

The Influence of Intoxication and Psychological Distress on the Inference of Intent to Kill

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Trial Court Erred in Failing to Instruct the Jury on a Lesser Included Offense of First-Degree Murder

In *Phillips v. Workman*, 604 F.3d 1202 (10th Cir. 2010), the U.S. Court of Appeals for the Tenth Circuit reviewed the case of Ernest Eugene Phillips, who argued that the trial court had unlawfully rejected his request to instruct the jury on the charge of second-degree, depraved-mind murder, a lesser included noncapital offense of first-degree malice aforethought murder, when the evidence may have permitted a rational jury to convict on the lesser offense, because of psychological and emotional impairment.

Facts of the Case

While allegedly intoxicated, Mr. Phillips approached and pushed Jason McFail, shouted racially charged obscenities at him, and used a small pocket knife to fatally stab him. Mr. McFail had congregated with four acquaintances outside of a gas station in Durant, Oklahoma, at approximately 11:00 p.m. on July 19, 1996. Mr. Phillips proceeded to push another of Mr. McFail's acquaintances before entering the gas station's convenience store and instigating a verbal confrontation with the attendant. Mr. Phillips left the store and antagonized Mr. McFail before fleeing. Mr. McFail died minutes later secondary to a deep wound that had nicked his heart. Mr. Phillips then stopped at a local bar and, according to the bartender, expressed remorse for his actions. The next day, Mr. Phillips was arrested, but he denied stabbing Mr. McFail.

Mr. Phillips was charged with first-degree murder on July 22, 1996, and was committed to Eastern State Hospital for a competency evaluation on Sep-

tember 5, 1996, at the request of his counsel. He was found competent on November 6, 1996, and, on April 8, 1997, Mr. Phillips' attorney successfully requested that Mr. Phillips be medicated with antipsychotics for suicidal ideation and psychotic symptoms. A second hearing was held to determine competence, and Mr. Phillips was once again deemed competent, despite his never having received the court-ordered medication. Moreover, affidavits from a psychiatrist and a psychologist and testimonies brought forth by his defense team supported the claim that he was not competent to stand trial.

At Mr. Phillips' trial, the defense argued that he lacked the capacity to experience the premeditated intent required for first-degree murder at the time of the incident, given his psychological and emotional impairment resulting from a combination of confronting his abusive father, the onset of psychotic symptoms, and three days of anxiety-induced alcohol consumption. Mitigating evidence was not allowed during the guilt phase; the defense's proposed instruction on the offense of second-degree murder, a lesser included offense of first-degree murder, was denied as well. Mr. Phillips was convicted of first-degree murder and sentenced to death.

Mr. Phillips' state appeals resulted in affirmations of the conviction. He raised 17 claims in a *habeas* petition to the federal district court. The court denied relief on each one, but granted a certificate of appealability on two of them. The case then moved to the Tenth Circuit Court, which granted a certificate on three more claims.

Ruling and Reasoning

The Tenth Circuit Court reversed the district court's denial of Mr. Phillips' petition for a writ of *habeas corpus* and remanded the case with instructions to the district court to conditionally grant the writ, permitting the state to retry him. The court held that the Oklahoma Court of Criminal Appeals (OCCA) erred in not permitting an instruction on second-degree, depraved-mind murder as that action was contrary to *Beck v. Alabama*, 447 U.S. 625 (1980).

Mr. Phillips' trial occurred in 1997, a time when second-degree, depraved-mind murder was a lesser included offense of first-degree murder with malice aforethought. In October 1999, the OCCA denied Mr. Phillips' appeal on the basis of its ruling in *Willingham v. State*, 947 P.2d 1074 (Okla. Crim. App.

1997) that second-degree, depraved-mind murder was not a lesser included offense of first-degree murder with malice aforethought as ruled. Twelve days after denying Mr. Phillips' appeal, the OCCA reversed its position in *Shrum v. State*, 991 P.2d 1032 (Okla. Crim. App. 1999), adopting the common law principle for all future cases that instructions on lesser forms of homicide should be administered if supported by the evidence. Mr. Phillips's petition for a rehearing was filed with the OCCA on November 4, 1999, and denied six weeks later.

The Tenth Circuit Court ultimately ruled that the OCCA had acted "contrary to the clearly established Supreme Court law of *Beck*" (*Phillips*, p 1209), in which the Court ruled that a defendant may not be sentenced to death, unless the jury has been instructed to consider a lesser included offense supported by the evidence. Mr. Phillips' petition for a retrial then became a matter of determining whether the evidence was sufficient to allow a rational jury to submit a guilty verdict for the lesser included offense of second-degree murder with no intention of taking a specific life.

In determining that the OCCA ruled out the lesser murder charge by ruling that the evidence better supported a first-degree murder charge, the Tenth Circuit Court found that the OCCA had exceeded the mandate of *Beck*. The court determined that the evidence in this case was sufficient to suggest that Mr. Phillips' actions were not intentionally aimed at taking the life of Mr. McFail and to warrant an instruction on the lesser included offense. The Tenth Circuit Court cited several pieces of evidence that supported this decision under the *Beck* standard, including that Mr. Phillips had been emotionally compromised by his intent to confront his violent father who had recently taken up residence with Mr. Phillips' former partner and their child; that Mr. Phillips may have been in a diminished mental state, but was refused his constitutional rights when the OCCA refused his attempts to submit pertinent evidence that would speak to his mental state during the guilt phase of the trial; and that he inflicted a wound that, according to the testimony of a medical expert, would typically not have been fatal with adequate medical attention. The court, therefore, concluded that the jury should have received instruction on the lesser included offense and granted Mr. Phillips' request for a retrial.

