant’s counsel supports a death sentence in any case and if their

ethical antenna is so attuned there is no reason to believe that their concerns were not as great before the election as now, yet no recusal motion was filed.

But appellant's arguments go deeper than expressed and to every camel's nose is attached a camel. If it is true, and in the State's view it must be, that appellant believes that the two Justices should not have participated in the case at all, appellant's position leads to the conclusion that any Justice whose voting record in capital cases, or at least "closely watched" capital cases, happens to correspond with the views of the great majority of the voters in Ohio should not publicize their voting record. That position is likely one that this Court or any court would hesitate to favor. As long as judges are elected the voting public is going to want to know and has a right to know the decisional record of the candidates.

But in the end the State cannot read the mind of any Justice on this Court. The State is confident that the two Justices decided the case according to the law and the facts uninfluenced by campaign slogans. It is certain that appellant has not shown that any campaign was so colored by positions that would favor a vote against him that it impacted the election results in any way. There is no credible reason for the two Justices to recuse themselves.

B.

Appellant's argument on the merits goes to the capital specification killing to escape detection, R.C. 2929.04(A)(3). Seven Justices found no fault with the jury's finding on that specification. Examination of appellant's Merit Brief shows not one letter devoted to a claim that the R.C. 2929.04(A)(3) specification was improper or not proved. Nor was there any claim that the resisting arrest conviction is wrong. *See*

Thompson, ¶284. For instance, in his Merit Brief, appellant stated that the “aggravating circumstances” did not outweigh mitigating factors. Merit Brief, page 134.

There should be no cause to reconsider a decision when the appellant never saw fit to raise the issue he wants reviewed. Appellant is simply seeking to make a new merit argument. Further, there should be no reason at all to consider appellant’s unsworn statements at mitigation as actual evidence going to whether the State proved the capital specification at the guilt phase. *Thompson*, ¶319. Nor is resisting arrest precluded simply because the arrest is already in progress. *Id.*; R.C. 2921.33.

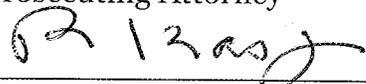
Appellant did not shoot the officer in the head several times before the officer got a handcuff on appellant’s wrist. The jury could find that appellant was resisting arrest and circumstantially that he purposely killed the officer to escape detection for that offense. *See Thompson*, ¶284. The evidence reveals appellant’s mindset shortly before the killing. Appellant said that “there’s demons in me”; “I will kill if another fucker threatens me”; and “nobody understands the shit I’ve done and I’m capable of.” T. 1226-1227. *See Thompson*, ¶113.

CONCLUSION

The State respectfully requests that the motion be denied.

Respectfully submitted,

SHERRI BEVAN WALSH
Prosecuting Attorney



RICHARD S. KASAY
Assistant Prosecuting Attorney
Appellate Division
Summit County Safety Building
53 University Avenue, 6th Floor
Akron, Ohio 44308

(330) 643-2800
Reg. No. 0013952

COUNSEL FOR APPELLEE
STATE OF OHIO

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing document has been sent via regular U.S. mail to Kimberly S. Rigby, Rachel Troutman, and Isa Mauch, Assistant State Public Defenders, Office of the Ohio Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio, 43215, on this 13th day of November, 2014.



RICHARD S. KASAY
Assistant Prosecuting Attorney
Appellate Division