



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA,

Respondent,

v.

**Supreme Court No. 12-0887
Circuit Court No. 11-F-060 (Wayne)**

CLINTON DOUGLAS SKEENS,

Petitioner.

PETITIONER'S BRIEF

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ASSIGNMENTS OF ERROR

- I. The Trial Court's Refusal To Instruct On Voluntary Manslaughter Denied Mr. Skeens His Constitutional Due Process Rights To Present A Defense To The Murder Charge, That He Was Only Guilty of Voluntary Manslaughter Because There Was Substantial Evidence He Acted Without Malice Due To His Mental Illness.

- II. The Trial Court Abused Its Discretion In Denying Mr. Skeens His Requested Change Of Venue As There Existed A Present Hostile Sentiment Toward Mr. Skeens At The Time Of His Trial That Mandated A Change Of Venue.

STATEMENT OF THE CASE

This case involves the actions of a mentally ill man, Clinton Skeens (Mr. Skeens), and how his delusional beliefs caused him to kill his high school football coach, Jess Scott Jarrell. On December 31, 2010, Mr. Skeens set out to find the home of Mr. Jarrell, something he had done at least three times in the recent past. Mr. Skeens believed that he needed to kill Mr. Jarrell because Mr. Jarrell was killing his stepdaughter and her mother. With this psychotic fear in mind, Mr. Skeens walked from Huntington to Wayne, found Mr. Jarrell, and stabbed him forty-three times, resulting in Mr. Jarrell's death. At trial in the Wayne County Circuit Court, both Mr. Skeens and psychiatrist Bobby Miller testified to Mr. Skeens' delusional beliefs and active psychosis at the time of the homicide. Based on Dr. Miller's testimony, the defense requested an instruction on voluntary manslaughter, which was refused by the trial court because the court said there was no evidence Mr. Skeens did not act with malice. The trial court's ruling was erroneous as this Court has recognized that mental illness is incompatible with and negates malice. The trial court's ruling effectively denied Mr. Skeens his right to present a defense to the

murder charge, i.e., that he was only guilty of a lesser included offense. As a result, the jury found Mr. Skeens guilty of first degree murder without a recommendation of mercy.

Because Mr. Skeens killed an adored hometown hero in a small community, there was substantial media coverage of not only the crime, but also of the trial. This coverage included Mr. Skeens being attacked by the victim's family members during his preliminary hearing. As a result of the extensive media coverage of the case, emphasizing the loss of a beloved community member, defense counsel filed a motion for change of venue. In addition to pointing out the extensive media coverage, counsel submitted a survey of potential jurors indicating a hostile sentiment in the community toward Mr. Skeens. The survey revealed that most jurors knew of the murder case and almost half of those who knew about the case had a negative opinion of Mr. Skeens. Also, during voir dire, the trial court excused more than half of the prospective jurors for cause. The trial court, nevertheless, denied the motion for change of venue.

On December 31, 2010, Mr. Skeens walked to the coach's home in Wayne from his home in Huntington, some 19 miles. (A.R., Vol. X, pp. 66, 72-73).¹ After committing the homicide, Mr. Skeens sat down in the Jarrell's living room and ate ice cream. (A.R., Vol. X, pp. 81, 83). He also arranged Mr. Jarrell's guns on his bed. (A.R., Vol. VIII, pp. 186-88). Then, Mr. Skeens drove Mr. Jarrell's truck through Wayne. (A.R., Vol. IX, p. 14). Mr. Skeens eventually found a trooper, walked up to the trooper's car, and asked the trooper, "Do you know who I am?" and allegedly stated, "I'm the man that killed Scott Jarrell." (A.R., Vol. IX, p. 13; Vol. X, p. 76). The trooper said Mr. Skeens was agitated. (A.R., Vol. IX, p. 25). At that time, the trooper thought Mr. Skeens' statement and behavior was some kind of joke until Mr. Skeens punched him in the face. (A.R., Vol. IX, pp. 13, 16). The trooper testified that as a result of Mr. Skeens'

¹ Pages in the Appendix Record, which was agreed to by the parties, will be cited as: A.R., Vol. #, Page #.

punch, the two ended up in a wrestling match. (A.R., Vol. IX, p. 13). Prior to the scuffle, Mr. Skeens removed his shirt even though it was only approximately 10 degrees outside. (A.R., Vol. X, p. 113). Mr. Skeens testified that he remembered pulling over to the trooper's car because "Coach Jarrell [was] telling me to pull over and whoop him, because he was a dirty cop." (A.R., Vol. X, pp. 74-75).

Mr. Skeens testified he remembered the scuffle with the trooper, but only remembers saying to the trooper "do you know Scott Jarrell?" (A.R., Vol. X, pp. 76-77). He testified he was hallucinating at the time of this alleged statement. (A.R., Vol. IV. p. 12).

Clinton Skeens Has a Long History of Mental Illness and Behaved in a Bizarre Manner Prior to the Homicide, Reflecting His Ongoing Mental Illness

Prior to the murder, Mr. Skeens had walked from Huntington to Wayne on at least two occasions searching for the Jarrell's house. (A.R., Vol. X, pp. 66-68). Mr. Skeens had known Mr. Jarrell from his high school days and had played football for him. (A.R., Vol. X, p. 46). Mr. Jarrell had helped Mr. Skeens obtain his first job. (A.R., Vol. X, p. 49). However, Mr. Skeens believed that he needed to kill Mr. Jarrell because he believed Mr. Jarrell had killed his family. (A.R., Vol. X, p. 73).

At trial, Kimberly Adkins testified that she observed Mr. Skeens lying in her yard in the snow, moving his fingers and mumbling on the morning of December 20, 2010, less than two weeks before the murder. (A.R., Vol. X, pp. 122-23). A Wayne County Sheriff Deputy, Chris Booten, investigated this situation and reported he found Mr. Skeens in the Adkins' yard with a knife lying right besides him. (A.R., Vol. X, pp. 142-43). Mr. Skeens told the deputy that he was having a seizure. (A.R., Vol. X, p. 143). After a warrant check, the deputy released Mr. Skeens and returned him to St. Mary's Hospital in Huntington as Mr. Skeens had informed the

deputy that he lived near the hospital. (A.R., Vol. X, p. 144). The officer did not seek psychiatric help for Mr. Skeens, despite his odd behavior.

Mr. Skeens was determined to find Mr. Jarrell, no matter how hard he had to search. James Larry Stephens, a resident of Newcomb Creek in Wayne County, testified “a guy [Mr. Skeens] stopped at my house and started to knock on the door, and he just hardly knocked. I mean, you just barely could hear it.” (A.R., Vol. VIII, pp. 69-70). This incident occurred four to five days before the murder. (A.R., Vol. VIII, p. 69). Mr. Stephens explained Mr. Skeens informed him he was looking for Mr. Jarrell. (A.R., Vol. VIII, p. 70). When Mr. Stephens informed him that Mr. Jarrell did not live there, Mr. Skeens turned and started back up the road. (A.R., Vol. VIII, p. 70).

Nancy Maynard, of Tammy’s Florist and Gift Shop in Wayne County, testified that a man had come into the store asking where Scott Jarrell lived, but she did not know where Mr. Jarrell lived. (A.R., Vol. VIII, pp. 74-75). Ms. Maynard also testified the man was real nervous and kind of pacing around. (A.R., Vol. VIII, p. 75). She stated she believed the man who entered the store and Mr. Skeens were the same person, but she couldn’t say for sure. (A.R., Vol. VIII, p. 76).

Sherry Rowe worked at the BP station that Scott Jarrell frequented and had lived with Mr. Skeens for four years. She told Mr. Jarrell in December 2010 that Mr. Skeens was looking for him. (A.R., Vol. VIII, pp. 62-65). She also told Mr. Jarrell that Mr. Skeens was not the same person and that he did a lot of pills, both nerve pills and pain pills, while the two were together. (A.R., Vol. VIII, p. 64).

