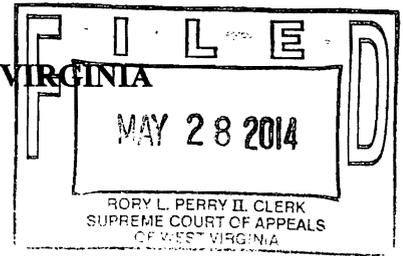


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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 13-1265



STATE OF WEST VIRGINIA,  
*Plaintiff below,*  
*Respondent,*

v.

MICHAEL L. YORK,  
*Defendant below,*  
*Petitioner.*

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RESPONDENT'S BRIEF

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## STATEMENT OF THE CASE

In 2012, Petitioner Michael York fatally shot three people with a 30-06 rifle outside his house in Webster County and then tried to hide one of the bodies by tying it to an ATV with an extension cord and attempting to drag it up a hill. When York's effort to conceal the body failed, he fled for Kentucky, making it as far as the Roane County border. York was eventually convicted on murder, conspiracy, felon-in-possession, and concealment-of-a-deceased-human-body charges. He is serving multiple life sentences without mercy as a result. The relevant facts from his five-day trial, viewed in the light most favorable to the State, are as follows.

### **I. Factual History.**

During the late afternoon on June 27, 2012, Denise Coates, Lamar Allen (a.k.a. "L.A. Coates"), and Dustin Brown went to the residence of Michael and Amanda York, apparently to repossess a washer and a dryer. (App.-I 31.)<sup>1</sup> At some point after they arrived, York went inside his house, retrieved his 30-06 rifle, returned outside, and fatally shot all three people. L.A. Coates was killed first, shot through the chest at a distance of greater than two feet (over five feet, in York's estimation, (App.-I 117; App.-II 553)); Denise Coates was shot once in the chest and twice in the back (App.-II 540); and Dustin Brown was shot twice in the back and once in the side (App.-II 551). York reloaded his rifle at least once during the shootings. (App.-II 453.) Although he claimed the shootings were made in self-defense, (App.-I 120), he also claimed he had no memory of what happened after he shot L.A. Coates, (App.-I 123), a claim his own expert doubted during his trial testimony, (App.-II 622).

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<sup>1</sup> The Appendix filed with Petitioner's Brief consists of essentially two volumes. The first volume, labeled "Appendix," consists of relevant trial documents. The second volume is the trial transcript. For ease of reference, these volumes will be referred to herein as App.-I and App.-II, respectively.

After the killing, York and his wife agreed that they would conceal at least one of the bodies. (App.-II 289.) They tied Dustin Brown's body to the back of an ATV with an orange extension cord and attempted to drag it up a hill. (*Id.*; App.-II 560.) Their plan failed, however, when the cord apparently broke. (App.-II 326-27.) Amanda York agreed to call 911 and tell police that she had killed the three people. Michael York then got in his 1991 Ford Bronco and drove west, heading for Ashland, Kentucky. (App.-I 119.) As York fled, Amanda called 911 at 6:42 p.m., (App.-II 357), and told authorities that she shot the three people, (App.-II 287, 305-07, 344).

Michael York was eventually arrested driving south on Interstate 79 in Roane County, West Virginia. (App.-II 295-96.) After being arrested, York gave a voluntary statement to police, admitting, "My wife never did nothing. I shot those people. Let my wife go." (App.-II 296.) Although York was prohibited from possessing firearms as a result of felonious assault and domestic violence convictions in Ohio, (App.-II 300), a number of firearms were found in the York home. (App.-II 291-93.)<sup>2</sup>

## **II. Procedural History.**

On January 16, 2013, Michael York was charged in a seven-count indictment. The Indictment alleged three counts of Murder in the First Degree (W. Va. Code § 61-2-1); one count of Concealment of a Deceased Human Body (W. Va. § 61-2-5a); one count of being a Prohibited Person Possessing a Firearm (W. Va. § 61-7-7(b)); and two counts of Conspiracy (to commit murder and to conceal a human body) (W. Va. § 61-10-31). (App.-I 4-7.) After prior attempts to

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<sup>2</sup> Amanda York was convicted of three counts of voluntary manslaughter and one count of conspiracy to conceal a deceased human body. Her appeal is also pending before this Court. *See State v. Amanda York*, No. 13-1312.

select a jury had failed, the site of the trial was moved to Braxton County, West Virginia, with Webster County Circuit Judge Alsop continuing to preside over the case. (App.-I 11.)

