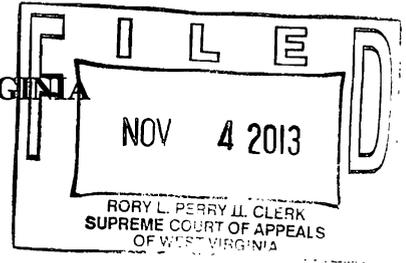


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



STATE OF WEST VIRGINIA, PLAINTIFF  
BELOW, RESPONDENT

VS.

APPEAL NO. 13-0775

ZACHARY ALLEN KNOTTS, JR., DEFENDANT BELOW,  
PETITIONER

**BRIEF OF PETITIONER, DEFENDANT BELOW**

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**I. TABLE OF AUTHORITIES**

West Virginia Code Section §61-3-24

People v. Morales, 911 N.Y.S.2d 21

**II. ASSIGNMENT OF ERROR**

The Circuit Court erred by finding that the defendant's statements to employees of a credit union amounted to a threat against the civil population.

**III. STATEMENT OF THE CASE**

**A. Procedural History**

On September 30, 2010 the defendant was arrested and charged with the offense of Threats of Terroristic Acts in violation of W. Va. Code § 61-6-24(b). (J.A. p. 1) On the 7<sup>th</sup> day of February, 2011 the defendant was indicted for the same offense in Marion County Circuit Court Case No. 11-F-33. (J.A. p.2) The defendant was found not competent to stand trial and was committed to the William R. Sharpe, Jr. Hospital until the Court loses jurisdiction over the defendant or until such time that he became competent to stand trial, which ever was sooner. On the 4<sup>th</sup> day of March 2013 the defendant filed a motion for opportunity to offer a defense to the charges pending against him pursuant to W. Va. § 27-6A-6. (J.A. p. 3) On the 26<sup>th</sup> day of June, 2013 a bench trial was conducted before the honorable David R. Janes. On the 2<sup>nd</sup> day of July 2013 the Court entered an Order finding that the State's evidence provides a sufficient basis for a jury to conclude that the defendant made a threat of terroristic acts. (J.A. p.11)

**B. Statement of Relevant Facts**

The defendant sustained significant head injury in 2002. He required prolonged hospitalization and removal of a portion of his brain. Mr. Knotts' injuries are permanent and he is not expected to ever improve. He has significant mental impairment becomes fixated on issues and cannot understand the seriousness of his impairment. One of the issues with which

Mr. Knotts became fixated was circumcision. He had determined that this was a worldwide crime against humanity and he began to crusade against the practice. His activities in this vein included approaching obviously pregnant women and questioning them about whether they intended to mutilate their unborn children and then lecturing them on the evils of circumcision.

Mr. Knotts was a member of the Fairmont Federal Credit Union. He became upset about actions that had been taken with regard to his credit union account. He made a number of phone calls to the credit union and went to the credit union in person to discuss his account. Due to Mr. Knotts' condition he was unable to discuss his concerns in a socially acceptable manner and thus caused personnel at the credit union to become wary of him. On one of his visits to the credit union he noticed that one of the employees was pregnant and he began to barrage her with commentary about circumcision. This caused the staff at the credit union to become even more alarmed at his conduct. It was decided that his accounts would be closed and his membership terminated. Mr. Knotts became upset with this action and began to call the credit union with increasing frequency and to become more and more belligerent in his dealings with credit union representatives. Mr. Knotts felt that his rights were being violated and that the credit union was retaliating against him for expressing his legitimate concerns regarding circumcision.

Ultimately, during one of the conversations with a credit union employee Mr. Knotts made comments about putting something on all of the cars in the parking lot at the credit union and expose to the world the heinous nature of the actions the credit union was directing toward him. Understandably, the people at the credit union began to be quite concerned about Mr. Knotts' conduct and one of the employees believed that Mr. Knotts had threatened to place explosive devices on their cars. Mr. Knotts on the other hand asserts that he merely told the credit union

employee that he was going to put literature and videos concerning circumcision on their vehicles and that he was going to show the whole world how bad they had treated him.