In addition to this bizarre behavior shortly before the murder, Mr. Skeens had a long history of mental health issues, including at least eight (8) psychiatric hospitalizations, some

voluntary and some involuntary. (A.R., Vol. X, pp. 96-97, 104). He had been prescribed and taken medication; however, at the time of the murder, he was not taking his prescribed medication and had not been doing so for several months. (A.R., Vol. X, p. 54). Mr. Skeens was discharged from Pretera outpatient services on September 15, 2010, due to non-compliance. (A.R., Vol. XII, p. 26). Mr. Skeens was seen in the emergency department the morning following the murder, but the attending physician did not feel a referral to the psychiatric department was needed. (A.R., Vol. IX, pp. 33-34). Mr. Skeens also has a history of substance abuse. (A.R., Vol. X, p. 158).

In 2009, Dr. Kahn diagnosed Mr. Skeens with Opiate Dependence and Depression NOS. (A.R., Vol. X, p. 159). Records from Pretera dated December 8, 2008, noted Mr. Skeens presented with paranoia. (A.R., Vol. X, p. 169). On August 8, 2007, Dr. Spangler of Riverpark Hospital diagnosed Mr. Skeens with Bipolar Affective Disorder and noted Mr. Skeens complained of hearing voices. (A.R., Vol. XII, p. 24). Additionally, Mr. Skeens made frequent trips to the local emergency rooms with various complaints, including complaints of being depressed and of being suicidal. (A.R., Vol. XII, pp. 23-26). Sometimes he would be admitted for further evaluation and treatment and sometimes he would not. As noted above, multiple doctors evaluated Mr. Skeens and while the doctors agreed Mr. Skeens was truly mentally ill, they did not agree on a specific diagnosis.

Post-arrest And Pre-trial, Multiple Events Of Significance Occurred

Competency Issues

On July 5, 2011, the Wayne County Grand Jury indicted Mr. Skeens for first degree murder. After his arrest, the defense moved for a competency evaluation. (A.R., Vol. I, p. 2).

On July 25, 2011, the trial court found Mr. Skeens not competent to proceed and sent him to Sharpe Hospital for restoration. (A.R., Vol. II, pp. 76-77). While at Sharpe, Mr. Skeens was placed back on a psychotropic medication regime. (A.R., Vol. XII, pp. 38-49). Additionally, the treatment staff at Sharpe felt that Mr. Skeens had mental health problems, but that he also was exaggerating and faking some of his symptoms. However, Dr. Velasco of Sharpe felt that Mr. Skeens' symptoms were real. (A.R., Vol. X, pp. 116, 159). Dr. Velasco gave Mr. Skeens a diagnosis of Depressive Disorder NOS. (A.R., Vol. X, p. 159). On January 6, 2012, the trial court determined Mr. Skeens had been restored to competency. (A.R., Vol. I, pp. 4-5).

The defense had Mr. Skeens evaluated by Dr. Bobby Miller and Dr. Miller found Mr. Skeens incompetent to stand trial. (A.R., Vol. II, pp. 53-54). Dr. Miller diagnosed Mr. Skeens with Bipolar Affective Disorder and noted that Mr. Skeens also experienced problems with hearing voices. (A.R., Vol. II, p. 49; Vol. XII, p. 20). Dr. Miller further explained that Mr. Skeens was preoccupied with the devil and the antichrist, that his speech was tangential, and that his thoughts were disorganized. (A.R., Vol. II, p. 45; Vol. XII, pp. 26-27). Dr. Miller testified he had no doubt Mr. Skeens has bipolar disorder, but further said Mr. Skeens also was malingering or faking and/or exaggerating some of his symptoms. (A.R., Vol. II, p. 53).

On June 10, 2011, Dr. Smith evaluated Mr. Skeens at the State's request. Dr. Smith believed that Mr. Skeens' depression was real and that Mr. Skeens had experienced delusional thoughts. (A.R., Vol. XII, pp. 4-5, 15). However, Dr. Smith also posited that Mr. Skeens was malingering. (A.R., Vol. II, pp. 19, 38). Dr. Smith agreed that a person can be both mentally ill and malingering at the same time. (A.R., Vol. II, p. 39). Ultimately, Dr. Smith diagnosed Mr. Skeens with Mood Disorder NOS and Malingering. (A.R., Vol. X, p. 160). Dr. Smith believed that Mr. Skeens was both competent to stand trial and criminally responsible. (A.R., Vol. II, pp.

20-21). However, Mr. Skeens was sent to Sharpe Hospital after this evaluation as the trial court primarily relied on Dr. Miller's evaluation, rather than Dr. Smith's, in finding Mr. Skeens incompetent to stand trial. (A.R., Vol. II, pp. 76-77).

Change of Venue

On February 29, 2012, defense counsel requested a change of venue due to the great amount of publicity surrounding this case as well as the community's familiarity with the victim. (A.R., Vol. I, pp. 6-7). Counsel noted that Mr. Jarrell "was so well known in the community as to require his funeral service to be conducted at Wayne High School to accommodate the number of attendees." (A.R., Vol. I, p. 6). In preparing for trial, the defense had Don Richardson & Associates conduct a telephonic survey of potential jurors. (A.R., Vol. IV, p. 34). The results indicated that 78% to 92% (median of 85%) of the potential jurors knew about the Skeens case or had knowledge from the media about the Skeens case, nearly the entire jury pool. (A.R., Vol. IV, p. 36). Of those who already knew of the case, 50% had already formed an opinion. (A.R., Vol. I, p. 19). Of those who already formed an opinion, 90% had a negative opinion, meaning that they either believed Mr. Skeens was guilty or implied Mr. Skeens was guilty. (A.R., Vol. I, p. 20).

The defense argued "that there is a substantial amount of information that the media has provided. I think it has affected the entire population of Wayne County as far as the individuals who are eligible to become jurors; it shows that." (A.R., Vol. IV, p. 44). The defense also highlighted "the date of occurrence and when it first hit the media was back in January 1st of 2011. That's 14 months later [the survey] and it's still way up there in people's minds. If you look at all the times it's been in the TV and news and, you know, the frequency thereof, it's an

astounding number of times that it was in the media.”² (A.R., Vol. IV, p. 38). Further, during voir dire, many potential jurors referred to the victim as “coach,” rather than as the victim or Mr. Jarrell, again reflecting how well known Mr. Jarrell was to the community. (See A.R., Vol. VI & VII). In addition, the trial court excused thirty-four (34) of the approximately sixty four (64) eligible jurors for cause. The trial court, after holding its decision on a change of venue in abeyance to see if it could seat a jury, ultimately denied the motion. (A.R., Vol. I, pp. 72-73, Vol. IV, p. 48, Vol. V, p. 5). The trial court ruled there was not widespread prejudicial publicity that would jeopardize a fair trial. (A.R., Vol. I, p. 72).

Impact of Mr. Skeens’ Mental Illness on Jury Instructions

During the trial, Dr. Miller testified Mr. Skeens’ bipolar mental illness manifested itself by Mr. Skeens having periods of rapid thinking, not sleeping for days, hearing voices, doing bizarre things, feeling depressed, experiencing delusions, and becoming religiously preoccupied or paranoid. (A.R., Vol. X, pp. 96, 97). Many of Mr. Skeens’ hospitalizations occurred when he was depressed and became suicidal. (A.R., Vol. X, p. 98). Mr. Skeens was the most active and the most psychotic, however, when he was manic. (A.R., Vol. X, pp. 98-99). Dr. Miller indicated it was during these manic phases that Mr. Skeens walked twenty (20) miles from Huntington to Wayne four (4) times in the snow looking for the victim. (A.R., Vol. X, p. 103).