Following a five-day trial in September 2012, Michael York was found guilty on six of the seven counts of the Indictment. (App.-I 21-23.) With regard to the murder of L.A. Coates, the jury found York guilty of the lesser-included offense of second-degree murder, (App.-I 21), and it found him not guilty of conspiracy to commit murder, (App.-I 22). He was found guilty as charged on the other counts. (*Id.*)

Consequently, on September 30, 2012, York was sentenced to the following consecutive terms in prison: two terms of life without mercy (first-degree murder); one determinate term of 40 years (second-degree murder); one indeterminate term of 1 to 5 years (concealment); one determinate term of 5 years (firearm); and an indeterminate term of 1 to 5 years (conspiracy). (App.-I 30-33.) York now appeals his convictions.

#### **STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

Oral argument is unnecessary in this case. The briefs and records on appeal adequately present the facts and legal arguments. Oral argument would not significantly aid the decisional process, and a memorandum decision affirming the Circuit Court's ruling is appropriate. If, however, this Court determines that oral argument is necessary, argument under Rule 19 of the Revised Rules of Appellate Procedure would be appropriate.

## SUMMARY OF ARGUMENT

Michael York's four appellate claims lack merit and must be rejected. *First*, the Circuit Court rightfully rejected York's proposed instruction on "imperfect self-defense." The instructions given by the court were proper statements of the law, and the court did not abuse its discretion when it denied York's request.

*Second*, the Circuit Court acted within its discretion when it declined to remove a juror who had engaged in a short, innocuous conversation with a State witness during a break in the trial. After learning of the conversation, the court conducted a hearing, allowing counsel to question both the State's witness and the juror. After hearing this evidence, the court correctly determined that the content, length, and location of the conversation did not warrant striking the juror from the *petit* panel.

*Third*, the State offered sufficient trial evidence of York's malice in these three killings. York murdered three people with a hunting rifle outside his home, shooting two of them in the back and reloading as he fired. He then tried to conceal at least one body by tying it to an ATV and dragging it up a hill. When that effort failed, he fled. Although York's defense was that he was simply protecting himself, *even his own expert did not believe him*. The jury heard the competing evidence and found him guilty. There was more than sufficient evidence to find that the killings were committed with malice, and York fails to show that no reasonable juror would have found him guilty of murder.

And *fourth*, the Circuit Court did not shed its judicial role when it asked the State's medical examiner to confirm that since Denise Coates and Dustin Brown were shot in the back that York was necessarily behind them. The court's questions were intended only to clarify the

medical examiner's testimony, and they did not remove the judge from his position of impartiality and neutrality.

## ARGUMENT

### I. The Circuit Court Correctly Rejected York's Proposed Jury Instruction on "Imperfect Self-Defense."

York first contends that the Circuit Court erred when it refused to offer York's Proposed Instruction No. 14, which purported to instruct the jury on the theory of "imperfect self-defense." (Pet'r's Br. 15.) This claim is without merit.

Jury instructions are reviewed with deference on appeal. "A jury instruction cannot be dissected on appeal; instead, the entire instruction is looked at when determining its accuracy." *State v. Bradshaw*, 193 W. Va. 519, 543, 457 S.E.2d 456, 480 (1995). This Court "review[s] jury instructions to determine whether, taken as a whole and in light of the evidence, they mislead the jury or state the law incorrectly to the prejudice of the objecting party." *State v. Guthrie*, 194 W. Va. 657, 671-72, 461 S.E.2d 163, 177-78 (1995). "So long as they do not," this Court "review[s] the formulation of the instructions and the choice of language for an abuse of discretion" and "will reverse only if the instructions are incorrect as a matter of law or capable of confusing and thereby misleading the jury." *Id.* (footnotes omitted).

York claims that the Circuit Court abused its discretion by refusing to give York's proposed instruction on "imperfect self-defense":

That the Court instructs the jury that the law recognizes 'an imperfect self-defense'. This is more in the nature of perception based upon faulty analysis of the circumstances, or state of mind arising from a pattern or history of interaction, which would lead to a reaction based on fear of ones [sic] safety arising out of previous abuse. The theory underlying the doctrine of imperfect self-defense is that when a defendant uses deadly force with an honest but unreasonable belief

that it is necessary to defend himself, the element of malice, necessary for a murder conviction is lacking.

