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IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 91-3878

RANDY L. BRACKETT,)	Appeal from the
)	United States
Plaintiff-appellant,)	District court for the
)	Central District of
)	Illinois
v.)	
)	No. 91-2063
HOWARD PETERS, ET AL.,)	
)	Hon. Harold A. Baker,
Defendant-appellee.)	Judge Presiding

REPLY BRIEF OF PLAINTIFF-APPELLANT

INTRODUCTION

Randy Brackett was charged with felony murder after Elizabeth Winslow, an 86-year-old woman he confessed to raping and battering, choked to death on food "stuffed down her throat" by a nursing home employee approximately five weeks later. Before her death, Ms. Winslow was depressed, expressed suicidal thoughts, had a poor appetite, and gradually deteriorated mentally and physically. Initially, the State asserted that Brackett committed "psychological murder" because the attack caused Ms. Winslow to lose the will to live^{1/}, but the State abandoned this theory at trial.

^{1/} According to a January 8, 1982 article in the St. Louis Post Dispatch, Madison County State's Attorney Don Weber "acknowledged that charging murder under such circumstances was unusual. He said the most similar case he could find in Illinois was that of a man who died of pneumonia while being treated for a gunshot wound." (Tr. Vol. IV at 340.) Another article, entitled "Psychological Murder Case Called Unprecedented by State's Attorney", appeared in the St. Louis Globe Democrat on February 5, 1982. That article quoted Weber as stating that the

(continued...)

Brackett's felony murder conviction was affirmed by the Illinois Appellate and Supreme Courts, which found that Brackett caused Ms. Winslow's death by inflicting a broken rib, a battered nose, and a state of physical weakness. Brackett filed a petition for a writ of habeas corpus in the United States District Court for the Central District of Illinois, asserting that his murder conviction violated due process because, after viewing the evidence in the light most favorable to the prosecution, no rational trier of fact could have found that the State proved beyond a reasonable doubt that Brackett caused Ms. Winslow's death.

In the words of the district court, Brackett's petition was based on the proposition that "in convicting him of murder, the state court must have found that the injuries he inflicted on Ms. Winslow physically contributed to her demise" (Baker Op. at 5-6; emphasis in original). The district court then proceeded to hold that "[a]fter

1/ (...continued)

[c]ase [against Brackett] is unprecedented. He and his staff have researched other murder cases, he says, and 'haven't found any that involve the psychological element we're talking about.'

'What we've got here is an intervening cause - - which is this woman saying that she doesn't want to live,' Weber said. 'We attribute this to the rape.'

'There have been murder convictions in Illinois in connection with deaths that occurred some time after an attack, but the causal relationship was more obvious,' Weber said.

(Tr. Vol. IV at 334.)

reviewing the trial court record, this court agrees with the petitioner that if the physical consequences of Ms. Winslow's injuries were all that was at issue, the evidence connecting those injuries to her death would be insufficient to support a constitutional murder conviction." (Baker Op. at 6.) The district court went on to salvage Brackett's conviction, however, by effectively resuscitating the "psychological murder" theory which the State first considered but then abandoned at trial.

While the district court was correct in finding that Brackett did not physically cause Ms. Winslow's death, the court erred in finding (1) that Brackett's conviction was based on evidence that he caused Ms. Winslow's depressed mental state and (2) that Illinois law permits a defendant to be convicted of felony murder for inflicting psychological harm. The district court erred in denying Mr. Brackett's petition.

The State's Response Brief fails to address the serious constitutional infirmities set forth in Petitioner's Opening Brief. The State asserts, in conclusory fashion, that there was enough evidence to convict Mr. Brackett of murder without so much as mentioning the district court's conclusion that evidence of the physical consequences of Ms. Winslow's injuries was deficient. However viewed, the evidence contained in the record below is insufficient to support Brackett's murder conviction. Consequently, Brackett is entitled to the issuance of the writ.

I. THE DISTRICT COURT CORRECTLY FOUND THAT THE EVIDENCE OF PHYSICAL INJURY IS CONSTITUTIONALLY INADEQUATE TO SUPPORT BRACKETT'S MURDER CONVICTION.

The State's Response Brief fails to acknowledge that the decision on appeal includes an explicit finding that the record evidence regarding "the physical consequences of Ms. Winslow's injuries" is insufficient to support a constitutionally valid conviction of felony murder. As petitioner demonstrated in his Opening Brief (at 25-34), Judge Baker's factual finding on this issue -- reached after a review of the record -- is well supported by the record and may be entitled to deference, even where the same record is available to the reviewing court. See Mustread v. Gilmore, 966 F.2d 1148, 1150 (7th Cir. 1992) (Review either plenary or deferential with respect to mixed questions of law and fact in a "paper case, where the district judge based his determination . . . solely on a state court record which is equally available to [the appeals court]").