Dr. Miller testified when Mr. Skeens went to the victim’s home, he was “a man on a mission to do bodily harm, to remove [Scott Jarrell] as a threat.” (A.R., Vol. X, p. 103). Dr. Miller further testified Mr. Skeens’ actions were the product of his mental illness and

² Unfortunately, defense counsel failed to submit for the record the news media articles in support of the motion for change of venue. Current counsel’s motion to supplement the record with these articles was denied by this Court.

psychosis. (A.R., Vol. X, pp. 103-05). Dr. Miller explained that Mr. Skeens' belief he had to remove Mr. Jarrell because Jarrell was a threat was the result of Mr. Skeens' psychotic delusion, a symptom of his mental illness. (A.R., Vol. X, p. 103).

Mr. Skeens testified on his own behalf during trial. Mr. Skeens described his illness and what it was like when he was not getting appropriate treatment for his illness. (A.R., Vol. X, pp. 51-60). He stated, "I'd go for days without sleeping sometimes. I'll be in hallucinations and visions and I go for three or four days without, and nights, without sleeping. That happens numerous times." (Vol. X, p. 59). Mr. Skeens explained "[t]he last year before the crime was really horrible. But, then again, some of the laughter I had with the angels and stuff was some of the best I ever had in my life. I was insane and – and what – what was normally funny, just funny to some people, was hilarious to me. What was bad was horrible to me. But, what was horrible was horrible anyway in my mind." (A.R., Vol. X, pp. 59-60). Mr. Skeens also explained his ongoing battle of keeping righteousness over evil. (A.R., Vol. X, p. 60).

Mr. Skeens testified that at some point, Mr. Jarrell became part of his delusional thinking and hallucinations. (A.R., Vol. X, pp. 57-60, 64). At first, Mr. Jarrell helped him. (A.R., Vol. X, p. 57). Later, Mr. Skeens believed Mr. Jarrell was his enemy, that Jarrell was coming to Huntington to take his stepdaughter and his stepdaughter's mother and then kill the two of them. (A.R., Vol. X, p. 60). On one occasion, Mr. Skeens went to the home of his stepdaughter and her mother and directed them to leave the house for their safety. (A.R., Vol. X, p. 60). While Mr. Skeens perceived a threat of some kind, no actual threat existed. Mr. Skeens also testified he had a vision Mr. Jarrell was working for the CIA and "implanting visions in my head through cell phone towers." (A.R., Vol. X, pp. 71, 72).

Mr. Skeens related he made four trips from Huntington to Wayne looking for Mr. Jarrell. On December 31, 2010, the day of the homicide, Mr. Skeens said he walked fifteen (15) to twenty (20) miles from Huntington to Jarrell's house in Wayne County. (A.R., Vol. X, pp. 72-73). After he entered Mr. Jarrell's home, Mr. Skeens asked him if he knew anything about the CIA and when Jarrell responded he did not, Mr. Skeens told him, "I'm going to have to kill you ... [b]ecause you killed my family." (A.R., Vol. X, p. 73).

No one doubts that Mr. Skeens acquired a knife and stabbed Mr. Jarrell to death, however, the reason for doing so was a significant issue for the jury. Mr. Skeens was not acting with reason, but instead responded to a perceived irrational psychotic threat. (A.R., Vol. X, p. 108).

Given the significance of Mr. Skeens' mental illness, the defense requested a jury instruction on voluntary manslaughter as a lesser included offense of murder. (A.R., Vol. X, p. 184). The judge denied this request, saying there was no evidence the act was not done maliciously. (A.R., Vol. X, pp. 184-85). The defense objected to the trial court's failure to instruct the jury on voluntary manslaughter, arguing it fit into the defense put on with Dr. Miller. (A.R., Vol. X, p. 184). The trial court did instruct the jury on diminished capacity. (A.R., Vol. XI, p. 16). However, the court did not instruct the jury on any lesser included offense, such as voluntary manslaughter, of which the jury could find Mr. Skeens guilty if they had a reasonable doubt on the element of malice. Thus, given the choice the jury had between finding Mr. Skeens guilty of murder and not guilty, it is evident, under the circumstances of this case, which one they would choose.

SUMMARY OF ARGUMENT

The trial court erroneously refused to instruct the jury on the lesser included offense of voluntary manslaughter despite substantial evidence Mr. Skeens was mentally ill at the time of the homicide, which negates the element of malice required for murder. Mr. Skeens met the two requirements for giving a lesser included offense instruction on voluntary manslaughter as that offense is a lesser included offense of first degree murder and there was evidence which would prove that lesser offense. This Court's decisions indicate that malice requires a mind under the sway of reason and that mental illness is incompatible with, and thus negates, malice.

Mr. Skeens further presented substantial evidence he was mentally ill and psychotic at the time of the homicide. Dr. Bobby Miller testified Mr. Skeens suffered from bipolar disorder and killed Mr. Jarrell as a result of a psychotic delusion in which Mr. Skeens perceived Mr. Jarrell as a threat. Mr. Skeens also testified about his mental illness and psychotic delusions involving Mr. Jarrell, including why he thought Mr. Jarrell was killing his family. Because Mr. Skeens was denied an instruction on voluntary manslaughter, the jury was unable to properly consider the substantial evidence he acted without malice due to his mental illness.

In denying Mr. Skeens' motion for a change of venue, the trial court abused its discretion as there was evidence of a present hostile sentiment in Wayne County against Mr. Skeens, which this Court recognizes as good cause for a change of venue. This hostile sentiment, which denied Mr. Skeens a fair and impartial jury, was due to the extensive media coverage of the crime and the case. The crime and the case received this coverage because Mr. Jarrell, the victim, was a well-known and well-liked member of the Wayne County community.

As evidence of the present hostile sentiment against Mr. Skeens, the defense presented a telephone survey of potential jurors which indicated that most jurors (78% to 92%) knew about

the case; that 50% of those who knew about the case had already formed an opinion; and 90% of those with an opinion had a negative opinion of Mr. Skeens, i.e., that he was guilty. In addition, during voir dire thirty-four (34) of the sixty-four (64) prospective jurors were excused for cause, further evidencing a present hostile sentiment. Thus, a change of venue was necessary in this case to guarantee Mr. Skeens a fair trial as it was highly unlikely the small population of Wayne County would not be affected by the widespread publicity resulting from this crime and the associated trial.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

A Rule 20 oral argument is necessary in this case as it presents an important constitutional issue of first impression – whether a defendant in a first degree murder case, who presents substantial evidence he was mentally ill at the time of the offense, is entitled to an instruction on voluntary manslaughter because such evidence negates malice.

This case is not appropriate for a memorandum decision as this case presents substantial questions of law and prejudicial error in the circuit court which should be discussed and resolved through a full opinion by this Court.

ARGUMENT

- I. The Trial Court's Refusal To Instruct On Voluntary Manslaughter Denied Mr. Skeens His Constitutional Due Process Rights To Present A Defense To The Murder Charge, That He Was Only Guilty of Voluntary Manslaughter Because There Was Substantial Evidence He Acted Without Malice Due To His Mental Illness.**

Although Mr. Skeens did not rely on the insanity defense at trial, he presented substantial evidence, through his testimony, and through that of Dr. Bobby Miller, that his actions were those of a psychotic, irrational mind, directly resulting from his mental illness. This Court has explicitly said malice “implies a mind under the sway of reason[,]” *State v. Bongalis*, 180 W.Va. 584, 587-88, 378 S.E.2d 449, 452-53 (1989). Mr. Skeens’ evidence that he was mentally ill when he committed the homicide clearly negates malice as his mind was under the influence of psychosis, not reason. Therefore, the trial court improperly denied defense counsel’s request for a voluntary manslaughter instruction, the lesser included offense of murder that does not require malice.

Standard of Review

“[J]ury instructions are reviewed to determine if they are supported by the evidence and are a correct statement of the law.” *State v. Leonard*, 217 W.Va. 603, 607, 619 S.E. 2d 116, 120 (2005). Thus, the giving or the refusal of an instruction is subject to an abuse of discretion standard. *Id.* Whether the jury was properly instructed ““ is a question of law, and the review is *de novo.*” *Id.* (quoting Syl. Pt. 1, *State v. Brooks*, 214 W.Va. 562, 591 S.E. 2d 120 (2003); Syl. Pt. 2, *State v. Blankenship*, 208 W.Va. 612, 542 S.E. 2d 433 (2000)).

