

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 12-0534

STATE OF WEST VIRGINIA,

*Plaintiff Below,
Respondent,*

v.

JOSEPH FREDERICK HORN,

*Defendant Below,
Petitioner.*

SUMMARY RESPONSE

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SUMMARY RESPONSE

The Petitioner has asserted four numbered Assignments of Error challenging his convictions for First Degree Murder and Arson. This Summary Response will address each Assignment in the order presented in the Petitioner's Brief.

1. The Petitioner first argues that there was insufficient evidence at trial to support the jury's verdict convicting the Petitioner of First Degree Murder and Arson.¹ The evidence at trial included the following:

(a) The victim, Michael Rife, was brutally murdered, leading to a permissible inference that his death was caused by intentional, malicious, and deliberate conduct. (App. Part C at 384-98, Trial Tr. Dec. 7, 2011.)

¹The Petitioner was originally indicted for Robbery -- in addition to Murder and Arson; the prosecution agreed to not oppose the dismissal of the Robbery charge due to a defect in the indictment. (App. Part C., Trial Tr. 12/17/11 at 437.)

(b) The witness who found the victim's body at about 11:45 PM on June 15, 2009 also found a small fire burning under the bed where the victim's body lay. (App. Part B at 132-33, Trial Tr. Dec. 6, 2011.)

(c) Shortly after the victim was killed, the Petitioner, shirtless, arrived at a nearby neighbor's house. (*Id.* at 152.)

(d) The morning after the victim was killed, the Petitioner was taken into custody at the neighbor's house. The Petitioner's clothing was stained with the victim's blood. (*Id.* at 258, 187-89.)

(e) The Petitioner later told the police in a brief conversation in a police car that he was in the victim's house when the victim was killed by an unknown person. The Petitioner claimed that he had been knocked unconscious, and offered no more details. (App. Part C at 347.)

At trial, the Petitioner did not take the stand. (*Id.* at 440.)

The evidence of the Petitioner's guilt was circumstantial, because there were no eyewitnesses to Mr. Rife's murder. However, circumstantial evidence is sufficient to support a criminal conviction. *See* Syl. Pt. 2, *State v. Guthrie*, 194 W. Va. 657, 461 S.E.2d 163 (1995).

There should be only one standard of proof in criminal cases and that is proof beyond a reasonable doubt. Once a proper instruction is given advising the jury as to the State's heavy burden under the guilt beyond a reasonable doubt standard, an additional instruction on circumstantial evidence is no longer required even if the State relies wholly on circumstantial evidence.

Moreover, Syl. Pt. 3 of *State v. Guthrie* states:

A criminal defendant challenging the sufficiency of the evidence to support a conviction takes on a heavy burden. An appellate court must review all the evidence, whether direct or circumstantial, in the light most favorable to the prosecution and must credit all inferences and credibility assessments that the jury might have drawn in favor of the prosecution. The evidence need not be inconsistent

with every conclusion save that of guilt so long as the jury can find guilt beyond a reasonable doubt. Credibility determinations are for a jury and not an appellate court. Finally, a jury verdict should be set aside only when the record contains no evidence, regardless of how it is weighed, from which the jury could find guilt beyond a reasonable doubt. To the extent that our prior cases are inconsistent, they are expressly overruled.

Applying this standard, there was sufficient evidence, taken in the light most favorable to the prosecution, that supported the jury's verdict. The jury could find that the Petitioner was at the murder and arson scene, was physically close enough to the victim to have the victim's blood all over his clothing, and had acted thereafter in the fashion of a guilty man. On this point, the Petitioner offered no explanation to police or otherwise of why he left the scene of an arson and murder and did not call the police -- if his story about being attacked himself had been true.

These circumstances, and this proof, clearly pointed the finger of guilt at the Petitioner. It was the jury's job to decide if this proof was beyond a reasonable doubt. Properly instructed, the jury did their job. The Petitioner's Assignment of Error One is without merit.

2. West Virginia Code § 61-2-1 is not unconstitutionally vague. This statute reads:

Murder by poison, lying in wait, imprisonment, starving, or by any willful, deliberate and premeditated killing, or in the commission of, or attempt to commit, arson, kidnapping, sexual assault, robbery, burglary, breaking and entering, escape from lawful custody, or a felony offense of manufacturing or delivering a controlled substance as defined in article four, chapter sixty-a of this code, is murder of the first degree. All other murder is murder of the second degree.

In an indictment for murder and manslaughter, it shall not be necessary to set forth the manner in which, or the means by which, the death of the deceased was caused, but it shall be sufficient in every such indictment to charge that the defendant did feloniously, willfully, maliciously, deliberately and unlawfully slay, kill and murder the deceased.

