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Carroll v. People

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KELLEY, J.

FILED IN THE
SUPREME COURT
OF THE STATE OF COLORADO

MAR - 6 1972

No. 24461

IN THE SUPREME COURT OF THE STATE OF COLORADO

Richard D. Sullivan

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| DONALD E. CARROLL, |] | Error to the District |
| |] | Court of the City and |
| Plaintiff in Error, |] | County of Denver and |
| |] | State of Colorado |
| |] | |
| vs. |] | |
| |] | |
| THE PEOPLE OF THE |] | |
| STATE OF COLORADO, |] | Honorable |
| |] | ROBERT T. KINGSLEY |
| Defendant in Error. |] | Judge |

PETITION FOR REHEARING

OPINION BY: MR. JUSTICE GROVES

EN BANC

JUDGMENT AFFIRMED

ROLLIE R. ROGERS
Colorado State Public Defender

THOMAS M. VAN CLEAVE III
Deputy State Public Defender

ATTORNEYS FOR PLAINTIFF IN ERROR
1575 Sherman Street
Denver, Colorado 80203
892-2665

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| STATE OF COLORADO, |] | |
| |] | Honorable |
| Defendant in Error. |] | ROBERT T. KINGSLEY |
| |] | Judge |

PETITION FOR REHEARING

COMES NOW Donald E. Carroll, Plaintiff in Error herein, by and through his attorneys, and respectfully petitions this Honorable Court, pursuant to Rule 40, Colorado Appellate Rules, for a rehearing of his appeal upon the following grounds:

I.

That the Court misapprehended the law and the facts with respect to the issue of whether the trial court erred in excusing for cause nine jurors who stated that under no circumstances would they impose the death penalty; the jury as ultimately empanelled was unrepresentative of a cross-section of the community and was more disposed to find Defendant guilty than one in which such prospective jurors were not excused for cause. See Witherspoon v. Illinois, 391 U.S. 510, 88 S. Ct. 1770 (1968); Ballard v. United States, 329 U.S. 187, 67 S. Ct. 261 (1946); Glasser v. United States, 315 U.S. 60, 62 S. Ct. 457 (1942).

II.

That the Court misapprehended the law and the facts with

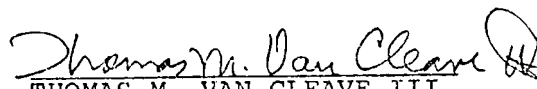
respect to the issue of whether the extra-judicial statement attributed to Defendant was obtained in violation of his constitutional privilege against self-incrimination; Defendant's waiver of the privilege and of the presence of an attorney was not knowingly and voluntarily made, because he was under the influence of alcohol and drugs and also because he was not adequately informed of the crime of which he was accused. See Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966); Townsend v. Sain, 372 U.S. 293, 83 S. Ct. 745 (1963); Blackburn v. Alabama, 361 U.S. 199, 80 S. Ct. 274 (1960); Johnson v. Zerbst, 304 U.S. 458, 58 S. Ct. 1019 (1938); Schenk v. Ellsworth, 293 F. Supp. 26 (D. Mont. 1968); Billings v. People, ___ Colo. ___, 466 P.2d 474 (1970).

III.

That the Court misapprehended the law and the facts with respect to the issue of whether there was sufficient evidence to support the verdict of the jury finding Defendant guilty of first degree murder. Ziatz v. People, 171 Colo. 58, 465 P.2d 406 (1970).

Respectfully submitted,

ROLLIE R. ROGERS
Colorado State Public Defender


THOMAS M. VAN CLEAVE III
Deputy State Public Defender

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Denver, Colorado 80203
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached Petition for Rehearing was personally served on the Honorable Duke W. Dunbar, Attorney General of the State of Colorado, this 6th day of March, 1972.

Y. Kiser