(App.-I 50.) But this is not the law in West Virginia, and the trial court was right to reject it.

In contending that he was entitled to an “imperfect self-defense” instruction, York relies almost solely on this Court’s decision in *State v. McCoy*, 219 W. Va. 130, 632 S.E.2d 70 (2006). That reliance is misplaced. Although *McCoy* mentions imperfect self-defense in a footnote, that doctrine has never been formally adopted in West Virginia. In *McCoy*, the trial court refused to allow the defendant to present any evidence of self-defense because it concluded that that defense was inconsistent with another defense—the insanity defense—that the defendant was also raising. *Id.* at 133, 73. *McCoy* recognized that this was error because inconsistent defenses are permissible, and because the jury may have used the evidence to convict the defendant of a lesser-included offense. *Id.* at 135-36, 75-76. But this Court did not approve any instruction resembling the one that York wanted the trial court to give to the jury here.

In contrast to the instruction that York wanted, the Circuit Court correctly instructed the jury on the law of self-defense in this state:

One of the questions determined by you in this case is whether or not the Defendants acted in self-defense so as to justify his or her acts. Under the law of this State, if the Defendant is not the aggressor and had reasonable grounds to believe and actually did believe that he or she was in imminent danger of death or seriously bodily injury from which he or she could save himself or herself only by using deadly force against his or her assailant, then he or she have the right to employ deadly force in order to defend himself or herself. By deadly force, is meant force which is likely to cause death or serious bodily harm.

In order for the Defendants to have been justified in the use of deadly force and self-defense, he or she must not have provoked the assault on him or her or have been the aggressor. Mere words without more, do not constitute provocation or aggression. The circumstances under which he or she acted must have been such as to produce in the minds of a reasonable prudent person, similarly situated with the reasonable belief that the other person was then about to kill him or her or to do serious bodily harm to him or her. In addition, the Defendant must have actually believed that he or she was in imminent danger of death or serious bodily injury and that deadly force must be used to repel it.

If evidence of self-defense is present, the State must prove beyond a reasonable [sic], the Defendants did not act in self-defense. If you find the State has failed to prove, beyond a reasonable doubt, the Defendants did not act in self-defense, you must find the Defendants not guilty. In other words, if you have a reasonable doubt as to whether or not the Defendant acted in self-defense, your verdict must be not guilty.

(App.-II 687-89.) The court also instructed the jury that it could not find malice if it found that York lacked “excuse, justification or provocation” for his acts. (App.-I 68.) And it instructed the jury on the lesser-included offenses of second-degree murder, voluntary manslaughter, and involuntary manslaughter. (App.-II 689-70.)

With regard to York’s proposed “imperfect self-defense” instruction, the Circuit Court explained “that language . . . seems to indicate, which I don’t believe is the law, that if your client’s beliefs turn out to be false, it would still justify self-defense and that’s not true unless your client’s beliefs were reasonable. So I’m concerned about that that’s a misstatement of the law.” (App.-II 650.) The court further explained that the jury had “to determine that his belief was reasonable at the time it happened, not that it was just his belief.” (*Id.*) Thus, the court rejected York’s proposed instruction on imperfect self-defense because it was confusing and redundant of the other, proper instructions being given. (App.-II 651.)

York’s proposed instruction was also improper because it was not supported by the evidence. Although “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,” *McCoy* at Syl. pt. 2, the converse is also true: a defendant cannot obtain an instruction for a defense that lacks evidentiary support. Here, seven witnesses testified for the State at York’s trial, including two sheriffs, three troopers, the 911 director, and the medical examiner. And only one witness testified for the defense, Dr. Bobby Miller, a hired expert who conceded during cross-examination that *he believed that York killed his three victims with malice.* (App.-II 629. (“Q

You also told me, and I think these are your words, ‘Did he have malice, yes.’ A Yes. Q And that was [sic] your words? A Yes.”.)<sup>3</sup> The jury was thus presented with evidence that York killed L.A. and Denise Coates and Dustin Brown with a hunting rifle at a distance outside his house, shooting the latter two victims in the back. Although York claims that his victims came to his house and “backed the Petitioner to his back door” and that he shot them in self-defense, no trial evidence substantiates his claim. Indeed, according to York, when the victims arrived and began to advance on him, he went back inside his house to retrieve his rifle and then re-emerged with it ready to fire. (App.-I-I 117, 131.) His acts speak for themselves and were clearly not taken in self-defense, reasonable or otherwise.

