H-Smith

14-0876

IN THE CIRCUIT COURT OF UPSHUR COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,
PLAINTIFF,

VS. **CASE NO. 12-F-17**

HOWARD CLARENCE JENNER,
DEFENDANT.

TRIAL ORDER

On the 21st day of April, 2014, came the State of West Virginia, by Jacob E. Reger, Prosecuting Attorney in and for Upshur County, West Virginia, and Kelley J. Cunningham, Assistant Prosecuting Attorney in and for Upshur County, West Virginia, and also came the Defendant, Howard Clarence Jenner, in his own proper person, and being represented and assisted by Harry A. Smith, III, Counsel for the Defendant, and particularly for the trial of this matter.

Thereupon, the Court proceeded to an in-camera hearing in regard to the objection of counsel for the Defendant of a photograph of the Defendant, Howard Clarence Jenner, in a T-shirt with descriptive writing on it, which the Defendant was wearing when he was apprehended, to which objection, the State did argue its position as to the admissibility of said photograph, and the Court will take this matter under advisement.

Thereupon, the Court proceeded to hear argument by counsel as to the photograph of a portion of flesh and the Court finds that the probative value outweighs the prejudicial effect and does hereby order that both photographs be permitted into evidence, and the Court noted the Defendant's objection.

The Court further noted for the record that it intends to permit the jury to take notes during the trial, and the State, by its Prosecuting Attorney and Counsel for Defendant had no objection.

The Court proceeded to fully explain to the Defendant the nature of the charges contained in the Indictment and the penalties therefore, as prescribed by the laws and statutes of the State of West Virginia, and the various pleas which the Defendant might enter upon arraignment and did further explain to the Defendant all of the Defendant's constitutional and legal rights, as prescribed by the laws and statutes of the State of West Virginia, and all other matters arising thereon or being pertinent thereto, and at the conclusion thereof the Defendant stated, in his own proper person, that he fully understood all matters explained to him by the Court and that he was ready to be arraigned upon the Indictment in this case.

Thereupon, the Court inquired of the Defendant if the Defendant desired to waive the formal reading of the Indictment herein, and with the advice and consent of said counsel, the Defendant waived all rights to the formal reading of the Indictment herein.

Thereupon, the Court proceeded to arraign the Defendant upon the charge of Murder, a felony, as contained in the First Count of the Indictment herein returned against him at the Bar of this Court, and the Defendant, Howard Clarence Jenner, for answer and plea thereto, stated in his own proper person, that he is not guilty of the offense of Murder, a felony, as contained in the First Count of the Indictment herein, which said plea of not guilty is now accepted and received by the Court and made a part of the record in this case.

Thereupon, the Court proceeded to arraign the Defendant upon the charge of Attempted Murder, a felony, as contained in the Second Count of the Indictment herein returned against him

at the Bar of this Court, and the Defendant, Howard Clarence Jenner, for answer and plea thereto, stated in his own proper person, that he is not guilty of the offense of Attempted Murder, a felony, as contained in the Second Count of the Indictment herein, which said plea of not guilty is now accepted and received by the Court and made a part of the record in this case.

Thereupon, the Court proceeded to arraign the Defendant upon the charge of Malicious Assault, a felony, as contained in the Third Count of the Indictment herein returned against him at the Bar of this Court, and the Defendant, Howard Clarence Jenner, for answer and plea thereto, stated in his own proper person, that he is not guilty of the offense of Malicious Assault, a felony, as contained in the Third Count of the Indictment herein, which said plea of not guilty is now accepted and received by the Court and made a part of the record in this case.

And of this, the said Defendant puts himself on the Country and issue is thereon joined.

Thereupon, the Court called this case on for trial, and the State of West Virginia, by said Prosecuting Attorney, and the Defendant, by counsel, each informed the Court that they were ready for trial upon the issues herein joined.

Thereupon, the Defendant, by counsel, moved to sequester all witnesses in this case, and there being no objection by the State, said motion to sequester all witnesses is hereby granted, and it is ADJUDGED and ORDERED that all witnesses are hereby sequestered from the Courtroom.