Discussion

The decision of the Tenth Circuit Court to reverse the denial of the *habeas* petition after the writ had been upheld through the state appeals process emphasizes the complexity of determining criminal intent in capital cases. The ruling stands to influence future cases involving mitigating circumstances, such as alcohol intoxication and psychological distress caused by trauma symptomatology attributed to distal factors such as childhood abuse.

In Oklahoma, it is difficult to disprove intent to commit a violent crime. There is a statute that allows for the inference of an intent to kill from the act of killing (Okla. Stat. tit. 21, § 701.7(A) (1995)). Furthermore, another statute states that premeditation can form immediately before committing a murder, requiring the defense to provide evidence disputing both this inferred intent and premeditation.

Mr. Phillips experienced considerable difficulty in combating the question of inferred intent in the trial court, as his attempts to submit evidence that would favor a lesser conviction had been rejected. First, Mr. Phillips' counsel and an investigator from the Oklahoma Indigent Defense System reported that Mr. Phillips' memory of the circumstances and context of the crime were poor, and emergent psychotic features complicated communication of his experiences to his attorney. Here, the questions of competence and intent interacted to complicate his case. When the court found Mr. Phillips competent to stand trial, his defense team reported that their ability to argue for a lack of premeditated intent was also impaired, as Mr. Phillips remained unable to fully assist in his own defense.

Second, Mr. Phillips was not permitted to present evidence about the actions of his abusive father or his own conduct around the time of the offense, both of which would have been pertinent during the trial phase. Despite the impact, such evidence could have had on perception of intent, the state appellate court had ruled that the abuse suffered by the defendant was irrelevant, as it was perpetrated during his childhood and was disconnected from the current crime in both time and method (*Phillips v. State*, 989 P.2d 1017 (Okla. Crim. App. 1999)).

Finally, Mr. Phillips had requested that the jury be instructed on voluntary intoxication in addition to the charge of second-degree murder. His request was rejected because the evidence was insufficient to indicate that he was so severely impaired by alcohol

that he was unable to act with criminal intent, despite two witnesses who identified alcohol on his breath. (*Phillips v. State*, 989 P.2d 1017).

In conclusion, the facts of this case call into question the practice of dismissing evidence that may inform the jury's ability to make inferences about criminal intent. The Tenth Circuit's ruling sets a precedent to protect against a slippery slope that could lead to a partial loss of the legal protections granted to individuals with mental illness through a degradation of permissible psychiatric evidence. With the relationships among traumatic events, substance use, and violent behavior receiving increased attention in both academic and applied psychological settings, this ruling may have considerable impact, as our legal system attempts to adapt to a more advanced etiological understanding of violent and aggressive behavior.

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Unwillingness Versus Inability to Assist in One's Own Defense in Assessments of Competency to Stand Trial

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Opposing Viewpoints Regarding a Defendant's Beliefs or Delusions in a Hearing for Competency to Stand Trial

In *State v. Hill*, 228 P.3d 1027 (Kan. 2010), the Kansas Supreme Court reviewed the appeal of Nathaniel L. Hill, who argued that the trial court erred in finding him competent to stand trial, because the evidence presented demonstrated that he was unable to assist in his own defense.

Facts of the Case

Nathaniel Hill, a drug supplier for April Milholland and her boyfriend Sam Yanofsky, was convicted of capital murder in their deaths. Mr. Hill reported

that Mr. Yanofsky owed him \$2,000 for marijuana, and he agreed to meet Mr. Yanofsky and Ms. Milholland at the house of Mr. Hill's friend, Sylvester Jones. Mr. Hill gave several different accounts of events that night. In his final version, he indicated that Mr. Yanofsky and Ms. Milholland arrived at Sylvester Jones' house and consumed alcohol and cocaine. Later, Mr. Yanofsky tackled him and began strangling him. He reported that Mr. Jones slid him a gun; as he grabbed it, Mr. Yanofsky struck his hand, causing the gun to discharge accidentally into Mr. Yanofsky.

In October 2003, Mr. Hill's attorneys asked Dr. George Athey, a clinical and neuropsychologist, to evaluate their client regarding his competence to proceed to trial. After that examination, Dr. Athey reported that Mr. Hill understood the legal process but was unable to assist his attorneys in his defense. He noted that Mr. Hill "believed his attorneys were hiding information from him, lying to him, brainwashing him, and threatening him" (*Hill*, pp 1033–1034). The defense then filed a motion for a competency-to-stand-trial evaluation.

The district court judge granted the motion and sent Mr. Hill to Larned State Security Hospital, where Mr. Hill was held for 51 days. The report of the treatment team that evaluated him at Larned stated that Mr. Hill "is capable of appropriately conducting himself in all aspects of the current legal proceedings" (*Hill*, p 1034). The report also said that although "disappointed in the performance of his attorney . . . his disappointment does not appear to be a sufficient obstacle that would prevent him from working successfully with his attorney" (*Hill*, p 1034). The team found he met the criteria for competency to stand trial.

Dr. Athey and Dr. William Logan, a psychiatrist, testified for the defense at the competency hearing, both opining that Mr. Hill was not competent. Dr. Patrick Pompfrey, a psychologist on the Larned treatment team, appeared for the state. He testified that although Mr. Hill was not satisfied with the performance of his attorneys, he was competent to assist his lawyers in his defense. The district court judge ruled that the defense had not met its burden of proving incompetence. However, a ruling of competence was deferred until Mr. Hill could be treated with medication and the effects could be evaluated.