**IV. SUMMARY OF ARGUMENT**

The actions of the defendant did not constitute the crime defined by W.Va. Code §61-6-24 because they were not done in order to intimidate or coerce the civilian population, influence the policy of a branch or level of government by intimidation or coercion, affect the conduct of a branch or level of government by intimidation or coercion, or retaliate against a branch or level of government for a policy or conduct of the government.

**V. STATEMENT REGARDING ORAL ARGUMENT**

The appellant requests the opportunity to present oral argument to the Court.

**VI. ARGUMENT**

The defendant is charged with the offense of “Threats of Terroristic Act” in violation of West Virginia Code Section §61-6-24. West Virginia Code § 61-6-24(b) states that:

Any person who knowingly and willfully threatens to commit a terroristic act with or without intent to commit the act, is guilty of a felony...

“Terroristic Act” is defined by West Virginia Code § 61-6-24(a)(3) as follows:

- (a) “Terroristic Act” means an act that is:
  - (i) Likely to result in serious bodily injury or damage to property or the environment; and
- (b) Intended to:
  - (i) Intimidate or coerce the civilian population;
  - (ii) Influence the policy of a branch or level of government by intimidation or coercion;

- (iii) Affect the conduct of a branch or level of government by intimidation or coercion; or
- (iv) Retaliate against a branch or level of government for a policy or conduct of the government.

The timing of the passage and implementation of amendments to this statute seems to indicate that said amendments to this Act were effected in reaction to the World Trade Center bombing on September 11, 2001. This statute was amended during the 6<sup>th</sup> Ex. Session in 2001 and went into effect on November 30, 2001.

Webster's Dictionary defines the term "civilian" as one who is not on active duty in a military, police or fire fighting force.

Webster's Dictionary defines the term "population" as "the whole number of people or inhabitants in a country or region..."

In the case at bar the defendant went to the White Hall branch of the Fairmont Federal Credit Union to discuss issues regarding his account. While there he engaged in conduct that no one disputes was distasteful or inappropriate, and he did so on more than once occasion. The Credit Union as a result decided to cancel the defendant's membership. Such action appears to have been appropriate and is not criticized by counsel. This action however angered the defendant and he sought to discuss matters related to his account with someone in authority.

However, due to his cognitive deficiencies and brain damage, the defendant was incapable of discussing his concerns in a socially acceptable manner. Also due to the same shortcomings the personnel at the Credit Union were reasonable alarmed by the defendant's conduct. Obviously, the Credit Union employees could not have known the defendant's brain injuries. As a result of this combination of circumstances the defendant ultimately made comments that were interpreted as a threat to harm employees or the property of employees at the Credit Union.

Unfortunately, there are no recordings of the defendant's statements. The criminal complaint prepared by deputy Phillips' in this matter indicates that the defendant threatened to "put devices on the employee (sic) cars and blow them up."

At the bench trial in this matter the State offered the testimony of the investigating officer, sheriff's deputy, Chip Phillips and credit union employee, Randi Lynn Morris. On direct examination Ms. Morris testified that Mr. Knotts called the call center for the credit union approximately three times on September 30, 2010. Ms. Morris stated that Mr. Knotts was angry that his account was being closed and that he wanted to speak to someone in authority. After not getting the relief he wanted Ms. Morris stated that Mr. Knotts said that "he was going to place devices on our cars to explode the cars and then he would let everybody see what he was going to do, because he was going to put DVD's across our property to let everybody watch." (J.A. p. 25). Ms. Morris met with deputy Phillips on September 30, 2010 and provided him with a hand written statement of events. (J.A. p. 25)

On cross examination Ms. Morris testified:

Q. You agree that you gave a handwritten statement the day of the events that we're discussing; true?

A. Yes

Q. And if I would approach you and hand you what I believe is your statement, would you agree that that's your statement?

A. Yes.

Q. So on that very same day you took the time to sit down, I'm guessing, with this officer; correct?

A. I'm not sure. I don't remember who it was officer wise.

Q. You met with a police officer?

A. Yes.

Q. And he asked you to tell him what happened?

A. Yes

Q. And he asked you to write it out?

A. Yes.

Q. And you did in fact write it out?

A. Yes.

Q. And you've since looked at this statement?

A. Yes

Q. I'm assuming you met with the prosecuting attorney to review your written statement?

A. Yes.

Q. Yet nowhere in that written statement that was made the day of the telephone call did you say anything about blowing up cars?