Thereupon, the State, by its Prosecuting Attorney, moved that Chief Deputy Virgil D. Miller, the investigating officer in this case, be allowed to remain at counsel table, and the Defendant, by counsel, had no objection, and the Court deeming it proper does hereby GRANT said motion.

Thereupon, the Court does hereby recess this matter until all jurors are present.

Thereupon, at the hour of 9:10 A.M. the parties and the jury were present in the Courtroom.

Thereupon, the Court called roll for the jurors selected for this trial and said twelve (12) jurors and two (2) alternate jurors were duly sworn by the Clerk of this Court upon their respective oaths for the trial of this case.

Thereupon, after opening statements by both the State of West Virginia, by said Prosecuting Attorney, and the Defendant, by counsel, the State of West Virginia, by said Prosecuting Attorney, proceeded with the taking of testimony and the production of evidence on behalf of the State of West Virginia, and adduced the sworn testimony of Sherman Truax, Nicholas Truax and Tyson Tomey.

Thereupon, at the hour of 10:20 A.M. the Court recessed.

Thereupon, at the hour of 10:40 A.M. the parties and the jury returned to Court.

Thereupon, the State of West Virginia further proceeded with the taking of testimony of Chief Deputy Virgil D. Miller, Cpl. B. K. Wright, Lt. Mark Davis.

Thereupon, at the hour of 12:00 P.M., the Court recessed for lunch.

Thereupon, at the hour of 1:30 P.M. the parties returned to Court.

Thereupon, at the hour of 2:00 P.M. the jury returned to the Courtroom.

Thereupon, the State of West Virginia further proceeded with the taking of testimony of Cpl. C. J. Day and Cpl. Rodney S. Rolenson.

Thereupon, at the hour of 3:25 P.M., the Court took an afternoon recess.

Thereupon, at the hour of 3:40 P.M. the parties returned to the Courtroom.

Thereupon, the parties discussed outside the presence of the jury the written stipulation regarding Lt. David Malcomb, and the Court will wait until Tuesday morning to see if Lt. Malcomb's status has improved and the parties had no objection to waiting.

Thereupon, the State of West Virginia further proceeded with the taking of testimony of Cpl. Rodney S. Rolenson.

Thereupon, the parties retired to the Judge's chambers to discuss an issue outside of the presence of the jury.

Thereupon, the parties returned to the Courtroom.

Thereupon, at the hour of 4:20 P.M. the Court recessed for the day, after instructing the jury as to their conduct during the overnight recess.

Thereupon, on April 22, 2014, at the hour of 8:30 A.M. the parties and the jury returned for continuance of trial.

Thereupon, at the hour of 9:00 A.M. the jury was returned to the Courtroom.

Thereupon, the Court read the stipulation agreed to by the parties concerning Lt. D. B. Malcomb's involvement in the taking of the Defendant's statement.

Thereupon, the State of West Virginia further proceeded with the taking of testimony of Keith, Queen, Dr. Susan Venuti, Terry Blake, Eugene Greathouse and Dr. Allison Wilson.

Thereupon, the Court at 10:20 A.M. took a morning recess.

Thereupon, at 10:30 A.M. the parties and the jury returned to the Courtroom.

Thereupon, the State of West Virginia proceeded with the taking of testimony of Linda Tenney, Sgt. Thomas A. Posey and Cpl. M. S. Clark.

Thereupon, the Court, at 11:30 A.M. recessed for lunch.

Thereupon, at 1:00 P.M. the parties and the jury returned to the Courtroom.

Thereupon, the Court, after having taken the matter under advisement, granted the Defendant's motion to suppress the introduction of a photograph of the t-shirt the Defendant was wearing at the time he was apprehended because the prejudicial effect of said photograph outweighs the probative value of said photograph.

Thereupon, the Court, does hereby ADJUDGE and ORDER that said photograph of the Defendant is suppressed during the trial phase of the Defendant on the charges included in the Indictment, but not during the trial on the issues of mercy.

Thereupon, the State of West Virginia proceeded with the taking of testimony of Chief Deputy Virgil D. Miller, Nicole MacEwan and Calissa Carper.

Thereupon, the Court, at 2:50 P.M. took an afternoon recess.

Thereupon, at 3:05 P.M. the parties and the jury returned to the Courtroom.