Since There Is Substantial Evidence Mr. Skeens Acted Without Malice, He Was Entitled To A Voluntary Manslaughter Instruction

Syllabus Point 2 of *State v. Leonard*, 217 W.Va. 603, 619 S.E. 2d 116 (2005), states the standards for determining whether a defendant is entitled to an instruction on a lesser included offense:

The question of whether a defendant is entitled to an instruction on a lesser included offense involves a two-part inquiry. The first inquiry is a legal one having to do with whether the lesser offense is by virtue of its legal elements or definition included in the greater offense. The second inquiry is a factual one which involves a determination by the trial court of whether there is evidence which would tend to prove such lesser included offense. *State v. Neider*, 170 W.Va. 662, 295 S.E.2d 902 (1982).” Syl. Pt. 1, *State v. Jones*, 174 W.Va. 700, 329 S.E.2d 65 (1985).

Accord Syl. Pt. 9, *State v. Davis*, 205 W.Va. 569, 519 S.E. 2d 852 (1999). Both requirements for giving a voluntary manslaughter instruction are met in this case. First, it is well-settled that voluntary manslaughter, W.Va. Code §61-2-4 (1994), is a lesser included offense of murder. *State v. McGuire*, 200 W.Va. 823, 834, 490 S.E. 2d 912, 923 (1997); *State v. Guthrie*, 194 W.Va. 657, 671, 461 S.E. 2d 163, 177 (1995). Also, malice is the critical distinguishing element between murder and voluntary manslaughter, the former requiring its presence and the latter its absence. *State v Kirtley*, 162 W.Va. 249, 254, 252 S.E.2d 374, 376-77 (1978). *Accord McGuire*, 200 W.Va. at 833, 490 S.E.2d at 922; Syl. Pt. 1, *State v. Bongalis*, 180 W.Va. 584, 378 S.E.2d 449 (1989). Thus, voluntary manslaughter is an intentional killing without malice. *Id.*

This Court’s definition and interpretation of the element of malice indicates that the second requirement for giving a voluntary manslaughter instruction also was met as there is substantial evidence Mr. Skeens acted without malice. This Court has defined malice as “an action flowing from a wicked and corrupt motive, a thing done *malo animo*, where the fact has been attended with such circumstances as carry in them the plain indication of a heart regardless of social duty and fatally bent on mischief.” *Bongalis*, 180 W.Va. at 587, 378 S.E. 2d at 452 (quoting *State v. Douglas*, 28 W.Va. 297, 299 (1886)). In *State v. Burgess*, 205 W.Va. 87, 89, 516 S.E.2d 491, 493 (1999), the Court applied the element of malice by quoting its definition from Black’s Law Dictionary 956 (6th ed. 1990):

“[t]he intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury or under circumstances that the law will imply an evil intent... A condition of the mind showing a heart regardless of social duty and fatally bent on mischief.” (emphasis added).

In further defining malice, the Court said in several cases:

This term, it has been said, implies a mind under the sway of reason. It excludes the idea of sudden passion aroused by an unanticipated and unprovoked battery inflicted by the assailant without the fault of the person assailed. If in such case the death of the aggressor results, even if intentional, it cannot be traced to a malignant heart but is imputable to human frailty. (emphasis added).

Bongalis, 180 W.Va. at 587-88, 378 S.E.2d at 452-53 (quoting *State v. Morris*, 142 W.Va. 303, 314-15, 95 S.E.2d 401, 408 (1956)). *Accord State v Ponce*, 124 W.Va. 126, 19 S.E.2d 221, 222 (1942); Syl., *State v. Galford*, 87 W.Va. 358, 105 S.E. 237 (1920). *See also Thomas v. Commonwealth*, 279 Va. 131, 160-61, 688 S.E.2d 220, 236-37 (2010) (Virginia Supreme Court approved malice instruction which stated, in part: “[m]alice is the state of mind which results in the intentional doing of a wrongful act to another without legal excuse or justification, at a time when the mind of the actor is under the control of reason.”) (emphasis added); *Davis v. U.S.*, 160 U.S. 469, 485, 16 S.Ct. 353, 357 (1895) (“One who takes human life cannot be said to be actuated by malice aforethought, or to have deliberately intended to take life, or to have ‘a wicked, depraved, and malignant heart,’ or a heart ‘regardless of society duty and fatally bent on mischief,’ unless at the time he had sufficient mind to comprehend the criminality or the right and wrong of such an act.”) (citation omitted)).

The above description and definition of malice is consistent with this Court’s approved instruction that malice can be inferred from the defendant’s use of a deadly weapon unless circumstances afford an excuse, justification, or provocation for his conduct. Syl. Pt. 5, *State v. Jenkins*, 191 W.Va. 87, 443 S.E.2d 244 (1994). *Accord State v. Bradshaw*, 193 W.Va. 519, 544, 457 S.E.2d 456, 481 (1995). Thus, the *Jenkins* Court recognized that the inference of malice may

be rebutted by mitigating or explanatory circumstances that negate malice, such as a killing resulting from provocation, the heat of passion, self-defense, or the defendant's insanity. *Jenkins*, 191 W.Va. at 93-95, 443 S.E. 2d at 250-52. *See also State v. Miller*, 197 W.Va. 588, 609, 476 S.E.2d 535, 556 (1996) (stating that defendant's defenses that killing was either accidental, in self-defense, or the result of incapacity due to intoxication "are incompatible with malice.").

The Court's previous recognition that malice implies a mind under the sway of reason, and that insanity or mental illness is incompatible with malice, is critical in this case. Because there is substantial evidence Mr. Skeens was psychotic, insane, and/or mentally ill when he committed the homicide, a jury might have justifiably found him guilty of the lesser offense of voluntary manslaughter as such evidence negated the element of malice. *See Syl. Pt. 1, Leonard*, 217 W.Va. 603, 619 S.E.2d 116 ("Jury instructions on possible guilty verdicts must only include those crimes for which substantial evidence has been presented upon which a jury might justifiably find the defendant guilty beyond a reasonable doubt." Syl. Pt. 5, *State v. Demastus*, 165 W.Va. 572, 270 S.E.2d 649 (1980)).

When defense counsel requested an instruction on voluntary manslaughter, the trial court rejected it on the ground it was not supported by the evidence. (A.R., Vol. X, pp. 184-85, 191). Defense counsel argued "it fits into our defense as we put it on with Dr. Miller." (A.R., Vol. X, 184). The trial court's assertion "you don't have any evidence that what was done was not malicious[,]" A.R., Vol. X, pp. 184-85, is incorrect. As indicated, the evidence that Mr. Skeens was psychotic or insane and/or mentally ill when he committed the homicide, which is inconsistent with malice, is very substantial. In addition to Mr. Skeens' bizarre behavior related

to the homicide, both Mr. Skeens and Dr. Miller provided testimony regarding Mr. Skeens' mental illness and associated lack of malice.

Before discussing this evidence, however, it is important to recognize that Mr. Skeens, due to his mental illness, was initially found incompetent to stand trial by the trial court and was sent to Sharpe Hospital to be restored to competency. (A.R., Vol. II, pp. 76-77). While at Sharpe, Mr. Skeens was evaluated and placed on psychoactive medications to help deal with his symptoms of mental illness and to assist in the restoration of his competency. (A.R., Vol. XII, pp. 38-49). It was only after such restoration that Mr. Skeens stood trial.

Dr. Bobby Miller's testimony alone is substantial evidence Mr. Skeens was psychotic and mentally ill at the time of the homicide. Dr. Miller, a board-certified psychiatrist, testified that, in addition to interviewing and testing Mr. Skeens, he reviewed his mental health records from 2001-2012 and the records are consistent, especially after 2007, that Mr. Skeens suffered from a bipolar disorder. (A.R., Vol. X, p. 96). Mr. Skeens had at least eight (8) psychiatric hospitalizations, including St. Mary's Hospital, River Park Hospital, and Sharpe Hospital; and two involuntary hospitalizations at Mildred Bateman Hospital in which he was committed by a mental hygiene commissioner through the involuntary commitment process. (A.R., Vol. X, pp. 96-97, 104).