The Petitioner points to no specific language in the statute, and cites to no authority, for his claim of unconstitutional vagueness, and otherwise provides no discussion of this claim. The statute

has previously been held to be constitutional, *see State v. Taylor*, 1981, 285 S.E.2d 635, 168 W. Va. 380 (1981); *State ex rel. Peacher v. Sencindiver*, 233 S.E.2d 425, 160 W. Va. 314 (1977). The Petitioner's proposition, if true, would require the voiding of hundreds of murder convictions. Petitioner's Assignment of Error Number Two is without merit.

3. The Petitioner argues that the trial court erred in not suppressing evidence -- the Petitioner's statement to the police and his clothing -- that were obtained when the Petitioner was arrested.

The trial court conducted an extensive suppression hearing on the Petitioner's motion to suppress before denying the motion. (App. Part A, Hr'g Tr. Dec. 6, 2011.) To summarize the court's findings and the evidence from this hearing: the neighborhood where the victim was killed, and where the Petitioner was arrested, is on the Virginia/West Virginia line; it is not readily apparent even to local people what residences in the neighborhood are in which state. (*Id.* at 207-208.) Although the victim was killed at his home, which is located in West Virginia, the person who found the victim dead reported the crime to Virginia 911; West Virginia police were notified and went to the murder scene. (*Id.* at 213-15.)

The Petitioner, meanwhile, had gone to a nearby residence that is located in Virginia, where he was located by West Virginia police, who initially thought this residence was in West Virginia. (*Id.*) The West Virginia police wanted to talk to the Petitioner as a potential witness who had reportedly seen the victim before he was killed. (*Id.*) When West Virginia police saw the Petitioner had blood on his ear, they suspected he might have a connection with the murder, and they detained the Petitioner. (*Id.*) They also noticed that the Petitioner had blood on his pants and boots; and when they saw the Petitioner trying to remove bloodstains from the boots, the West Virginia police

removed his boots. (App. Part A, Hr'g Tr. 42, 45-46, 171.) *See also* App. Part A at 214-15. (Trial Tr. Dec. 6, 2011; App. Part B at 258-59.)

When the West Virginia police were informed that they were actually twenty feet into Virginia, they summoned the Virginia police, who arrested the Petitioner and obtained warrants to search him and his truck. (App. Part A, Hr'g Tr. 114-16.) The West Virginia police also obtained an arrest warrant for the Petitioner to give to the Virginia authorities. (*Id.* at 158.)

The trial court heard evidence establishing all of the above, and ruled that the good-faith and probable-cause-based detention and arrest of the Petitioner by West Virginia and then Virginia police did not provide grounds for suppressing the evidence obtained from the Petitioner. (*Id.* at 216-21.)

The Petitioner does not cite any legal authority for his claim that the aforesaid actions by the police required the trial court to suppress the evidence in question. This Court has stated, in connection with motions to suppress:

1. When reviewing a ruling on a motion to suppress, an appellate court should construe all facts in the light most favorable to the State, as it was the prevailing party below. Because of the highly fact-specific nature of a motion to suppress, particular deference is given to the findings of the circuit court because it had the opportunity to observe the witnesses and to hear testimony on the issues. Therefore, the circuit court's factual findings are reviewed for clear error.

2. In contrast to a review of the circuit court's factual findings, the ultimate determination as to whether a search or seizure was reasonable under the Fourth Amendment to the United States Constitution and Section 6 of Article III of the West Virginia Constitution is a question of law that is reviewed *de novo*. Similarly, an appellate court reviews *de novo* whether a search warrant was too broad. Thus, a circuit court's denial of a motion to suppress evidence will be affirmed unless it is unsupported by substantial evidence, based on an erroneous interpretation of the law, or, based on the entire record, it is clear that a mistake has been made.

Syl. Pts. 1 and 2, *State v. Lacy*, 196 W. Va. 104, 468 S.E.2d 719 (1996).

In *State v. Buzzard*, 194 W. Va. 544, 549 n.11, 461 S.E.2d 50, 55 n.11 (1995) (citation omitted), this Court stated:

Exigent circumstances exist where there is a compelling need for the official action and there is insufficient time to secure a warrant, police may then enter and search private premises, in this case a motel, without obtaining a warrant. Exigent circumstances may exist in many situations: three well recognized situations are when police reasonably believe (1) their safety or the safety of others may be threatened, (2) quick action is necessary to prevent the destruction of potential evidence, or (3) immediate action is necessary to prevent the suspect from fleeing.

