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Criminal Law--Definition of Capital Offenses

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relief to first file a petition in a circuit court of West Virginia seeking an evidentiary hearing. *Sheftic v. Boles*, 377 F.2d 423 (4th Cir. 1967).

The district court's refusal was based on an earlier case in which it held on principles of comity and a desire to give state courts an opportunity to redress invalid state convictions without federal encroachment that state remedies must be exhausted. *Miller v. Boles*, 248 F. Supp. 49 (N.D. W. Va. 1965).

The Court of Appeals in the principal case overrules the district court's dismissal and clearly disapproves the *Miller* decision. The Court of Appeals held that while the Supreme Court had not ruled on this exact question it had held that where there were two alternative methods for filing the writ in state procedures, it was necessary to utilize only one in order to give state courts an opportunity to pass on the matter. The Court of Appeals also cited with approval a Third Circuit case which held it would be unreasonable to expect the circuit court to grant a writ when the Supreme Court of Appeals of that state had already denied the writ. *United States ex rel. Almeida v. Baldi*, 195 F.2d 815 (3rd Cir. 1952).

Criminal Law—Definition of Capital Offenses

P, fourteen years of age, was indicted for an alleged murder committed at age thirteen. The case was set for trial in the Intermediate Court of Kanawha County under W. VA. CODE ch. 49, art. 5, § 3 (Michie 1966) which provides that a juvenile court shall have jurisdiction over persons under eighteen years of age except for capital offenses. *P* contended that since capital punishment has been abolished in West Virginia, the juvenile court should properly have jurisdiction. *Held*, writ of prohibition denied. Capital offenses include those punishable by life imprisonment. Since murder in West Virginia is punishable by life imprisonment, *P* could be tried by the intermediate court. *State v. Wood*, 155 S.E.2d 893 (W. Va. 1967).

This decision rested on the court's interpretation of the term "capital offenses." W. VA. CODE ch. 49, art. 1, § 4 (Michie 1966) defines delinquency as a crime not punishable by death or life imprisonment, while W. VA. CODE ch. 49, art. 5, § 3 (Michie 1966) just speaks of capital offenses without further definition. In order to resolve the disparity in terminology, the court reasoned that capital offenses, as used in W. VA. CODE ch. 49, art. 5, § 3 (Michie

1966), must include all crimes punishable by death or life imprisonment.

This question has previously arisen in the area of bail. Capital offenses are not bailable, but it has been held that the abolition of capital punishment makes all persons charged with a crime bailable. 8 AM. JUR. 2d *Bail and Recognizance* §§ 30-31 (1963). What this seems to be saying is that by abolishing capital punishment, the difference between capital offenses and other crimes is also abolished. By statutory interpretation the West Virginia court was able to reach an opposite result in the principal case.

Damages—Inadequacy of Verdict

P brought action to recover for property damage to her automobile and for personal injuries sustained in a rear end collision negligently caused by *D* while *P* was waiting to turn at an intersection. *P*'s husband, *H*, sought to recover for medical expenses and loss of consortium occasioned by *P*'s injuries. The jury returned a verdict in favor of *P* but against *H* in disregard of instruction, and judgment was entered thereon. A motion by *P* and *H* to set aside the verdict and judgment on the grounds of inadequacy and as showing, passion, prejudice, bias, or misconception of the law was overruled. *Held*, affirmed as to *P*, reversed and remanded as to *H*. Evidence of liability must be uncontroverted in order to set aside a verdict. Furthermore, the jury having found in favor of *P*, *H* became entitled as a matter of law to recover on his derivative claim. *Coakley v. Marple*, 156 S.E.2d 11 (W. Va. 1967).

One of the issues which arose in this case concerned circumstances under which a jury verdict for plaintiff may be set aside on grounds of inadequacy. The court looked to *Shipley v. Virginian Railway Co.*, 87 W. Va. 139, 104 S.E. 297 (1920), which established the rule that the court may not set aside a verdict because of inadequacy if the evidence is such that had the verdict been for *D* the court could not set it aside. Since *P*'s right to recovery was a jury question in the principal case, the court did not have the right to decide on its adequacy.

Another issue arising was the jury's apparent disregard for an instruction. The trial court instructed that if they found for *P*, they must also find for *H* and consider his damages. The court found that the denial of recovery constituted a reversible error