Thereupon, the State of West Virginia proceeded with the testimony of Sherman Truax, and at the conclusion thereof, the State rested its case.

Thereupon, the Defendant, by counsel, moved the Court for a directed verdict and a verdict of acquittal on the grounds that the State had failed to make and establish a prima facie case herein to which motion the State objected, and after due and mature consideration, the Court is of the opinion to and does hereby overrule and deny said motion.

Thereupon, the Court dismissed the jury until 9:00 A.M. on April 23, 2014, after instructing the jury as to their conduct during the overnight recess.

Thereupon, the Court recessed for the day.

Thereupon, on the 23rd day of April, 2014, again came the parties for further proceedings as the law may require.

Thereupon, the Court, outside the presence of the jury, advised the Defendant of his right to testify in this matter, whereupon the Defendant, in person, advised the Court that he waived his right to testify and thereupon, the Court finds that the Defendant knowingly, intelligently, voluntarily and with the advice of counsel, waives his right to testify.

Thereupon, at 9:15 A.M., the jury, all members being present, returned to the Courtroom.

Thereupon, the Court, advised the jury as to the stipulation of the 12/22/11 Upshur County Emergency 911 call sheets, Pierpont Community College admissions and that the Defendant stayed 6 nights at the Baxa Motel.

Thereupon, the Defendant rested its case.

Thereupon, there being no additional evidence or testimony to offer on behalf of the Defendant, the Court advised the Defendant that he could participate in the jury instruction review and the Defendant advised the Court that he wished to be present.

Thereupon, the Court recessed to review jury instructions with the parties.

Thereupon, the Court, recessed until 11:00 A.M.

Thereupon, at 10:55 A.M. the parties returned to the Courtroom and the parties had no objection to the jury instructions nor the Judge's charge.

Thereupon, at 11:00 A.M. the jury returned to the Courtroom and the Court instructed the jury upon the law applicable to the evidence and testimony presented to the jury in this case and to the issues arising herein, by means of reading said instructions to said jury.

Thereupon, at 11:44 A.M. the Court, heard the closing arguments of said Prosecuting Attorney, on behalf of the State of West Virginia, and of counsel for the Defendant as well.

Thereupon, at 12:34 P.M. the jury retired into the jury room to consider of the verdict to be returned in this case.

Thereupon, the Court excused the two (2) alternate jurors.

Thereupon, at 12:45 P.M. the jury informed the Bailiff they would like a fifteen (15) minute recess and then they would continue their deliberation, to which request the parties had no objection.

Thereupon, the Court, recessed until 1:05 P.M.

Thereupon, at 1:05 P.M. the jury returned to the jury room to continue deliberation in this matter.

Thereupon, at 1:25 P.M. the parties returned into Court and the Court was advised by the Bailiff that the jury had reached a verdict in regards to the allegations set forth and contained in the Indictment herein.

Thereupon, the jury returned into Court and announced in open Court that the jury had reached a verdict in regards to the Indictment herein.

Thereupon, the Court inquired of the foreman of said jury as to the verdict herein, and the foreman informed the Court that the jury had unanimously found the Defendant GUILTY of the charge of Murder in the First Degree, a felony, as contained in the First Count of the Indictment, which said verdict was received and accepted by the Court without objection on the part of the parties hereto.

Thereupon, the Court inquired of the foreman of said jury as to the verdict herein, and the foreman informed the Court that the jury had unanimously found the Defendant GUILTY of the charge of Attempted Murder, a felony, as contained in the Second Count of the Indictment, which said verdict was received and accepted by the Court without objection on the part of the parties hereto.

Thereupon, the Court inquired of the foreman of said jury as to the verdict herein, and the foreman informed the Court that the jury had unanimously found the Defendant GUILTY of the charge of Malicious Assault, a felony, as contained in the Third Count of the Indictment, which said verdict was received and accepted by the Court without objection on the part of the parties hereto.

Thereupon, the Defendant, by counsel, moved the Court for a jury poll, and the Court does hereby grant said motion, whereupon the jury was polled.

Thereupon, the Court finds the Defendant guilty based upon the jury's verdict.

