

14-0321

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

vs.

Indictment No. 12-F-201-1
Honorable John Lewis Marks, Jr.

WILLIAM B. MURRAY,

Defendant.

**ORDER FOLLOWING HEARING ON POST-TRIAL MOTIONS/ SENTENCING ORDER/
ORDER COMMITTING DEFENDANT TO CUSTODY OF COMMISSIONER OF THE
WEST VIRGINIA DIVISION OF CORRECTIONS**

On the 10th day of February, 2014, came the State of West Virginia by Traci M. Cook, Assistant Prosecuting Attorney for Harrison County, West Virginia, and Laura B. Pickens, Assistant Prosecuting Attorney for Harrison County, West Virginia, and came also the defendant, William B. Murray, in person and in the custody of the Sheriff of Harrison County, West Virginia, and by his counsel, Jonathan Fittro, Esquire, and Jason Glass, Esquire. Also present for said proceedings were Sergeant R. G. Waybright, II of the Harrison County Sheriff's Department and Michael Burnside, Adult Probation Officer. All parties were present for a sentencing hearing in the above-styled indictment.

Whereupon, the Court reviewed the procedural history of the above captioned matter for the record.

Thereupon, the Court acknowledged receipt of the defendant's Motion for Judgment of Acquittal and Motion for a New Trial and acknowledged receipt of the State's response thereto.

Thereupon, the Court addressed the defendant's written and oral Motion for Judgment of Acquittal and heard the arguments of counsel, which arguments are more fully set forth on the record.

Whereupon, the Court did **FIND** that looking at the evidence in the light most favorable to the State, there was substantial evidence presented at trial from which the jury could deliberate and consider as to the offense of Murder of the First Degree as charged in Count One of the Indictment and the offense of Concealment of a Deceased Human Body as charged in Count Three of the Indictment; that the credibility determination was an issue for the jury; that the Court gave the appropriate jury instruction regarding accomplice testimony; that the Court cannot make its own credibility determinations; and there was sufficient evidence presented to the jury upon which the jury could find the defendant guilty beyond a reasonable doubt upon the offense of Murder of the First Degree as charged in Count One of the Indictment and the offense of Concealment of a Deceased Human Body as charged in Count Three of the Indictment.

Accordingly, the Court did **DENY** the defendant's written and oral Motion for Judgment of Acquittal.

Thereupon, the Court addressed the defendant's Motion for a New Trial and heard the arguments of counsel, which arguments are more fully set forth on the record.

Whereupon, the Court noted that the defendant's Motion for a New Trial sets forth two grounds for a new trial: 1) erroneous admission of a video-recording of the defendant at the Harrison County Sheriff's Department because it was not relevant and more prejudicial than probative of any issue of fact; and 2) the evidence admitted at trial was excessive such that the defendant was prejudiced. The Court did **FIND** that the video-recording of the defendant at the Harrison County Sheriff's Department was part of the statement that the defendant gave at the Harrison County Sheriff's Department; that the defendant's actions and demeanor at the time of his statement were relevant; that the video-recording was probative and that its

probative value was not substantially outweighed by unfair prejudice as previously set forth by the Court on the record; and the Court properly instructed the jury that it was for the jury to determine what was said by the defendant in the recording. The Court did further **FIND** that a Judge cannot be a thirteenth juror; the Judge judges the law; the jury judges the facts; and the jury did not render their verdicts lightly.

Accordingly, the Court did **DENY** the defendant's Motion for a New Trial as to the video and did **DENY** the defendant's Motion for a New Trial as to extreme evidence.

Thereupon, the Court acknowledged receipt of the Presentence Investigation Report, prepared by Virginia Baker, Adult Probation Officer.

Thereupon, counsel for the State represented unto the Court that she had received and reviewed a copy of the Presentence Investigation Report and desired no corrections or modifications to the same.

Thereupon, counsel for the defendant represented unto the Court that counsel had received a copy of the Presentence Investigation Report, but the defendant was not provided with a copy of the Presentence Investigation Report to review in this matter.

Thereupon, the Court stood in recess to allow counsel for the defendant to review the Presentence Investigation Report with the defendant.

Thereupon, the Court reconvened.

Thereupon, counsel for the defendant advised the Court that the defendant had two minor corrections to the Presentence Investigation Report. Counsel for the defendant noted two corrections on page 4 of the Presentence Investigation Report, to which the Court advised that the matters to be corrected would not enter into the Court's decision as to the appropriate sentence.

Thereupon, counsel for the State advised that she did not object to the corrections noted by the defendant.

The Court, thereupon, **ORDERED** that the corrected Presentence Investigation Report prepared by Virginia Baker be filed and made a part of the record in this case.