The trial court accepted the possibility that the West Virginia police might have been technically (and inadvertently) acting as private persons when they detained the Petitioner. (App. Part A, Hr'g Tr. at 208-209.) However, the court also realized that law enforcement acting outside their jurisdiction nevertheless have citizen's arrest powers. (*Id.*) See Syllabus Point 2, *State ex rel. State v. Gustke*, 205 W. Va. 72, 516 S.E.2d 283 (1999) ("A law enforcement officer acting outside of his or her territorial jurisdiction has the same authority to arrest as does a private citizen and may make an extraterritorial arrest under those circumstances in which a private citizen would be authorized to make an arrest.")²

The rule most commonly recognized with respect to the right of a private person to make an arrest without a warrant for the commission of a felony is that an arrest is justified if a felony was in fact committed by someone and if there was "reasonable" or "probable" cause or grounds to believe or suspect that the person arrested was the one who committed the felony. See Annotation, "Information, belief, or suspicion as to commission of felony, as justification for arrest by private person without warrant" 133 A.L.R. 608, IV, citing, *inter alia*, *Allen v. Lopinsky*, 81 W. Va. 13, 94

²The Respondent does not believe that the doctrine of pursuit is an issue in the instant case, because the West Virginia police did not have any suspicion of the Petitioner until they were already in Virginia (although they initially did not know it was Virginia.)

S.E. 369 (1917). *See also Edwards v. State*, 462 So. 2d 581, 582 (Fla. Dist. Ct. App. 1985) (“At common law, a private citizen may arrest a person who in the citizen's presence commits a felony or breach of the peace, or a felony having occurred, the citizen believes this person committed it.”).

Moreover, an unauthorized arrest that is conducted outside of an officer’s geographic jurisdiction does not mean that the exclusionary rule should be applied to suppress evidence seized as a consequence of the arrest. In *People v. Hamilton*, 666 P.2d 152 (Colo. 1983), where police officers made an arrest and seized evidence while they were technically outside of their jurisdiction, but had probable cause to detain a defendant, the court stated:

[T]he sanction of the exclusionary rule is designed to effectuate guarantees against deprivation of constitutional rights. Thus, the evidence seized may be suppressed here only if the unauthorized arrest violated constitutional restraints on unreasonable searches and seizures. Here, the warrant itself established probable cause for defendant's arrest. While the Golden officers were not in fresh pursuit when they entered Denver, they were confronted with the possibility that defendant might complete his visit to the Denver bank before any officer arrived. . . . Under these circumstances, we conclude that the conduct of Lamb and Foulke, though not authorized, was not so unreasonable as to violate defendant's constitutional protection against unreasonable searches and seizures.

666 P.2d at 56-57 (Colo. 1983) (citations omitted).

Applying the foregoing standards to the instant case: the trial court’s ruling refusing to suppress the evidence obtained when the Petitioner was arrested was not a mistake. The West Virginia police immediately sought Virginia police involvement when they learned their true geographic location – twenty feet into Virginia. Finding blood on the last known person to see a recent murder victim certainly gave the West Virginia police probable cause to believe that the Petitioner might be involved in the murder, and to detain him to preserve evidence while they waited for Virginia police, who were seeking appropriate warrants. The West Virginia police were clearly

acting under exigent circumstances and with probable cause. The trial court did not err in refusing to suppress the evidence obtained when the Petitioner was arrested. The Petitioner's Assignment of Error Number Four is without merit.

4. The Petitioner argues that the trial court should have granted the Petitioner a new trial, citing Rule 33 of the West Virginia Rules of Criminal Procedure: "The Court on motion of a defendant may grant a new trial . . ." (Pet'r's Br. at 12.) However, the Petitioner's Appendix does not reflect that the Petitioner's trial counsel made a motion for a new trial or asserted the grounds discussed by the Petitioner in his Brief. Those "grounds" moreover are simply conclusory, argumentative statements, without any citation to the Appendix Record. The Petitioner's Assignment of Error Number Four is therefore without merit.

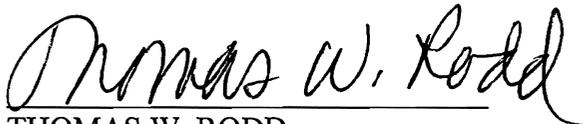
For the foregoing reasons, the Petitioner's conviction should be upheld.

Respectfully submitted,

STATE OF WEST VIRGINIA
Plaintiff Below, Respondent,

By counsel

DARRELL V. MCGRAW, JR.
ATTORNEY GENERAL



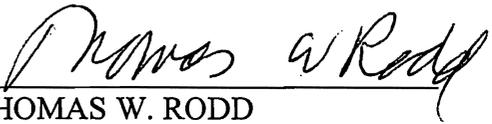
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CERTIFICATE OF SERVICE

I, THOMAS W. RODD, Assistant Attorney General and counsel for the Respondent, do hereby verify that I have served a true copy of the *SUMMARY RESPONSE* upon counsel for the Petitioner by depositing said copy in the United States mail, with first-class postage prepaid, on this 30th day of August, addressed as follows:

To: Thomas H. Evans, III, Esq.
P.O. Box 70
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THOMAS W. RODD