Thereupon, the Court advised the jurors that they would need to determine if they would recommend mercy or not upon the Murder in the First Degree conviction.

Thereupon, at the hour of 1:44 P.M. the Court dismissed the jury for the day, after instructing the jury as to their conduct during the overnight recess.

Thereupon, the Defendant, moved to set aside the jury's verdict based upon the fact that the jury had not deliberated long enough therefore there was not sufficient time for the jury to review all the evidence and possible verdicts, to which motion the Court does hereby DENY.

Thereupon, the Court does hereby ADJUDGE and ORDER that the Court is in recess until April 24, 2014, at 8:30 A.M.

Thereupon, on the 24th day of April, 2014, at 9:02 A.M. again came the parties and twelve (12) regular jurors and the two (2) alternate jurors for further proceedings as the law may require.

Thereupon, after the Clerk took roll of the jury, the Court does hereby release the two (2) alternate jurors in this matter.

Thereupon, the Court instructed the jury and advised them of the process for the mercy phase of the trial.

Thereupon, the Court hearing opening statements by counsel for the Defendant and the State.

Thereupon, the Defendant further proceeded with the taking of testimony of Dr. Robert J. Rush and Elizabeth Grinstaff.

Thereupon, the Defendant rested.

Thereupon, the State further proceeded with the taking of testimony of Chief Deputy Virgil D. Miller, Sherman Truax and Nicholas Truax.

Thereupon, the State rested.

Thereupon, the Court requested the foreperson of the trial to act as foreperson for the mercy phase since all original jurors have returned.

Thereupon, the Court heard closing statements by the Defendant and the State.

Thereupon, at 11:12 A.M. the jury retired to the jury room.

Thereupon, the Court recessed.

Thereupon, at 11:41 A.M. all parties returned to the Courtroom and the jury had advised the Bailiff that they would like to recess for lunch.

Thereupon, the Court again instructed the jury as to their conduct during the lunch recess and then recessed Court until 1:00 P.M.

Thereupon, at 12:58 P.M. counsel returned to the Courtroom, the Defendant was not present, and the jury returned and was in the jury room.

Thereupon, at 1:00 P.M. the Court recessed awaiting verdict.

Thereupon, at 1:10 P.M. all parties returned to Courtroom.

Thereupon, the jury returned to the Courtroom and the jury foreman informed the Court that the jury had reached a verdict of no mercy on the Defendant's conviction of Murder in the First Degree.

Thereupon, the Defendant, by counsel, requested a poll of the jury.

Thereupon, the Court, instructed the jury about discussing this matter during this term of Court and thereafter released the jury.

Thereupon, the Court does hereby ORDER the verdict form filed.

Thereupon, the Court does hereby ADJUDGE and ORDER that post-trial motions are hereby ordered to be filed with the Court and hearing on post-trial motions and sentencing on the Defendant's conviction on the Second Count and the Third Count of the Indictment is hereby continued until **June 30, 2014**, at the hour of **2:00 o'clock P.M.**, on said day and all parties herein are directed to return into this Court on said day for further proceedings as the law may require.

It is accordingly ADJUDGED and ORDERED that Serena R. Peterson, Probation Officer for the 26th Judicial Circuit of the State of West Virginia, cause to be made a thorough and complete investigation into the background and circumstances of the Defendant, including victim

impact statement, for the purpose of assisting the Court in the exercise of its sentencing discretion on the Second Count and Third Count of the Indictment and for the purpose of determining whether the Defendant is eligible for probation and the advisability of so doing, and it is further ADJUDGED and ORDERED that said Probation Officer tender unto this Court a written report of her findings and recommendations on or before **June 30, 2014.**

It is further ADJUDGED and ORDERED that the Defendant is hereby remanded to the custody of the Sheriff of Upshur County, West Virginia, to be by said Sheriff transported to the Tygart Valley Regional Jail to await further proceedings.

It is further ADJUDGED and ORDERED that the Clerk of this Court make and prepare certified copies of this Order and transmit the same to the following parties:

1. Jacob E. Reger, Prosecuting Attorney, 38 W. Main St, Buckhannon, WV 26201;
2. Harry A. Smith, III, Counsel for Defendant, P.O. Box 1909, Elkins, WV 26241;
3. Serena R. Peterson, Probation Officer, P.O. Box 737, Buckhannon, WV 26201;
4. Tygart Valley Regional Jail, 400 Abbey Road, Belington, WV 26250.

which said copies shall serve as adequate and sufficient notice of all matters had and taken herein.

