

No. 19-6204

IN THE SUPREME COURT OF THE UNITED STATES

JAMES BIELA, Petitioner

v.

THE STATE OF NEVADA, Respondent

On Petition for Writ of Certiorari to the
Supreme Court of the State of Nevada

REPLY TO RESPONDENT’S BRIEF IN OPPOSITION

CAPITAL CASE

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I.

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

Petitioner James Biela files this Reply to address certain legal arguments made in Respondent's Brief in Opposition to his Petition for a Writ of Certiorari to this Court.

II.

REASONS WHY THE WRIT SHOULD ISSUE

- A. THE NEVADA SUPREME COURT COMMITTED ERROR WHEN IT UTILIZED AN INCORRECT STANDARD TO DENY MR. BIELA RELIEF FROM HIS UNFAIR AND IMPARTIAL JURY IMPANELED AS WELL AS HIS RECEIPT OF INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILURE TO RAISE THIS JURY ISSUE ON DIRECT APPEAL IN VIOLATION OF THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

First, the State contends this Court should deny the Petition because the parties cannot agree on the facts supporting or negating the presence of juror prejudice (State's Brief in Opposition, p. 4, 9). The State bases this contention on the fact that Mr. Biela believes he was entitled to a change in venue due to lack of impartiality and hostility towards Mr. Biela and it was incumbent upon appellate counsel to present the issue on appeal. The fact that the State disagrees whether or not Mr. Biela suffered a lack of impartiality throughout his voir dire process is of no consequence to the issue presented within the Petition – whether the Nevada Supreme Court applied an incorrect standard in denying him relief. Further, even the Nevada Supreme Court noted that “[a]ll prospective jurors indicated that they had been

exposed to some media coverage of the case and followed media reports while Denison was missing.” (App. A p. 18). Thus, there is no dispute that the pretrial publicity in this case was rampant. Rather, the dispute surrounds the application of this Court’s precedent by the Nevada Supreme Court.

Next, in presenting their assertion that the Nevada Supreme Court did not apply an improper standard, the State essentially presents a list of cases cited by the Nevada Supreme Court (*See generally* State’s Brief in Opposition, p. 5-7). Mr. Biela does not take issue with the cases utilized by the Nevada Supreme Court in coming to its decision. Rather, Mr. Biela submits the Nevada Supreme Court applied this Court’s precedence in an improper way in holding Mr. Biela to a standard not implemented by this Court. The State makes much of the fact that the Nevada Supreme Court cited to its own authority which is “rooted” in this Court’s jurisprudence (State’s Brief in Opposition, p. 6). The fact that the Nevada Supreme Court cited two state court cases, which in turn cite to this Court’s authority on this issue, does not lead to the conclusion that the Nevada Supreme Court did not apply an improper standard. The State’s premise is flawed.

The State attempts to distract from the issue by continuously informing this Court that Mr. Biela did “not allege that any empaneled juror was unfair or biased.” (State’s Brief in Opposition, p. 4) (citing App. A, p. 20). The State continues citing

the Nevada Supreme Court's finding that "[n]o seated juror indicated that the publicity would prevent them from acting impartially." App. A p. 19 (State's Brief in Opposition, p. 5). The citation to these excerpts furthers Mr. Biela's point as they are nearly identical to the Nevada Supreme Court's flawed holding. Within the Order of Affirmance, the Nevada Supreme Court explained,

No seated juror indicated that the publicity would prevent them from acting impartially. Even where pretrial publicity has been pervasive, this court has upheld the denial of motions for change of venue where the jurors assured the district court during voir dire that they could be fair and impartial in their deliberations (App A, p. 18).

Under *Irvin v. Dowd*, 366 U.S. 717, 722, 81 S. Ct. 1639, 6 L. Ed. 2d 751 (1961), Mr. Biela is not required to identify a single juror that indicated they were unfair or biased. Mr. Biela only need demonstrate that "the nature and strength of the opinion formed are such as in law necessarily... raise the presumption of partiality." *Id.* at 723.

This principle is confirmed in that the presumption of impartiality created by such juror assurances of impartiality may be overcome with evidence of actual bias or evidence that "the general atmosphere in the community or courtroom is sufficiently inflammatory." *Murphy v. Florida*, 421 U.S. 794, 803, 95 S. Ct. 2031, 2036 (1975). It is within this Court's precedent that the Nevada Supreme Court's error lies.

Here, despite the State's implication, Mr. Biela does not suggest he had a right

to an ignorant jury, but rather, a jury that was not so affected by the atmosphere of both the courtroom and the community.

III.

CONCLUSION

For the reasons in this Reply Brief, and those in Petitioner's original Petition for Writ of Certiorari, the Court should grant certiorari in this case.

Dated this 20th day of November, 2019.

Respectfully submitted,

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