

COA Opinion: Social networking websites constitute general reputation evidence rather than specific instances of conduct.

15. June 2011 By Kristina Araya

In *People v Orlewicz*, No. 285672, the Court of Appeals reversed the trial court's order granting a new trial and affirmed the defendant's convictions and sentences in charges arising from a murder. The lower court had granted a new trial on the basis that the exclusion of psychiatric testimony pertaining to the defendant's reasonable fear of imminent bodily harm denied the defendant effective assistance of counsel. On appeal, the defendant argued that for various reasons he was deprived of his right to present a case and was denied effective assistance of counsel.

The Court of Appeals was "puzzled" by the trial court's reliance on ineffective assistance of counsel when it granted a new trial, and found the exclusion of the psychiatrist's testimony did not deny the defendant his right to present a defense. In this case, the evidence was not relevant because it "cast no light whatsoever" on which version of events leading up to the murder were more likely.

The Court of Appeals also considered whether it was an error for the trial court to exclude evidence of the victim's My Space page. The court found that the My Space page should have been admitted because social networking websites are general reputation evidence rather than specific instances of conduct. The court reasoned that social networking websites "must be deemed a gestalt and not simply a conglomerate of parts." However, the error in this case was harmless because the defendant was able to sufficiently testify about the contents of the page.

Additionally, the court found that the defendant waived his right to a public trial by failing to object when the judge ordered the courtroom closed and defendant's family were excluded from jury voir dire. Defense counsel requested that the family members be allowed to stay in the courtroom, but the record did not reflect a legal objection to their exclusion.

The court rejected the defendant's remaining claims that voir dire was insufficient, that evidence of a PPO against the victim should have been admitted, that the prosecutor committed misconduct, that the defendant was prejudiced by a pre-arraignment remark by the Wayne County Prosecutor, and that the defendant was denied effective assistance of counsel.