Dr. Miller explained Mr. Skeens' bipolar illness was characterized by periods of rapid thinking, not sleeping for days, hearing voices, doing bizarre things, feeling depressed, experiencing delusions, and becoming religiously preoccupied or paranoid. (A.R., Vol. X, pp. 96, 97). "When he [Mr. Skeens] was sickest, is (sic) he would have ideas about antichrist, resurrection, heaven and hell, and how he could convert himself to being in a God status." (A.R., Vol. X, p. 98). When Mr. Skeens was depressed, he became suicidal and that's when

many of his hospitalizations occurred. (A.R., Vol. X, p. 98). When Mr. Skeens was manic, however, that is when he was most active and most psychotic, although he would still be able to function. (A.R., Vol. X, pp. 98-99). For example, during Mr. Skeens' manic phases he would walk long distances and Dr. Miller reported Mr. Skeens walked twenty (20) miles four (4) times in the snow from Huntington to Wayne looking for the victim in this case. (A.R., Vol. X, p. 103).

According to Dr. Miller, Mr. Skeens had not had any medication for his illness for approximately eight (8) months prior to the homicide. (A.R., Vol. X, p. 103). Dr. Miller said when Mr. Skeens went to the victim's house to do him bodily harm and remove him as a threat, he did so in response to a delusion, a psychotic error in thinking, which was a symptom of his mental illness. (A.R., Vol. X, p. 103). Thus, Dr. Miller concluded that Mr. Skeens suffered from a form of psychosis (bipolar disorder) when he committed the homicide. (A.R., Vol. X, pp. 104, 108). This evidence clearly negates malice as one cannot be rational and psychotic at the same time. *See Jenkins*, 191 W.Va. at 93-95, 443 S.E.2d at 250-52.

Mr. Skeens' testimony likewise indicated the homicide resulted from his psychotic mental illness which is incompatible with malice. Mr. Skeens began his testimony by talking about how he played football for Coach Jarrell at Wayne High School, how the coach helped him get his first job, always treated him with respect and dignity, and was very caring. (A.R., Vol. X, pp. 46-49). Mr. Skeens, however, said he got sick in 2007, began having bad hallucinations, and his illness overwhelmed him. (A.R., Vol. X, pp. 50-51). His hallucinations involved battles between righteousness and evil. Mr. Skeens said he had two angels in his hallucinations or visions — Lord God Dougie and Lord God Alisa (after his stepdaughter), and the Lord God Almighty, all of whom he would rely on for help. (A.R., Vol. X, pp. 57-60). In one of these

hallucinations, he was at the Wayne football field, he got hurt, Coach Jarrell was there, and was helping Mr. Skeens heal. (A.R., Vol. X, p. 57). Mr. Skeens said things got flipped around and Coach Jarrell became his enemy. (A.R., Vol. X, p. 57).

Mr. Skeens described how he battled Coach Jarrell and believed Jarrell was killing his family:

Q. You admired him [Coach Jarrell], didn't you?

A. You have to admire him. Anybody who knew him had to admire him. I don't see how anybody could not know him and not admire him. But, it just got flip-flopped around in my head to where – and even at the end of the day, or end of the days, where we'd say to each other "I'll do battle with you all day long. I'll kill you all day long. But, in the end, I still love and respect you."

Now, that would be after, when he'd be killing my family and – and I'd be trying to kill his family or just trying to do battle, righteous over evil. He would – he would – he would, in my mind, he was real. Of course, it's all in my mind. Anything bad I ever said about Coach Jarrell was in my mind only. And he would rape and kill my stepdaughter and her mother, and I would, with the thought, switch his family around so he'd be doing it to his family. And he'd do the same thing to me. It was just – it was a constant—it was a constant battle.

Q. But, you knew this wasn't real?

A. No, no, I knew it was real. No, it was real. It was in my mind. It was real. It was just more real than what we're standing here talking right now. I mean, you – and like I say, I wasn't asleep when it was happening, either. I was awake. It wasn't like you wake up and you have a dream and wake up. I mean, it's nothing like – it's nothing—it's nothing that simple.

It's something that's in your mind and it's just as real as real can get. And that's – that's the sad fact about what it is. It took me six months when I – after the crime happened before I even started getting my mind back. I was on – I got back on medication and – and I was around people. I was in jail, but I was still around people and time. And one of the things is — is I think is after you hit the bottom, the only way you can go is up. And I hit the bottom, and the only thing I could do was come back up.

(A.R., Vol. X, pp. 64-66).

Mr. Skeens testified these battles between righteousness and evil would last three or four days and nights, he would go for days without sleeping and be so exhausted, he would rest for a day, and then would go right back at it. (A.R., Vol. X, p. 62).

Mr. Skeens stated he made four trips from Huntington to Wayne before he found Coach Jarrell. (A.R., Vol. X, p. 66). On one trip, he walked to Lavallette and slept in a car wash until he could warm up and walk back home to Huntington. (A.R., Vol. X, p. 68). Mr. Skeens said he walked that distance in the snow because “insanity was driving me and – and it’s easy done when you’re insane.” (A.R., Vol. X, pp. 68, 69). Mr. Skeens testified when you’re insane, you don’t think you are insane, you think everybody else is insane. (A.R., Vol. X, p. 70). Mr. Skeens also said he would battle Coach Jarrell in his mind while he was walking. He described how he would put Jarrell on a railroad track, have a train run over him, but “[y]ou couldn’t kill him... it made him stand up like flags.” (A.R., Vol. X, p. 69). Mr. Skeens further testified he had a vision Coach Jarrell was working for the CIA, was “implanting visions in my head through cell phone towers[,]” was torturing him and was enjoying doing it. (A.R., Vol. X, pp. 71, 72).

On December 31, 2010, the day on which the homicide occurred, Mr. Skeens walked from Huntington to Mr. Jarrell’s house in Wayne County, a distance of 15 to 20 miles. (A.R., Vol. X, pp. 72-73). Mr. Skeens related his conversation with Mr. Jarrell when he went to his house:

*** I walked to his house and then came to his house, and I went in and asked him. I said, “Coach Jarrell, do you know anything about the CIA. He said – he said, “No. I don’t.” I said, “Well, I’m going to have to kill you.” He said, “Why?” “Because you killed my,” I said, “Because you killed my family.”

I stabbed him two or three times, and must have hit him in the heart, because that’s when he fell down. And that’s how I remember it, and I don’t remember anything else about what happened there.

(A.R., Vol. X, p. 73). Mr. Skeens said Mr. Jarrell was still talking to him after he was dead; and Jarrell told him to pull over and whip Trooper Chapman because he was a dirty cop. (A.R., Vol. X, pp. 75-76).

Mr. Skeens acknowledged his killing of Mr. Jarrell was a horrible thing: “Me being mentally ill and killing an innocent man and everybody is suffering.” (A.R., Vol. X, p. 76). Mr. Skeens further agreed it was not a very smart thing to do, but stated, “you can’t apply logic to the acts of an insane man.” (A.R., Vol. X, p. 78).

In addition to Mr. Skeens’ testimony and Dr. Miller’s testimony that Mr. Skeens’ actions were the result of his mental illness, the absence of any logical motive for the homicide and Mr. Skeens’ other bizarre behavior³ further support his contention his actions lacked malice. Accordingly, the above substantial evidence that Mr. Skeens’ committed the homicide while psychotic and mentally ill demonstrates the absence of malice and entitled him to a jury instruction on voluntary manslaughter.