Thereupon, counsel for the State addressed the Court as to sentencing in this matter.

Thereupon, the victim's mother, Tina Painter, addressed the Court relative to sentencing.

Thereupon, counsel for the defendant addressed the Court as to sentencing in this matter.

Thereupon, the Court advised the defendant of his right of allocution, and the defendant, William B. Murray, addressed the Court relative to sentencing in this matter.

Thereupon, the Court did **FIND** that it has no discretion as to sentencing in this matter as to the defendant's conviction for the offense of Murder of the First Degree as charged in Count One of the Indictment.

Nothing further being offered in delay of judgment herein with regard to defendant's finding of guilty to the felony offense of Murder in the First Degree without Mercy as charged in Count One of the Indictment in this case, it was considered and **ORDERED** by the Court that said defendant, William B. Murray, be committed to the custody of the Commissioner of the West Virginia Division of Corrections for a term of life from the 15th day of January, 2012, thereby giving the defendant credit for time previously served. Further, the Court **will not** make a recommendation that the defendant, William B. Murray, be considered for parole based upon the finding by the jury.

Nothing further being offered in delay of judgment herein with regard to defendant's finding of guilty to the felony offense of Concealment of Deceased Human Body as charged in Count Two of the Indictment in this case, it was considered and **ORDERED** by the Court that said defendant, William B. Murray, be committed to the custody of the Commissioner of the West Virginia Division of Corrections for a term of not less than one (1) year nor more than five (5) years from the 15th day of January, 2012, thereby giving the defendant credit for time previously served. It is further **ORDERED** that said sentence shall be served *concurrently* with the defendant's sentence imposed pursuant to his finding of guilty to the felony offense of Murder in the First Degree as charged in Count One of the Indictment in this case. It is further **ORDERED** that the defendant, William B. Murray, shall pay a fine in the amount of One Thousand Dollars (\$1,000.00) pursuant to his finding of guilty to the felony offense of Concealment of Deceased Human Body as charged in Count Two of the Indictment in this case.

It was further **ORDERED** that the defendant, William B. Murray, shall pay the costs of these proceedings and the State of West Virginia shall have a judgment against the defendant for the amount of said costs.

It was further **ORDERED** that the defendant, William B. Murray, shall make restitution in the amount of Seven Hundred Fourteen Dollars (\$714.00), within one (1) year from his release from imprisonment, to W. A. Hartman Memorials, and W. A. Hartman Memorials shall have a judgment against the defendant for the amount of said restitution. Said restitution shall be paid to the Clerk of this Court and upon receipt of said restitution, the Clerk of this Court shall release said restitution to W. A. Hartman Memorials located at 459 Noll Drive, Harrisonburg, Virginia 22802. It was further **ORDERED** that the defendant, William B.

Murray, shall be held jointly and severally liable with Clayton S. Collins, in Indictment Number 12-F-169-1, for the aforementioned amount of restitution owed to W. A. Hartman Memorials.

It was further **ORDERED** that the defendant, William B. Murray, shall make restitution in the amount of Three Thousand Fifty-Seven Dollars and Seventy Cents (\$3,057.70), within one (1) year from his release from imprisonment, to West Virginia Crime Victims Compensation Fund and West Virginia Crime Victims Compensation Fund shall have a judgment against the defendant for the amount of said restitution. Said restitution shall be paid to the Clerk of this Court and upon receipt of said restitution, the Clerk of this Court shall release said restitution to West Virginia Crime Victims Compensation Fund, RE: CV-12-0417-Z, located at 1900 Kanawha Blvd E., Room W-334, Charleston, West Virginia 25305-0610. It was further **ORDERED** that the defendant, William B. Murray, shall be held jointly and severally liable with Clayton S. Collins, in Indictment Number 12-F-169-1, for the aforementioned amount of restitution owed to West Virginia Crime Victims Compensation Fund.

Thereupon, the Court addressed certain letters received by the Court regarding the representation by counsel for the defendant and noted that any such complaint is to be addressed by a post-conviction habeas corpus petition.

Whereupon, the Court advised the defendant of his appeal rights.

Thereupon, the Court advised the defendant that pursuant to Chapter 62, Article 4, Section 17 of the Code of West Virginia, if costs, fines, forfeitures, penalties or restitution imposed by the Court on the defendant in this matter are not paid in full when Ordered to do so by the Court, the Circuit Clerk shall notify the West Virginia Division of Motor Vehicles of such failure to pay and upon such notice, the Division of Motor Vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until such time

that the costs, fines, forfeitures or penalties are paid. Thereupon, it was Ordered that the original written notice be filed and made a part of the record in this case and a copy was provided to the defendant.