A. No.

Q. Did he tell you he was going to kill you?

A. No.

Q. Did he say he was going to blow you up?

A. No.

Q. Did he say he was going to blow the bank up?

A. No.

Q. Are you a member of the government?

A. No.

Q. So you don't work for the state of the federal government in any capacity?

A. No.

Q. The credit union is not a branch of the government?

A. No.

Q. How many people are in your location where you work?

A. There's probably about 30.

Q. And on that particular day there would have been 30 people?

A. Yes.

Q. And the only – as you sit here today, the only thing you're telling this court is that he threatened to do something to cars in a parking lot?

A. Yes.

Q. How far away is your parking lot?

A. About a hundred feet outside the door.

Q. It was obvious to you that he was suffering from some sort of mental disturbance; is that true?

A. Yes.

Q. So you weren't really certain whether to take what he said seriously or not?

A. I mean, I take seriously whatever people say to me on the phone. You know, I wasn't sure of what the situation was. I wasn't sure whether or not he was being serious. But I wasn't willing to take that chance either.

Q. And he was calling because he was mad about his account being closed?

A. Yes.

Q. That's the only thing that he wanted to be fixed was he wanted his account open?

A. Yes.

Q. And that was the whole purpose of his communication and discussion with you was to talk to somebody to get his account reinstated at the credit union?

A. Yes

Q. And he didn't say anything bizarre or unusual about other issues, he was focused only on getting his account open?

A. Yes.

Q. And he was telling you, at least from your written statement, I'm assuming you'll still agree with me, that what he was wanting to do was to put DVD's on cars at the credit union in the parking lot of some sort so people could see for themselves what he perceived the credit union was doing to him?

A. No.

Q. What did he say, exactly?

A. He was saying that he was going to put DVD's on the cars to show the world how we were and what he was going to do to us.

Q. So, in fact, part of my quest was true then?

A. Yes.

Q. He wanted to expose to others the wrong that he felt the credit union was doing to him?

A. Yes

Q. Did he tell you what was going to be on these DVD's?

A. No.

Q. But he was expressing to you that he was going to try to show everybody out there what he felt was wrong about what you were doing to him?

A. Yes.

(J.A. p. 27-31)

Deputy Phillips' direct testimony was similar to Ms. Morris' testimony. Deputy Phillips further elaborated on the background leading up to Ms. Morris' interaction with Mr. Knotts and the day in question as well. Deputy Phillips informed the Court that Mr. Knotts had been asked to stay off the credit union property and that on September 30, 2010 he was in a parking lot across the street from the credit union. (J.A. p. 34 ). Deputy Phillips addressed Mr. Knotts irrational rantings about circumcision and approaching pregnant women. (J.A. p. 35) Deputy Phillips acknowledged that no explosive devices were located. (J.A. p. 37)

On Cross, deputy Phillips conceded that:

1. Mr. Knotts never had an explosive device. (J.A. p. 40)
2. It was obvious that Mr. Knotts had a mental condition. (J.A. p. 41)
3. That it was apparent that he was dealing with a mentally disturbed person. ( J.A. p. 41)
4. That he deals with mentally disturbed persons on a regular basis and that such persons often make statements that are not true. (J.A. p. 42)
5. That the sheriff's department is involved in filing mental hygiene petitions on such people because they cannot help themselves. (J.A. p. 43)
6. That the defendant's interactions were with a limited number of people.