Other courts have recognized that the element of malice is negated by a defendant’s actions which are the product of a delusion or mental illness. *See People v. Conley*, 411 P.2d 911, 916 (Cal. 1996), *superseded by statute*, *People v. Saille*, 820 P.2d 588 (Cal. 1992) (“A person who intentionally kills may be incapable of harboring malice aforethought because of a mental disease, defect, or intoxication, and in such case his killing, unless justified or excused, is

³ Kimberly Adkins, a Wayne resident, testified she observed Mr. Skeens lying in her yard in the snow, moving his fingers and mumbling on December 20, 2010. (A.R., Vol. X, pp. 122-23). After the homicide, Mr. Skeens sat in the Jarrell home and ate ice cream. (A.R., Vol. IX, pp. 60, 102-04) (A.R., Vol. VIII, p. 151). Mr. Skeens also arranged Mr. Jarrell’s shotguns on the latter’s bed. (A.R., Vol. VIII, pp. 160,186-87). Mr. Skeens further facilitated his arrest by approaching Trooper Chapman, taking off his shirt, and assaulting Chapman for no reason. (A.R., Vol. IX, pp. 13, 25-27).

voluntary manslaughter.”);⁴ *State v. Green*, 6 P.2d 177, 186 (Utah 1931) (holding that evidence tending to show defendant was insane, along with other evidence of his mental state, “was sufficient to entitle the defendant to have the jury instructed as to the law of voluntary manslaughter and have that question submitted to the jury.”); *Davis v. State*, 28 S.W.2d 993, 996 (Tenn. 1930) (stating that a defendant possessed of an insane delusion “is presumed to be incapable of malice, an essential ingredient of murder.”).

The Trial Court’s Refusal To Instruct On Voluntary Manslaughter Denied Mr. Skeens His Fundamental Right To Present A Defense To The Murder Charge

One of the most important due process rights a defendant has is the right to present a defense. *State v. Jenkins*, 195 W.Va. 620, 628, 466 S.E.2d 471, 479 (1995); *Rock v. Arkansas*, 483 U.S. 44, 51-52, 107 S.Ct. 2704, 2708-09 (1987) *Crane v. Kentucky*, 476 U.S. 683, 690, 106 S.Ct. 2142, 2146-47 (1986). The trial court denied Mr. Skeens that fundamental right by its refusal to instruct on voluntary manslaughter when there was substantial evidence Mr. Skeens acted without malice, as a result of his mental illness. As Chief Justice Albright noted in dissent in *Leonard*, 217 W.Va. at 612, 619 S.E.2d at 125, “malice is of the essence of murder, and the prisoner has a right to disprove it in any legitimate manner.” (quoting *State v. Evans*, 33 W.Va. 417, 424, 10 S.E. 792, 794 (1890)). Moreover, this Court clearly stated “a criminal defendant is entitled to an instruction on any recognized defense for which there exists evidence sufficient for a reasonable jury to find in his/her favor.” *State v. Shingleton*, 222 W.Va. 647, 651-52, 671 S.E.2d 478, 481-82 (2008) (quoting Syl. Pt. 2, in part, *State v. McCoy*, 219 W.Va. 130, 632

⁴ In 1981, the California legislature abolished the defense of diminished capacity, prohibited admission of evidence of mental illness to show or negate the capacity to form any mental state, and prohibited expert testimony on the issue of whether the defendant had or did not have the required mental state. *Saille*, 820 P. 2d at 592-93.

S.E.2d.70 (2006)). The trial court's refusal to instruct on voluntary manslaughter improperly denied Mr. Skeens the logical defense to the murder charge that he was only guilty of voluntary manslaughter due to the absence of malice.

The jury was unable to consider an insanity defense because Mr. Skeens refused to consent to its use by defense counsel. (A.R., Vol. X, pp. 8-9). The jury was further unable to consider, as a practical matter, the diminished capacity defense because Dr. Miller testified Mr. Skeens was capable of forming an intent to kill. (A.R. Vol. X, pp. 108-09). Therefore, the only viable defense available was that Mr. Skeens was guilty of voluntary manslaughter and not murder, based on the substantial evidence described above, that Mr. Skeens did not act maliciously due to his mental illness. *Cf. McGuire*, 200 W.Va. at 836, 490 S.E.2d at 925 (holding that the defendant was properly convicted of voluntary manslaughter as the jury could find she intentionally killed her child, but did not do so maliciously because she believed it was her only option under the circumstances). The *McGuire* Court further noted that psychiatric testimony described the defendant, when she committed the act, as being unable to distinguish right from wrong. *Id.* at n.37. Here, the trial court's refusal to give a voluntary manslaughter instruction denied defense counsel the closing argument that Mr. Skeens was only guilty of voluntary manslaughter because he acted without malice, which could have been very effectively delivered based on the above evidence.

Thus, because Mr. Skeens was denied a voluntary manslaughter instruction, the jury was unable to properly consider and give effect to the substantial evidence that Mr. Skeens acted without malice due to his mental illness. As this Court explained in *Miller*, 197 W.Va. at 610, 476 S.E. 2d at 557, "[a] trial judge's instructions to a jury as to the law and how the evidence should be assessed are crucial to a fair trial. Instructions should guide a jury's deliberations and

are not mere technicalities in our legal system. Errors in such matters may go to the heart of the question of guilt.” “Without [adequate] instructions as to the law, the jury becomes mired in a factual morass, unable to draw the appropriate legal conclusions based on the facts.” *Id.* at 610-11, 476 S.E.2d at 557-58 (quoting *State v. Guthrie*, 194 W.Va. 657, 672, 461 S.E.2d 163, 178 (1995) (quoting *State v. Miller*, 194 W.Va. 3, 15 n. 20, 459 S.E.2d 114, 126 n. 20 (1995))).

Since the jury was not instructed on voluntary manslaughter, they were unable to draw an appropriate and logical legal conclusion that Mr. Skeens, due to his mental illness, did not act with malice. Mr. Skeens was thereby denied his state and federal constitutional rights to due process of law. U.S. Const. amend. XIV; W.Va. Const. art. III, §10.

II. The Trial Court Abused Its Discretion In Denying Mr. Skeens His Requested Change Of Venue As There Existed A Present Hostile Sentiment Toward Mr. Skeens At The Time Of His Trial That Mandated A Change of Venue.

The trial court denied Clinton Skeens a fair trial by denying his motion for change of venue. This case received great amounts of media attention, which saturated the small Wayne County community, both when the crime first happened and at the time of trial. The victim in this case, Jess Scott Jarrell, was a well-known football coach and well-liked member of the community who most people simply knew as “coach.” Mr. Jarrell’s funeral was held at the Wayne County High School where he had coached to accommodate all the people who wished to grieve Mr. Jarrell’s loss and offer condolences to Mr. Jarrell’s family. Any death by homicide is a tragedy, but most do not warrant front page or lead story news coverage for multiple days. In this case, Mr. Jarrell’s death was front page news repeatedly. Most of the potential pool of jurors, as demonstrated by an opinion survey, had knowledge of the case and half of those potential jurors had strong negative feelings regarding Mr. Skeens. Further, Mr. Skeens was

attacked at his preliminary hearing by members of the victim's family, reflecting the intense emotions surrounding this case. In this matter, it was not just a simple question of publicity, but the grand total of the media attention, the community's awareness of the case, due, in large part, to the media, and the victim's heightened positive status in the community, that made it impossible for Clinton Skeens to receive a fair and impartial trial in Wayne County. The community wanted to avenge the death of its beloved coach and the only person to blame was Clinton Skeens, a mentally ill man who believed that he needed to kill his high school football coach to protect and avenge his family.

The hostile community sentiment was evident at Mr. Skeens' trial as the trial court excused thirty four (34) jurors for cause. It was not only the widespread publicity, but the fixed opinions of potential jurors about their beloved coach and his untimely death that prevented Mr. Skeens from receiving a fair and impartial trial in Wayne County. Therefore, the trial court abused its discretion in failing to grant a change of venue.