Given the trial evidence, York cannot identify any legal error in the court’s jury instructions, and his argument that the trial court failed in this regard must be rejected.

## **II. The Circuit Court Did Not Abuse Its Discretion When It Denied York’s Request to Strike Juror Bowman from the Petit Panel.**

Next, York contends that his convictions must be overturned because the Circuit Court allowed a juror to stay on the *petit* panel after she had had a brief conversation with a State witness. This claim too is reviewed for an abuse of discretion. *State v. Gilman*, 226 W. Va. 453, 462, 702 S.E.2d 276, 285 (2010) (per curiam).

With regard to contact between a trial witness and a juror, this Court has recognized that “there is no automatic requirement that mandates the reversal of a conviction whenever a witness for the State comes into contact with the jury.” *State v. Waugh*, 221 W. Va. 50, 56, 650 S.E.2d 149, 155 (2007). Rather, all that is required “is a factual analysis that focuses on the length and degree of contact between the jury and the witness, as well as an inquiry into whether the witness provided testimony that was crucial to the conviction, or merely formal in nature.” *Id.* In *State v.*

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<sup>3</sup> Neither Michael nor Amanda York testified at trial. (App.-II 638.)

*Holland*, for example, a state witness had a conversation with several jurors while the parties conducted an *in camera* hearing:

The record indicates that the conversation lasted approximately five minutes and occurred while the parties were engaged in *in camera* proceedings in the judge's chambers. Trooper McDonald testified that the subjects of the conversation included Calhoun County football games, deer hunting, and helicopter searches for marijuana. He testified that the defendant's case was not discussed nor was reference made to the subject of drinking or driving under the influence of alcohol. Trooper McDonald also had coffee with one of the jurors on the morning of the trial, but he testified that it was before he knew who the jurors were and the case was not discussed.

178 W. Va. 744, 748, 364 S.E.2d 535, 539 (1987). Despite recognizing the impropriety of that conversation (which was far more substantial than the conversation here between Deputy Cutlip and Juror Bowman), this Court held that the witness-juror contact did not entitle the defendant to relief. This Court explained that the communication had nothing to do with the case and that there was no prejudice that resulted from the encounter. *Id.* The same holds true here.

After interrupting the conversation between Deputy Cutlip and Juror Bowman, the Circuit Court notified the parties of the contact:

[A]s I was leaving the courthouse for lunch, I observed one of our jurors—I don't even know the juror's name, having a conversation with the witness, Jack Cutlip. It appeared to me, just from my observations, that she initiated the conversation. I didn't hear anything other than, "Are you related to Rick Cutlip" or words to that effect and I walked up to the juror and said, "You're a juror on this case?" She said, "Yes." I said, "You're not supposed to be having any conversations with the witness." She said, "Well, we weren't talking about the case." I said, "Well, no conversations." It stopped.

The court then allowed counsel to question Deputy Cutlip and Juror Bowman. Cutlip explained that the juror had simply asked him if he had a brother named Rick:

As I was coming down the steps, she was standing there at the wall and she asked me if my brother was Rick Cutlip. And I told her, I said, "I have a brother Rick Cutlip, but I'm not sure it's the same one." She said, "Well, he taught high school in Braxton County." I said, "That's the wrong one." And of course, that is when [the trial judge] came down the hall.

(App.-II 337.) Juror Bowman recalled the same conversation. She testified, “It was my fault. I asked him if he was related to Rick Cutlip because Rick is from Webster County and that’s all.” (App.-II 339.) She confirmed that they did not “have any conversation of any nature about this case.” (*Id.*) York then moved to strike Juror Bowman from the jury for her interaction with Deputy Cutlip. (App.-II 341.) The court took the motion under advisement, (App.-II 342), and later denied it. Contrary to York’s contention that the motion was denied “because there were no alternate jurors available to replace Juror Bowman at that time,” (Pet’r’s Br. 19), the Circuit Court explained that although the communication should not have occurred, it did not constitute cause to remove Juror Bowman. The trial judge considered various factors: there was no communication regarding the case; the communication was initiated by the juror, not the witness; and the conversation took place in a hallway, not in a private area. (App.-II 474.) The Circuit Court’s decision to allow Juror Bowman to remain on the jury panel was not an abuse of discretion, and this claim must be rejected.