Mr. Knotts also testified. He denied that he said he was going to blow up cars. (J.A. p. 44) He said that he "was going to hand out 200 e-mails and DVD's on the cars near the bank." (J.A. p. 46) He stated that the DVD's concerned circumcision. (J.A. p.46 ) Mr. Knotts testified that the reason for his interaction with the credit union on September 30, 2010 was to retrieve his bank records so that he would have records of all the spending he had done in connection with renovating his house. (J.A. p.48 )

The evidence produced by the State at the bench trial in this matter clearly is lacking and is not sufficient to convince a reasonable person that Mr. Knotts did indeed threaten to blow anything up let alone commit the offense with which he is charges. However, assuming for the sake of argument that the defendant did in fact threaten to blow up cars, such conduct does not fall within the parameters of that prohibited by W.Va. Code § 61-6-24(b). There is no evidence that the defendant was attempting to influence the policy of, affect the conduct of or retaliate

against the government or a branch thereof. Additionally, becoming angry with the employees at a branch of the local credit union and threatening to blow up their cars clearly is not an effort to intimidate the civilian population. Quite simply the acts involved in this matter were the rantings of a mentally disabled person who was angry and who is incapable of articulating his displeasure in a socially acceptable manner. The statute which the defendant is charged with violating is aimed at criminalizing true terrorist conduct and threats thereof by individuals who are attempting to promote some sort of social, political or economic agenda. While the State may argue that the defendant was in fact doing so with his tirades against circumcision, close scrutiny of the evidence in this matter reveals that the defendant did not make the alleged threats in an effort to end circumcision but rather simply because he was angry that the Credit Union was cancelling his membership and that persons at the local branch would not tell him when or where the next board meeting would be.

There is no case law in this State interpreting the language of the statute in question in this matter. The legislature of State of New York passed the Anti-terrorism Act of 2001 six days after the attacks of September 11, 2001. The language in this act parallels that of the West Virginia Statute in many respects, and in particular the definitions section of the Act is extremely similar in that it requires intimidation of the civilian population and/or attempts to influence government etc. as discussed hereinabove. In People v. Morales, 911 N.Y.S.2d 21 the Appellate Division of the Supreme Court of New York, First Department threw out convictions obtained by the State pursuant to the Anti-Terrorism Act. This case involved a dispute between rival gang members in the Bronx. The State of New York sought and obtained convictions for the offenses of manslaughter in the first degree as a crime of terrorism and criminal possession of a weapon in the second degree as a crime related to the death of a 10 year old girl and the paralysis of a young man. The Appellate Court reasoned that the actions involved in the homicide did not constitute terrorism. The court engaged in a lengthy and detailed analysis of what exactly is meant by the term terrorism and considered the definitions contained within the New York Act related to "Act of Terrorism." In this endeavor the Court stated among other things:

To decide this appeal, we need not define the minimum size of "a civilian population" that may be the target of terrorism for purposes of Penal Law article 490. Rather, it suffices to observe that the term "to intimidate or coerce a civilian population," implies an intention to create a pervasively terrorizing effect on

people living in a given area, directed either to all residents of the area or to all residents of the area who are members of some broadly defined class, such as gender, race, nationality, ethnicity, or religion. The intention by a gang to intimidate members of rival gangs, when not accompanied by an intention to send an intimidating or coercive message to the broader community, does not, in our view, meet the statutory standard which defines an “act of terrorism” as any of certain crimes “committed with the intent to... intimidate the civilian population at large,” the term “population at large is... intended to require a more pervasive intimidate of the community rather than a narrowly defined group of people.”

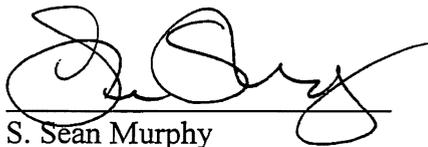
People v. Morales, 911 N.Y.S. 2d 21

The reasoning set forth in the Morales case is both pertinent and persuasive when considering the extent of the conduct encompassed by West Virginia Code §61-3-24. When one considers the West Virginia Statute with impartial reason, considers the conduct alleged and the mental status of the defendant and then gives due regard to the logical scrutiny applied to a similar statute by the Morales Court is clear that the defendant did not commit a crime as charged in the indictment.

**VII. CONCLUSION**

As the evidence produced at the trial in this matter clearly fails to establish that the defendant committed the offense defined by W.Va. Code §61-6-24 the Appellant prays that this Court reverse and vacate the ruling of the Circuit Court of Marion County and remand the case with necessary and appropriate instructions.

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