ORDER ENTERED: 5/20/14

UPSHUR COUNTY, W.V.
FILED
2014 MAY 21 A 9:06
BRIAN GAUDET
CIRCUIT CLERK

Judge of the Circuit Court
of Upshur County, West Virginia

CC-5/21/14
As Listed

ATTEST: A true copy from the records located in the office of the Clerk of the Circuit Court of Upshur County, West Virginia.

Given under my hand 5/21/14
BRIAN P. GAUDET, CLERK

By
Deputy Clerk

H. Smith, III

IN THE CIRCUIT COURT OF UPSHUR COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,
PLAINTIFF,

VS. **CASE NO. 12-F-17**

HOWARD CLARENCE JENNER,
DEFENDANT.

SENTENCING ORDER

On the 4th day of August, 2014, came the State of West Virginia, by Jacob E. Reger, Prosecuting Attorney in and for Upshur County, West Virginia, and also came the Defendant, Howard Clarence Jenner, in his own proper person, and being represented and assisted by Harry A. Smith, III, upon all prior proceedings had and taken herein.

Thereupon, pursuant to and in conformity with a prior Order of this Court made and entered in this case, Jason A. Kelley, Probation Officer for the 26th Judicial Circuit of the State of West Virginia, tendered to the Court his written report of the Pre-Sentence Investigation conducted by him, which said report, together with the findings and recommendations contained therein, after having been first duly seen and inspected by the Court, is now accepted and received by the Court and is ORDERED filed and made a part of the record in this case, and at the conclusion thereof, the Court inquired of the Defendant if the Defendant had any objection to the contents of said report and the Defendant stated to the Court that the Defendant did not object to the contents of said report and had nothing further to offer in alteration or mitigation of the facts and allegations contained therein.

Thereupon, the Court took time to consider of the matters contained in said written report of the said Jason A. Kelley, Probation Officer for the 26th Judicial Circuit of the State of West Virginia, together with the findings and recommendations contained therein.

Thereupon, the Court inquired of the Defendant if he had anything further to say or offer prior to judgment and sentence being pronounced against him, and no sufficient cause or reason to the contrary being shown or appearing to the Court, and the Defendant offering nothing in delay or arrest of judgment and sentence upon the Defendant's plea of guilty and conviction of the offense of First Degree Murder, a felony, in manner and form as the State of West Virginia has charged in the First Count of said said Indictment, it is, therefore, accordingly ADJUDGED and ORDERED that the Defendant, be confined and imprisoned in the Mount Olive Correctional Complex situate in Mount Olive, in Fayette County, West Virginia, for the rest and remainder of his natural lifetime with no recommendation of mercy, pursuant to the jury not recommending mercy and pursuant to the terms and provisions of Chapter 62, Article 2, Section 1 of the West Virginia Code, as amended.

It is further ADJUDGED and ORDERED that the conviction date shall be April 22, 2014, the sentence date shall be August 4, 2014, and the effective date shall be December 23, 2011, thereby awarding 955 days credit at the Tygart Valley Regional Jail.

Thereupon, the Court inquired of the Defendant if he had anything further to say or offer prior to judgment and sentence being pronounced against him, and no sufficient cause or reason to the contrary being shown or appearing to the Court, and the Defendant offering nothing in delay or arrest of judgment and sentence upon the Defendant's conviction of the offense of Attempted Murder, a felony, in manner and form as the State of West Virginia has charged in the Second Count of the Indictment, it is, therefore, accordingly ADJUDGED and ORDERED that the Defendant, Howard Clarence Jenner, be confined and imprisoned in the Mount Olive Correctional Complex situate in Mount Olive, in Fayette County, West Virginia, for an

indeterminate term and period of not less than three (3) years nor more than fifteen (15) years, pursuant to the terms and provisions of Chapter 61, Article 11, Section 8 of the West Virginia Code, as amended.

