

S-23-1012 *State of Nebraska* (Appellee) v. *Kevin T. Kilmer* (Appellant)

Appeal from the District Court for Cherry County, Judge Mark D. Kozisek

Attorneys: Todd W. Lancaster and Helen O. Winston (Nebraska Commission on Public Advocacy for Appellant) and Jacob M. Waggoner (Asst. Attorney General for Appellee)

Criminal: Life Imprisonment for first-degree murder

Ruth W. was living with Michael M. and Appellant, when Ruth W. accused Appellant of stealing. Ruth M. indicated that she would be asking Appellant to leave the residence. A few days later, Amber S. reported to law enforcement that Appellant admitted that to hitting a woman named Ruth in the head with an axe, to putting her body in a suitcase, and to leaving the suitcase by the side of the road. When law enforcement investigated, Ruth W.'s body was found inside a suitcase by the side of the road, and her injuries were consistent with blunt force trauma to her back and head, which was determined to be her cause of death. Blood spatter and an axe were found at Ruth W.'s residence. DNA testing confirmed that Ruth W.'s DNA was on the axe, and the blood splatter belonged to Ruth W. Ruth W.'s DNA was found on Appellant's boots. After trial, a jury convicted Appellant of first-degree murder and use of a deadly weapon to commit a felony. The district court sentenced him to consecutive terms of life imprisonment and ten (10) years to fourteen (14) years in prison, respectively. Consecutive prison terms means that each prison term is served one after the other—not at the same time.

On appeal, Appellant points out that for him to be convicted of first-degree murder, the State had to prove that he purposely killed Ruth W. with premeditated malice. Premeditated malice means that the intent to murder was formed prior to the murder. Appellant argues that the State did not offer any evidence for the jury to conclude he killed Ruth W. with premeditated malice. In response, the State points out that there was evidence of previous difficulties between Ruth W. and Appellant. The State contends that this evidence and the evidence of the nature of the killing—the fact that Ruth W. was hit on her head, from behind, and many times—was sufficient for the jury to determine that Appellant killed Ruth W. with premeditation.

Life imprisonment cases are direct appeals to the Supreme Court. Both parties filed briefs with the Nebraska Supreme Court, and the Court is ready to hear arguments from the parties. Each party will have 20 minutes to argue the case before the Supreme Court and to answer questions from Supreme Court Justices.