Whereupon, the defendant was remanded to the custody of the Sheriff of Harrison County, West Virginia for transport to the North Central Regional Jail and Correctional Facility to await transfer to the West Virginia Division of Corrections.

COUNT ONE: MURDER IN THE FIRST DEGREE
LIFE WITHOUT MERCY

CONVICTION DATE: JULY 16, 2013
SENTENCE DATE: FEBRUARY 10, 2014
EFFECTIVE SENTENCE DATE: JANUARY 15, 2012

COUNT THREE: CONCEALMENT OF DECEASED HUMAN BODY
NOT LESS THAN ONE (1) YEAR NOR MORE THAN FIVE (5) YEARS
ONE THOUNDAND DOLLAR (\$1,000.00) FINE

CONVICTION DATE: JULY 16, 2013
SENTENCE DATE: FEBRUARY 10, 2014
EFFECTIVE SENTENCE DATE: JANUARY 15, 2012
TO BE SERVED CONCURRENTLY
WITH THE SENTENCE IMPOSED
FOR MURDER IN THE FIRST
DEGREE AS CHARGED IN COUNT
ONE OF THE INDICTMENT

It was further **ORDERED** that the Clerk of this Court transmit a copy of this Order, duly certified, to the following parties:

Traci M. Cook, Esq.
Laura B. Pickens
Assistant Prosecuting Attorney
Suite 201, Courthouse
301 West Main Street
Clarksburg, West Virginia 26301

Jonathan Fittro Esq.
Counsel for Defendant
P.O. Box 1636
Clarksburg, West Virginia 26302-1636

Harrison County Adult Probation Office
Third Floor, Courthouse
301 West Main Street
Clarksburg, West Virginia 26301

Jason Glass, Esq.
Counsel for Defendant
P.O. Box 4388
Clarksburg, West Virginia 26302-4388

North Central Regional Jail
and Correctional Facility
#1 Lois Lane
Greenwood, West Virginia 26415

West Virginia Department of Corrections
112 California Avenue
Charleston, West Virginia 25305

W. A. Hartman Memorials
459 Noll Drive
Harrisonburg, Virginia 22802

WV Crime Victims Compensation Fund
Re: CV-12-0417-Z
1900 Kanawha Blvd E., Room 334
Charleston, West Virginia 25305-0610

ENTER:

February 18, 2014

John Lewis Marks, Jr.

HONORABLE JOHN LEWIS MARKS, JR.,
Judge, Division 1

SUBMITTED BY:

[Signature]

TRACY M. COOK, W. Va. Bar Id. 7147
Assistant Prosecuting Attorney

[Signature]
LAURA B. PICKENS, W. Va. Bar Id. 6221
Counsel for Defendant

APPROVED AS TO FORM BY:

[Signature]
JONATHAN FITTRO, W. Va. Bar Id 7967
Counsel for Defendant

[Signature]
JASON GLASS, W. Va. Bar Id 9966
Counsel for Defendant

JUDICIAL CIRCUIT CLERK
COUNTY OF HARRISON, WEST VIRGINIA

I, Donald E. Kopp II, Clerk of the Fifteenth Judicial Circuit and the 18th
Family Court Circuit of Harrison County, West Virginia, hereby certify the
foregoing to be a true copy of the ORDER entered in the above styled action
on the 18 day of February, 2014.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix

Seal of the Court this 18 day of February, 2014.

Donald E. Kopp II
Fifteenth Judicial Circuit & 18th Family Court
Circuit Clerk
Harrison County, West Virginia

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

VS.

FELONY CASE NO(S):12-F-201-1(Appeal)
(John Lewis Marks, Jr., Judge)

WILLIAM MURRAY,
Defendant.

ORDER APPOINTING COUNSEL

An affidavit has been filed with this Court reciting that the defendant in the above-styled matter is financially unable to employ counsel for representation in certain proceedings before this Court. After reviewing the affidavit and considering the matter, the Court is of the opinion, the eligibility requirements of West Virginia Code §29-21-1, et. seq. are satisfied. Accordingly, the Court **ORDERS:**

That JASON GLASS AND JONATHAN FITTRO, licensed Attorneys at Law practicing before the Bar of this Court, are appointed to represent the defendant in his appeal in the above-styled matter.

It is further **ORDERED** that the Clerk of this Court send a certified copy of this Order to Office of the Prosecuting Attorney for Harrison County, West Virginia, Harrison County Courthouse, 301 W. Main Street, Clarksburg, WV 26301; to Jason Glass, Esq., Attorney at Law, PO Box 4388, Clarksburg, WV 26302; and to Jonathan Fittro, Esq., Attorney at Law, PO Box 1636, Clarksburg, WV 26302.

ENTER:

February 14, 2014

John Lewis Marks, Jr.

John Lewis Marks, Jr., Judge