It is further ADJUDGED and ORDERED that the conviction date shall be April 22, 2014, the sentence date shall be August 4, 2014, and the effective date shall be upon the completion of his aforesaid sentence on his conviction for First Degree Murder as set forth above..

It is further ADJUDGED and ORDERED that the sentence heretofore imposed upon the Defendant on his conviction on the Second Count of the Indictment shall run consecutively to the sentence imposed upon the Defendant on his conviction on the First Count of the Indictment.

Thereupon, the Court inquired of the Defendant if he had anything further to say or offer prior to judgment and sentence being pronounced against him, and no sufficient cause or reason to the contrary being shown or appearing to the Court, and the Defendant offering nothing in delay or arrest of judgment and sentence upon the Defendant's conviction of the offense of Malicious Assault, a felony, in manner and form as the State of West Virginia has charged in the Third Count of the Indictment, it is, therefore, accordingly ADJUDGED and ORDERED that the Defendant, Howard Clarence Jenner, be confined and imprisoned in the Mount Olive Correctional Complex situate in Mount Olive, in Fayette County, West Virginia, for an indeterminate term and period of not less than two (2) years nor more than ten (10) years, pursuant to the terms and provisions of Chapter 61, Article 2, Section 9(a), of the West Virginia Code, as amended.

It is further ADJUDGED and ORDERED that the conviction date shall be April 22, 2014, the sentence date shall be August 4, 2014, and the effective date shall be upon the completion of his aforesaid sentence on his conviction for First Degree Murder as set forth above

It is further ADJUDGED and ORDERED that the sentence imposed upon the Defendant on his conviction on the Third Count of the Indictment shall run concurrently with the sentence imposed upon the Defendant on his conviction on the Second Count of the Indictment.

It is further ADJUDGED and ORDERED that a judgment is hereby rendered against the Defendant for all Court costs assessed by the Court.

It is further ADJUDGED and ORDERED that the Court appointed attorney fees incurred by the Defendant in this matter, are hereby waived by this Court.

Thereupon, the Court fully explained to the Defendant all rights to appeal to the West Virginia Supreme Court of Appeals and the Defendant, in his own proper person, stated to the Court that he fully and completely understood these rights.

It is further ADJUDGED and ORDERED that the Clerk of this Court transmit a duly certified Commitment Paper to the Commissioner of the West Virginia Department of Corrections, pursuant to the provisions of Chapter 62, Article 7, Section 10 of the West Virginia Code, and any and all other papers and documents as required by the laws and statutes of the State of West Virginia.

It is further ADJUDGED and ORDERED that the Defendant be and he is hereby committed to the custody of the Warden of the Mount Olive Correctional Complex situate in the City of Mount Olive, in Fayette County, West Virginia, to serve the sentence heretofore imposed upon the Defendant, and the Defendant be and he is hereby remanded to the custody of the Sheriff of Upshur County, West Virginia, to be by the latter placed in the Tygart Valley Regional Jail, situate in Randolph County, West Virginia, until such time as the Defendant is transported and delivered to the custody of the Warden of the Mount Olive Correctional Complex, as aforesaid.

It is further ADJUDGED and ORDERED that the Clerk of this Court make and prepare certified copies of this Order, to be sent by United States Mail to the following parties:

1. Jacob E. Reger, Prosecuting Attorney, 38 W. Main St, Room 202, Buckhannon WV 26201;

2. Harry A. Smith, III, Counsel for Defendant, P.O. Box 1909, Elkins, WV 26241;

3. Upshur County Sheriff's Department, 38 West Main Street, Buckhannon, WV 26201;

4. Tygart Valley Regional Jail, 400 Abbey Road, Belington WV 26250;

5. WV Division of Corrections, 1409 Greenbrier St., Charleston, WV 25311;

6. Mount Olive Correctional Complex, One Mountainside Way, Mount Olive, WV 25185.

which said copies shall constitute adequate, sufficient and legal notice of all matters had and taken herein.

UPSHUR COUNTY
DOB: 03/23/1984

ORDER ENTERED: 8/6/14

CC - 8/6/14
ASlister

Judge of the Circuit Court of
Upshur County, West Virginia

UPSHUR COUNTY, W.V.
FILED
2014 AUG -6 P 3: 24
BRIAN GAUDET
CIRCUIT CLERK

ATTEST: A true copy from the records located in the office of the Clerk of the Circuit Court of Upshur County, West Virginia.