Standard of Review

In reviewing the denial of a request for change of venue, this Honorable Court examines whether an abuse of discretion occurred in the lower court. *State v. Peacher*, 167 W.Va. 540, 550, 280 S.E.2d 559, 568 (1981). *See also* Syl. Pt. 2, *State v. Williams*, 172 W.Va. 295, 305 S.E.2d 251 (1983), *quoting* Syl. Pt. 2, *State v. Wooldridge*, 129 W.Va. 448, 40 S.E.2d 899 (1946) (“Whether, on the showing made, a change of venue will be ordered, rests in the sound discretion of the trial court; and its ruling thereon will not be disturbed, unless it clearly appears that the discretion aforesaid has been abused.”).

The Right To A Change Of Venue

“The right to a trial by an impartial, objective jury in a criminal case is a fundamental right guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and Article III, Section 14, of the West Virginia Constitution.” Syl. Pt. 4, *State v. Peacher*, 167 W.Va. 540, 550, 280 S.E.2d 559, 568 (1981). A change in venue is necessary when circumstances exist such that the defendant cannot get a fair trial in the county where the crime occurred. *See* Rule 21(a), W.Va. R. Crim. P. (“The circuit court upon motion of the defendant shall transfer the proceedings as to that defendant to another county if the circuit court is satisfied that there exists in the county where the prosecution is pending so great a prejudice against the defendant that he or she cannot obtain a fair and impartial trial at the place fixed by law for holding the trial.”). *See also* W.Va. Code § 62-3-13 (2010) (“A court may, on the petition of the accused and for good cause shown, order the venue of the trial of a criminal case in such court to be removed to some other county.”).

There must be good cause for a change of venue and widespread publicity, by itself, is not enough to justify a change of venue. Syl. Pt. 2, *Williams*, 172 W.Va. 295, 305 S.E.2d. 251. *See also* Syl. Pt. 3, *State v. Blevins*, No. 11-1014, 2013 WL 2302043 (W.Va. May 20, 2013) (finding publicity without more is insufficient cause for a change of venue and holding the key question is whether the defendant can receive a fair trial). The core questions are whether the jury pool is able to be fair and impartial and whether there exists a present hostile sentiment against the accused extending throughout the pool of potential jurors. *See* Syl. Pt. 1, *State v. Gangwer*, 169 W.Va. 177, 286 S.E.2d 389 (1982); Syl. Pt. 1, *State v. Goodman*, 170 W.Va. 13, 290 S.E.2d 260 (1981). *See also* Syl. Pts. 1 & 2, *State v. Peacher*, 167 W.Va. 540, 280 S.E.2d 559 (1981)(holding that in order to have grounds for a change of venue, the defendant must show

a present hostile sentiment toward him). A reviewing court should examine both the amount of publicity given a case and the voir dire of potential jurors to determine if the possibility of bias was fully examined. *Wansley v. A.E. Slayton*, 487 F.2d 90, 92-93, 96 (4th Cir. 1973).

The specific standard for granting a motion for a change of venue in West Virginia dates back at least to the 1927 decision of *State v. Siers*, 103 W.Va. 30, 136 S.E. 503 (1927). In *Siers*, the petitioner asserted that because of widespread newspaper reports, “there are scarcely any persons in Harrison County who have not read and discussed the facts regarding the assault.” *Id.* at 32, 136 S.E. at 503. In reversing the conviction, the Court stated the basic principle regarding a change of venue that remains in effect today: “A present hostile sentiment against an accused, extending throughout the entire county in which he is brought to trial, is good cause for removing the case to another county.” *Id.* at Syl. Pt. 1.

In arguing to affirm the conviction in *Siers*, the State argued that, despite the prejudice in the community, an impartial jury had been obtained. 103 W.Va. at 33, 130 S.E. at 504. The Court rejected this argument, stating the fact that an impartial jury was later impaneled is not conclusive, on a motion for a change of venue, that prejudice against the accused did not exist. *Id.* at 33, 130 S.E. at 504. The Court explained its reasoning, pointing out that “[i]nfluences, silent, yet potential, may permeate the community, endangering an impartial trial.” *Id.*

Similarly, in *State v. Dandy*, 151 W.Va. 547, 153 S.E.2d 507 (1967), the Court reversed a defendant’s conviction for making false entries in written accounts kept by the State, finding that “the fact that a jury free from exception can be empaneled is not conclusive, on a motion for a change of venue, that prejudice does not exist.” *Id.* at 564, 153 S.E.2d at 516. Citing numerous newspaper articles, the Court once again explained that “influences, silent yet potential, may permeate the community, endangering an impartial trial.”

In *State v. Ginanni*, 174 W.Va. 580, 328 S.E.2d 187 (1985), this Court reversed the defendant's conviction for sexual abuse due to the trial court's failure to grant a change of venue. The Supreme Court explained there was a significant present hostile sentiment toward the defendant based on his bad reputation in the community. *Id.* Further, seven (7) of the twenty-eight (28) prospective jurors were excused for cause because they had already formed an opinion regarding the defendant such that they could not render a fair and impartial verdict based solely on the evidence presented at trial. Finally, the *Ginanni* Court explained, "[a]s we have repeatedly held: 'The fact that a jury free from exception can be impanelled is not conclusive, on a motion for a change of venue, that prejudice does not exist, endangering a fair trial. . . .'" *Id.* at 584, 328 S.E.2d at 191 (internal citations omitted).

In *State v. Derr*, 192 W.Va. 165, 172, 451 S.E.2d 731, 738 (1994), Justice Cleckley stated: "[o]ne of the inquiries on a motion for a change of venue should not be whether the community remembered or heard the facts of the case, but whether the jurors had such fixed opinions that they could not judge impartially the guilt or innocence of the defendant." The defendant must show that "he cannot receive a fair trial in the county where trial would be held if the motion is not granted." *Peacher*, 167 W.Va. at 551, 280 S.E.2d at 569. (internal citation omitted). Additionally, the reviewing court should consider the number of jurors who are excused for cause based on the fact they have already formed an opinion. *Ginanni*, 174 W.Va. 580, 328 S.E.2d 187. *Cf. State v. Baker*, 180 W.Va. 233, 376 S.E.2d 127 (1988) (concluding that when, after extensive voir dire, only three of twenty seven potential jurors recalled that death was caused by ax wounds, there was insufficient evidence to justify a change of venue).

The reported decisions of this Court contain numerous instances where trial courts, in order to ensure impartial juries, have transferred venue under a variety of circumstances. *See*,

e.g., *State v. James*, 227 W.Va. 407, 710 S.E.2d 98, 103 n.3 (2011) (charge of sexual abuse, transferred from Grant County to Mineral County); *Gibson v. McBride*, 222 W.Va. 194, 195 n.1, 663 S.E.2d 648 n.1 (2008) (charge of conspiracy to commit murder, transferred from Marshall to Cabell County); *State v. Dinger*, 218 W.Va. 225, 227 n.4, 624 S.E.2d 572, 574 n.4 (2005) (charge of murder, transferred from Summers to Monroe County); *State v. Taylor*, 215 W.Va. 74, 76 n.2, 81, 593 S.E.2d 645, 647 n.2, 652 (2004) (charges of breaking and entering, grand larceny, and petit larceny transferred from Grant County to Mineral County); *State v. Rodoussakis*, 204 W.Va. 58, 511 S.E.2d 469 (1998) (charge of murder, transferred from Greenbrier County to Raleigh County); *State v. Beard*, 203 W.Va. 325, 326 n.1, 507 S.E.2d 688, 689 n.1 (1998) (two counts of murder, transferred from Pocahontas County to Greenbrier County and subsequently to Braxton County); *Stuckey v. Trent*, 202 W.Va. 498, 505 S.E.2d 417 (1998) (seven counts of murder, transferred from Marion County to Wood County); *State v. Knuckles*, 196 W.Va. 416, 420, 473 S.E.2d 131, 135 (1996) (three counts of DUI causing death, transferred from Monroe County to Summers County); *State v. Jarvis*, 199 W.Va. 38, 41 n.2, 483 S.E.2d 38, 41 n.2 (1997) (charge of murder, transferred from Braxton County to Gilmer County); *State v. McKenzie*, 197 W.Va. 429, 433 n.1, 475 S.E.2d 521, 525 n.1 (1996) (charge of murder, transferred from Harrison County to Wood County); *State v. Bonham*, 184 W.Va. 555, 558, 401 S.E.2d 901, 903 (1991) (charges of conspiracy to commit malicious wounding and manslaughter, transferred from Boone County to Cabell County).