The district court correctly found that none of the physical injuries attributed to Brackett caused Ms. Winslow's death. The court found that Ms. Winslow's broken rib was "by no means conclusive as to cause of death" for four reasons: (1) "a normal, healthy person would have difficulty expelling that much food", (2) the autopsy was "inconclusive as to whether [Ms. Winslow's] choking was an accident, or whether it resulted from a suicide or homicide", (3) Dr. Elliott testified that "[h]e believed the six ounces of food had been 'stuffed down her throat'", and (4) both Dr. Elliott and the

pathologist testified "there were no signs that [Ms. Winslow] had any difficulty breathing." (Baker Op. at 6.) The district court found that "although the injuries to Mrs. Winslow's nose prevented the nursing home from using a nasal feeding tube which would have prevented her from choking, this is not sufficient to provide the petitioner with legal responsibility for her death." Id.

In sum, the district court correctly found that the record evidence failed to prove "the essential causal link between the wounds inflicted by the defendant and the death [of the victim]" See People v. Brown, 57 Ill. App. 3d 528, 532-33, 373 N.E.2d 459, 462 (1st Dist. 1978).

II. THE DISTRICT COURT ERRED IN SALVAGING BRACKETT'S CONVICTION BASED ON MS. WINSLOW'S DETERIORATED MENTAL STATE.

After finding that evidence of Ms. Winslow's physical injuries was constitutionally insufficient to convict Brackett of murder, the district court held that the state court "base[d] the petitioner's conviction in part on the petitioner's responsibility for Ms. Winslow's deteriorated mental condition."^{2/} The District Court, however, erred in finding that the state court "must have

^{2/} Baker Op. at 8: "[A]lthough the trial court specifically rejected the psychological murder theory . . . it found that the defendant's act of rape contributed to the victim's death. Because the court considered the rape . . . to have precipitated Ms. Winslow's death, the court must have considered psychological damage to be a cause of death on which to base a murder conviction."

considered psychological damage to be a cause of death on which to base a murder conviction" for three chief reasons.

First, as demonstrated in Petitioner's Opening Brief (at 34-36), no competent evidence regarding the cause or causes of Ms. Winslow's depression was presented at trial. Dr. Elliott's anecdotal testimony regarding the effects of trauma on elderly patients was insufficient to prove beyond a reasonable doubt that Brackett caused Ms. Winslow's depressed mental state. The record suggests at least five other factors which may have been at least partly responsible for Ms. Winslow's depression, including disappointment at being placed in a nursing home, loneliness, and senile atrophy of the brain, which was noted during the autopsy. (See Opening Brief at 15-18.) Dr. Elliott was an internist, not a psychologist. Ms. Winslow was never examined by a psychologist qualified to diagnose her depressed mental state or testify as to its causes.

Second, the opinions of the Illinois Appellate and Supreme Courts show that both decisions were based on physical links between the defendant's conduct and the victim's death. In seeking to establish such links, both courts emphasized the victim's broken rib, bruised nose, and weakened physical condition as causes of choking attributable to the defendant. (See Opening Brief at 45.) Given the state trial court's categorical rejection of the "psychological murder theory", it is not surprising that the reviewing courts attempted to base their decisions upholding

the murder conviction on purely physical links between Mr. Brackett's conduct and the victim's death by asphyxiation.

Third, even if Brackett's conduct was proven to be the cause of Ms. Winslow's depression (which the record simply does not establish), Ms. Winslow did not die of depression: She died because a nurse's aid "stuffed" over six ounces of pureed food down her windpipe. (See Opening Brief at 10; Tr. Vol. I at 428-29.)

The district court erred in salvaging Mr. Brackett's conviction based on the notion that he caused Ms. Winslow's depression. There was no competent evidence regarding the cause or causes of Ms. Winslow's depression; no "psychological autopsy" was performed. Ms. Winslow was never examined by a psychologist. Dr. Elliott, an internist, was not competent to testify as to the causes of Ms. Winslow's mental state.

A review of the opinions of the Illinois Appellate and Supreme Courts does not support the notion that those decisions were based on Mr. Brackett's responsibility for psychological harm. The district court, therefore, erred in finding that Brackett's conviction could be upheld on this ground.

III. THE DISTRICT COURT ERRED IN RULING THAT ILLINOIS LAW PERMITS A DEFENDANT TO BE CONVICTED OF FELONY MURDER FOR INFLECTING PSYCHOLOGICAL HARM.

Without citing any authority, Judge Baker upheld Brackett's conviction on the legal conclusion that "nothing in Illinois law is inconsistent with the theory that the petitioner's rape and beating of an 86-year-old woman caused the psychological as well as physical trauma that led to her death." (Baker Op. at 10.) This is not the law. Illinois law does not permit a defendant to be convicted of felony murder for causing psychological harm.^{3/}

Under Illinois law, a defendant may not be convicted of felony murder for causing another person to become depressed and suffer from a loss of appetite. Even if it did, physical weakness was not the cause of Ms. Winslow's death: Ms. Winslow died because so much food was "stuffed down her throat" that even an uninjured person would have been unable to expel it. (See Opening Brief at 22-23; Response Brief at ix.)