Given under my hand 8/6/14
BRIAN K. GAUDET, CLERK

By Deputy Clerk

IN THE CIRCUIT COURT OF UPSHUR COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,
PLAINTIFF,

VS. **CASE NO. 12-F-17**

HOWARD CLARENCE JENNER,
DEFENDANT.

COMMITMENT PAPER

On the 4th day of August, 2014, came the State of West Virginia, by Jacob E. Reger, Prosecuting Attorney in and for Upshur County, West Virginia, and also came the Defendant, Howard Clarence Jenner, in his own proper person, and being represented and assisted by Harry A. Smith, III, his counsel of record.

It is ADJUDGED that the Defendant has been convicted by a jury of the offense of *First Degree Murder*, a felony, as contained in the First Count of the Indictment, and the Court, having asked the Defendant whether he had anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, it is, therefore, accordingly ADJUDGED and ORDERED that the Defendant, Howard Clarence Jenner, be confined and imprisoned in the Mount Olive Correctional Complex situate in Mount Olive, Fayette County, West Virginia, for the rest and remainder of his natural lifetime with no recommendation of mercy, pursuant to the jury not recommending mercy and to the terms and provisions of Chapter 62, Article 2, Section 1, of the West Virginia Code, as amended.

It is further ADJUDGED and ORDERED that the conviction date shall be April 22, 2014, the sentence date shall be August 4, 2014, and the effective date shall be December 23, 2011, thereby awarding 955 days credit at the Tygart Valley Regional Jail.

It is ADJUDGED and ORDERED that the Defendant is guilty of the offense of *First Degree Murder*, a felony, as contained in the First Count of the Indictment, as charged and convicted.

It is ADJUDGED that the Defendant has been convicted by a jury of the offense of *Attempted Murder*, a felony, as contained in the Second Count of the Indictment, and the Court, having asked the Defendant whether he had anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, it is, therefore, accordingly ADJUDGED and ORDERED that the Defendant, Howard Clarence Jenner, be confined and imprisoned in the Mount Olive Correctional Complex situate in Mount Olive, Fayette County, West Virginia, for an indeterminate term and period of not less than three (3) years nor more than fifteen (15) years, pursuant to the terms and provisions of Chapter 61, Article 11, Section 8, of the West Virginia Code, as amended.

It is ADJUDGED and ORDERED that the Defendant is guilty of the offense of *Attempted Murder*, a felony, as contained in the Second Count of the Indictment, as charged and convicted.

It is further ADJUDGED and ORDERED that the conviction date shall be April 22, 2014, the sentence date shall be August 4, 2014, and the effective date shall be upon the completion of his aforesaid sentence on his conviction for First Degree Murder as set forth above.

It is further ADJUGED and ORDERED that the sentence heretofore imposed upon the Defendant on his conviction on the Second Count of the Indictment shall run consecutively to the sentence imposed upon the Defendant on his conviction on the First Count of the Indictment.

Thereupon, the Court inquired of the Defendant if he had anything further to say or offer prior to judgment and sentence being pronounced against him, and no sufficient cause or reason

It is further ADJUDGED and ORDERED that the Clerk of this Court forthwith transmit this record, duly certified, of the judgment and commitment to the Commissioner of the West Virginia Division of Corrections, and that this record serve as the Commitment of the Defendant.

UPSHUR COUNTY
DOB: 03/23/1984

ORDER ENTERED: 8/6/14

CC 8/6/14
J. Rgr
H. Smith
UCSD
TVRJ
DOC
mt. Olive

Judge of the Circuit Court
of Upshur County, West Virginia

UPSHUR COUNTY, W.V.
FILED
2014 AUG -6 P 3:24
BRIAN GAUDET
CIRCUIT CLERK

ATTEST: A true copy from the records located in the office of the Clerk of the Circuit Court of Upshur County, West Virginia.
Given under my hand 8/6/14
BRIAN P. GAUDET, CLERK
By Deputy Clerk