The Trial Court Abused Its Discretion In Denying The Motion for A Change of Venue As There Was A Present Hostile Sentiment Toward Mr. Skeens

In this matter, like in *Ginanni*, many people already had formed an opinion regarding whether Mr. Skeens was guilty. The news media reported about this case often, making it clear

that the county's beloved coach had been murdered and Mr. Skeens was the only possible suspect. In its motion for a change of venue, the defense asserted Mr. Skeens "cannot obtain a fair and impartial trial in Wayne County due to the existence of substantial prejudice presently existing against defendant, and that such prejudice constitutes good cause for removal of the matter to another county." (A.R., Vol. I, p. 6). Defense counsel further alleged in the motion:

Among other things, there continues to be extensive media coverage of this matter; the victim was so well known in the community as to require his funeral service to be conducted at Wayne High School to accommodate the number of attendees; the defendant was attacked and assaulted at his preliminary hearing; and a special memorial service was conducted by the victim's former players at a Wayne High School football game and a scholarship fund established in his honor; solicitation for said scholarship fund continues in Wayne County.

(A.R., Vol. I, p. 6). At the hearing on the motion, the defense argued "that there is a substantial amount of information that the media has provided. I think it has affected the entire population of Wayne County as far as the individuals who are eligible to become jurors; it shows that."

(A.R., Vol. IV, p. 44). The defense also highlighted "the date of occurrence and when it first hit the media was back in January 1st of 2011. That's 14 months later [the survey] and it's still way up there in people's minds. If you look at all the times it's been in the TV and news and, you know, the frequency thereof, it's an astounding number of times that it was in the media." (A.R., Vol. IV, p. 38).

Defense counsel further submitted a public opinion survey conducted of eligible Wayne County jurors. *See* A.R., Vol. IV, pp. 34-35. The survey indicated that 78% to 92% (median of 85%) of the potential jurors knew about the Skeens case or had knowledge from the media about the Skeens case, nearly the entire potential jury pool. (A.R., Vol. IV, p. 36). Of those who already knew of the case, 50% had already formed an opinion. (A.R., Vol. I, p. 19). Of those who already formed an opinion, 90% had a negative opinion, meaning that they either believed

Mr. Skeens was guilty or implied Mr. Skeens was guilty. (A.R., Vol. I., p. 20). The survey results are strong evidence of the existence of a present hostile sentiment against Mr. Skeens.

After hearing counsel's motion, the trial court stated, "I'll take this ruling under advisement, realizing that you have substantial evidence with regard to the survey and from the facts and figures that could be extrapolated to the whole county." (A.R., Vol. IV, p. 52). The Court further indicated it would try to seat a jury first. (A.R., Vol. IV, pp. 48, 52).

Voir dire in this case lasted two days and occurred approximately two weeks in advance of trial. The day jury selection began, articles about Mr. Jarrell's death appeared in the newspaper. (A.R., Vol. I, pp. 60-61). His death was still a major news story in the local area. While many potential jurors claimed to be unaffected by the extensive news coverage occurring both at the time of Mr. Jarrell's death and at the time of the trial, it is highly unlikely that any juror missed all the media coverage. *See* A.R., Vol. I, pp. 19-20. It is equally unlikely that any juror who saw media coverage was unaffected by it. When a small town loses one of its local legends, people notice the event, often seeking out additional information about the event. It is not a story that quickly cycles to the bottom of the trash pile in our 24-hour news cycle world. It is a story that lingers, with people asking how and why, trying to figure out what happened to this esteemed man.

During voir dire, thirty-two (32) jurors, or half of the approximately sixty-four (64) jurors voir dired, were excused for cause. *See generally*, A.R., Vol. VI & VII. Two additional jurors were removed for cause at the start of trial, giving a total of thirty-four (34) jurors excused for cause.⁵ (A.R., Vol. VII, pp. 27-35, 42-45). The defense also requested that an additional

⁵ Of the thirty-four (34) jurors excused, twenty-four jurors (24) were excused because they either knew too many details about the case, primarily from the media, or were related or closely linked to a person involved in the case such as the victim or a testifying law enforcement officer.

seventeen (17) jurors be removed for cause, but the trial court denied those requests. The high number of jurors removed for cause reflects that there was a present hostile sentiment toward Mr. Skeens. However, according to the lower court, the jurors not released for cause could be fair and impartial despite their exposure to media coverage and despite the significance of this event. *See generally*, A.R., Vol. VI & VII. The trial court therefore denied the motion for a change of venue, stating “there was not widespread prejudicial publicity that would jeopardize a fair trial for the Defendant.” (A.R., Vol. I, p. 72).

The trial court’s ruling is erroneous. The widespread prejudicial publicity clearly jeopardized Mr. Skeens’ right to a fair trial. Moreover, hostile sentiment is evidenced by the opinion survey results indicating that 50% of the eligible jurors who had heard of the case had already formed an opinion and 90% of these people believed Mr. Skeens was guilty. It is further evidenced by the large number of jurors (34) excused for cause. *See State v. Ginanni*, 174 W.Va. at 582, 328 S.E.2d at 189. Additionally, as explained above, this Court has noted several times that the fact the trial court impaneled an impartial jury is not conclusive on a motion for change of venue that prejudice did not exist. *State v. Ginanni*, 174 W.Va. 580, 584, 328 S.E.2d 187, 191 (1985); *State v. Dandy*, 151 W.Va. 547, 564, 153 S.E.2d 507, 517 (1967); *State v. Siers*, W.Va. 30, 33, 136 S.E. 503, 504 (1927).

What distinguishes this case from most other cases in which a change of venue is sought is the fact this homicide occurred in a small county⁶ and involved a high profile person most people likely knew or heard of. In *State v. Sette*, 161 W.Va. 384, 242 S.E.2d 464 (1978), this Court reviewed a trial in Monongalia County where the defendant and his romantic partner were charged with plotting to murder the defendant’s spouse. *Id.* at 386, 242 S.E.2d at 467. The

⁶ In 2012, the population of Wayne County was 42,481. Available at <http://quickfacts.census.gov/qfd/states/54/54099.html> (last viewed June 10, 2013).

partner committed the murder and subsequently gave a confession implicating the defendant as the mastermind behind the murder. This Court stated “[f]acts like these produce sensational journalism in themselves.” *Id.* at 389, 242 S.E.2d at 468. This Court concluded that “[i]t would have almost been necessary for a resident of Monongalia County to be both blind and deaf for him not to have heard the sordid details of the case and to have formulated at least a tentative opinion.” 161 W.Va. at 390, 242 S.E.2d at 468-69. Consequently, the Court reversed the trial court’s refusal to grant a change of venue, explaining that “there would not have been in many other places the same daily repetition of the facts which so indelibly impressed the case upon any potential Monongalia County jury.” *Id.* at 392, 242 S.E.2d at 469. The same analysis is applicable here. Thus, it was extremely unlikely the citizens of Wayne County would be unaffected by the widespread publicity that attended this sensational crime and Mr. Skeens’ trial.

For all of the above reasons, the trial court abused its discretion in not granting Mr. Skeens a change of venue, impairing his right to a fair trial; therefore, Mr. Skeens’ conviction must be overturned.

CONCLUSION

Mr. Skeens respectfully requests that this Honorable Court reverse his conviction and sentence and remand this case to the Circuit Court of Wayne County for a new trial.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that I served the foregoing Petitioner's Brief and Appendix Record by delivering a true copy thereof to Benjamin Yancey, at the Attorney General's Office, State Capitol Complex, Building 1, Room W-435, Charleston, West Virginia 25305, this 3rd day of July, 2013.



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