The State argues that "numerous defendants have been convicted of murder under almost identical facts in other criminal cases" and that "one is guilty of murder if he inflicts a dangerous blow while striking another thereby

^{3/} In contrast to the district court's evaluation of the sufficiency of the evidence, the lower court's legal conclusion that "nothing in Illinois law is inconsistent with the theory that the petitioner's rape and beating of an 86-year-old woman caused the psychological as well as physical trauma that eventually lead to her death" is clearly subject to de novo review. Mozee v. American Comm'l Marine Serv. Co., 940 F.2d 1036, 1044 (7th Cir. 1991).

starts a chain of causation which ultimately ends in death." (Response Brief at 6-7.) This is simply wrong. In each of the cases cited by the State, the defendant inflicts a physical injury, which leads to a physical complication, which in turn acts as the immediate physical cause of death. The most common example is a life-threatening injury which interferes with breathing and thereby causes pneumonia. None of the cases involves a death caused by psychological injury or depression.

For example, in People v. Paulson, 80 Ill. App. 2d 44, 225 N.E.2d 424 (1st Dist. 1967), the defendant fractured the victim's skull and caused extensive brain damage with a blow from a baseball bat. Neurosurgery was necessary to relieve pressure caused by a subdural hematoma. During the operation, an infection (meningitis) entered the surgical incision. The victim died of meningitis; defendant was convicted of murder. On appeal, the court affirmed because death was caused by an infection which developed during an operation necessitated by the blow inflicted by the defendant.

In Paulson, the immediate cause of death (infection) was directly traceable to the physical injury caused by the defendant. By contrast, in this case -- as the district court correctly found -- the immediate cause of Ms. Winslow's death (asphyxiation on food "stuffed down her throat") was not traceable to her broken rib, bruised nose or weakened physical condition, because "even a healthy person

would have difficulty expelling that much food" (Baker Op. at 6), and the failure to use a nasal feeding tube "is not sufficient to provide the petitioner with legal responsibility for her death." (Id. at 7.)

The other cases cited by the State are equally inapposite; they demonstrate only that pneumonia is a frequent and foreseeable physical complication of certain life-threatening physical injuries. See, e.g., People v. Reader, 26 Ill. 2d 210, 186 N.E.2d 298 (1962) (defendant responsible for gunshot wound which caused victim's death by pneumonia); People v. Gulliford, 86 Ill. App. 3d 237, 407 N.E.2d 1094 (3d Dist. 1980) (head injury and brain damage caused victim's death by pneumonia); People v. Fuller, 141 Ill. App. 3d 737, 490 N.E.2d 977 (3d Dist. 1986) (blunt trauma during robbery caused fatal series of heart attacks); United States v. Hamilton, 182 F. Supp. 548, 550 (D.C. Cir. 1960) (see Opening Brief at 42-45) (facial injuries caused victim's death by asphyxiation on blood); People v. Smith, 56 Ill. 2d 328, 307 N.E.2d 353 (1974) (see Opening Brief at 42) (defendant caused death where victim jumped out second floor window to escape attack after defendant threatened to kill her).

In each of the cases cited by the State, the defendant caused a physical injury, which in turn caused a physical complication (such as pneumonia), which in turn was the "immediate" cause of death. By contrast, in our case, no physical injury inflicted by the defendant was responsible

for the fact that a nurse's aid "stuffed" over six ounces of pureed food down the victim's throat, nor did any physical injury inflicted by Mr. Brackett cause physical complications which acted as the immediate cause of Ms. Winslow's death. The immediate cause of Ms. Winslow's death was asphyxiation. As the State's Response Brief effectively concedes, Brackett was not responsible for Ms. Winslow's choking because "even a healthy person would have had difficulty expelling the volume of food found in the victim's trachea." (State's Response Brief at ix.)

IV. THE POTENTIAL REINSTATEMENT OF PRIOR CONVICTIONS NOT UNDER REVIEW IS NOT GROUNDS FOR DENYING THE WRIT.

At pages 10-11 of the State's Response Brief, the State asserts -- without citing any authority -- that "should relief issue here on appeal, then the cause must be referred to State Court for reinstatement of the previously vacated convictions" and that "even assuming petitioner was to prevail on the merits here, he would still not be entitled to a writ ordering his release from prison."

As the United States Supreme Court held in Peyton v. Rowe, 391 U.S. 54 (1968), however, habeas corpus relief is not limited to immediate release from illegal custody. In Peyton, the Court overruled McNally v. Hill, 293 U.S. 131 (1934) -- which had held that a prisoner could not challenge sentences to be served in the future -- because "to the extent that McNally relied on the notion that immediate physical release was the only remedy under the federal writ

of habeas corpus, it finds no support in the statute and has been rejected by this Court in subsequent decisions." Id. at 67. The state's assertion that it may seek to reinstate prior convictions not under review has no bearing on the constitutionality of Mr. Brackett's murder conviction -- or the merits of Mr. Brackett's petition.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in petitioner's Opening Brief, this Court should reverse the district court and remand with instructions that the writ be granted.

Respectfully submitted,

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