### **III. The State Presented Sufficient Evidence to Prove that York Killed His Victims with Malice.**

York also argues that the State failed to introduce sufficient evidence that he killed his victims with malice. (Pet’r’s Br. 21.) York’s argument seems to rest on his claim that he killed all three of his unarmed victims in self-defense and there could thus be no finding of malice. (*Id.* at 22.) But this argument fails because the jury was presented with these competing theories and found that the State’s case was proven beyond a reasonable doubt and there is no ground for upsetting that jury determination.

This Court has recognized that “a criminal defendant challenging the sufficiency of the evidence to support a conviction takes on a heavy burden.” *Guthrie*, 194 W. Va. at 669, 461 S.E.2d at 175. After “review[ing] all the evidence, whether direct or circumstantial, in the light

most favorable to the prosecution” and after “credit[ing] all inferences and credibility assessments that the jury might have drawn in favor of the prosecution,” the jury’s 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.” *Id.* at 669-70, 175-76.

Viewing the record under this standard, it was certainly reasonable for the jury to find that York had the requisite malice to commit first and second degree murder. The evidence showed that York, after going inside his home to get a weapon, shot his victims with a rifle at significant distances outside of his home. Two of the victims were shot in the back, during which time York reloaded his rifle at least once. Then, after killing his victims, York tied Dustin Brown’s body to the back of an ATV and tried to drag it up a hill to conceal it. Furthermore, the defense’s own expert, Dr. Bobby Miller, testified that he believed York acted with malice and that York’s claimed lack of memory was likely not true. (App.-II 622 (“Q So it’s not something that he would forget an entire incident killing two people and dragging a body with a four-wheeler? A He did not.”).) In light of the overwhelming evidence introduced against him at trial, York’s claim that only an unreasonable jury could have found him guilty of murder is simply without merit.

#### **IV. The Circuit Judge’s Questions to the Medical Examiner Were Not an Abuse of Discretion.**

Finally, York’s claim that the Circuit Court “engaged in improper questioning of the medical examiner,” (Pet’r’s Br. 24), is without merit. “This Court will review a trial court’s questioning a witness under the abuse of discretion standard.” Syl. pt. 1, in part, *State v. Farmer*, 200 W. Va. 507, 490 S.E.2d 326 (1997).

It is axiomatic that “[a] trial judge in a criminal case has a right to control the orderly process of a trial and may intervene into the trial process for such purpose, so long as such

intervention does not operate to prejudice the defendant's case." Syl. pt. 4, in part, *State v. Burton*, 163 W. Va. 40, 254 S.E.2d 129 (1979). As such, "[t]he plain language of Rule 614(b) of the West Virginia Rules of Evidence authorizes trial courts to question witnesses—provided that such questioning is done in an impartial manner so as to not prejudice the parties." *Farmer* at Syl. Pt. 3.

Nothing in the record even remotely suggests that the Circuit Court abandoned its role of impartiality and neutrality with its questions to the medical examiner. The Circuit Court simply asked the medical examiner to clarify two answers he had already given. First, he asked the medical examiner to verify that his opinions were given to a reasonable degree of medical certainty. And second, he asked the medical examiner to confirm that if two of the victims' entrance wounds were in their back, then necessarily they were shot from behind. (App.-II 569-71.) Nothing about the court's questions was partial to the State or prejudicial to the defense, and this claim must be rejected.

## CONCLUSION

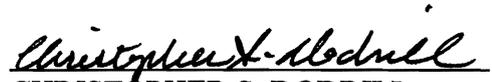
For the foregoing reasons, the judgment of the Circuit Court of Webster County, West Virginia, must be affirmed.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Christopher S. Dodrill, Assistant Attorney General and counsel for the Respondent, hereby verify that I have served a true copy of "Respondent's Brief" upon counsel for the Petitioner by depositing said copy in the United States mail, with first-class postage prepaid, on this 28th day of May, 2014, addressed as follows:

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