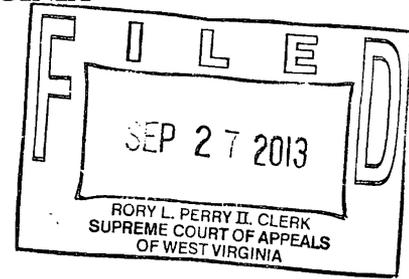


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 12-0887



STATE OF WEST VIRGINIA,

*Plaintiff Below, Respondent,*

v.

CLINTON DOUGLAS SKEENS,

*Defendant Below, Petitioner.*

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BRIEF OF RESPONDENT  
STATE OF WEST VIRGINIA

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---

BRIEF OF RESPONDENT STATE OF WEST VIRGINIA

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I.

STATEMENT OF THE CASE

On December 31, 2010, Clinton Douglas Skeens (“Petitioner”) intentionally, maliciously, deliberately and premeditatedly murdered his former high school football coach, Jess Scott Jarrell (“Coach Jarrell”), by stabbing him 43 times with a knife. The facts and circumstances of this murder are as follows:

On December 6-7, 2010, Howard Whaley (“Whaley”) was at the BP station in Wayne, West Virginia. App. R. vol. VIII, 57-58. While there, Petitioner approached Whaley and told him that he was “looking good today,” to which Whaley replied “thank you.” App. R. vol. VIII, 58. After this initial hello, the two men interacted with one another for a time. *Id.* At one point during their conversation, Petitioner asked Whaley whether he knew where Coach Jarrell lived. *Id.* Whaley responded “yes” and went on to tell Petitioner that Coach Jarrell lived in the Wilson’s Creek area of Wayne County. *Id.* Upon hearing this, Petitioner left the BP station immediately and began

walking towards Wilson's Creek. App. R. vol. VIII, 58-59.

During this same time period, early December 2010, Sherry Rowe ("Rowe") was working at the BP station in Wayne when Coach Jarrell came in the store. App. R. vol. VIII, 60-62. During this visit, Rowe informed Coach Jarrell that Petitioner had been in the store a day or so ago and had asked Rowe where Coach Jarrell lived. App. R. vol. VIII, 62. Rowe then asked Coach Jarrell whether he had seen Petitioner; Coach Jarrell indicated that he had not. Rowe went on to tell Coach Jarrell to be careful, as Petitioner was not the same "guy" that he was 30 years ago when he played football for Coach Jarrell. App. R. vol. VIII, 62, 63. Coach Jarrell responded that he was not worried. App. R. vol. VIII, 63.

On December 19, 2010, Petitioner went to the Kroger store located on Fifth Avenue in Huntington, West Virginia, where he purchased two knives.<sup>1</sup> *See generally* App. R. vol. VIII, 119-24, 203; App. R. vol. IX, 19-22.

Approximately 4 or 5 days prior to murdering Coach Jarrell, December 26-27, 2010, Petitioner knocked on James Stephens' ("Stephens") door; Stephens lived about 3 miles from Coach Jarrell. App. R. vol. VIII, 69-70. Stephens answered the door at which time Petitioner said, "I'm looking for Coach Jarrell." App. R. vol. VIII, 70. Stephens went on to tell Petitioner that he was a long way from Coach Jarrell's house, and that Coach Jarrell lived up the road about 3 miles. App. R. vol. VIII, 70, 72. At this point, Petitioner turned away from Stephens and began walking in the direction of Coach Jarrell's house. *Id.*

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<sup>1</sup> Petitioner paid for the knives in cash and used his Kroger discount card. App. R. vol. VIII, 120-21. One of these knives was found at the murder scene. App. R. vol. VIII, 168, 179, 186. Notably, the brand and type of knives that Petitioner purchased at Kroger's on December 19, 2010, were of the same brand and type of other knives that the store had up for sale when the State police returned to Kroger's to investigate this matter. App. R. vol. VIII, 123-24, 126, 128.

On December 30, 2010, Petitioner went into “Tammy’s Florist and Gift Shop” in Wayne, where Nancy Maynard (“Maynard”) was working.<sup>2</sup> App. R. vol. VIII, 74-75. Once inside, Petitioner asked Maynard whether she knew where Coach Jarrell lived; Maynard responded that she did not.<sup>3</sup> App. R. vol. VIII, 75. Maynard then attempted to locate Coach Jarrell’s house for Petitioner by making a couple of phone calls. Unable to do so, Maynard told Petitioner that she could not help him. App. R. vol. VIII, 75, 77. Immediately thereafter, Petitioner left the store.<sup>4</sup> *Id.*

At approximately 6:30 a.m.–7:00 a.m. on December 31, 2010, Robert Stephens (“Stephens”), who had known Petitioner for many years, was on his way to work when he saw Petitioner walking towards Coach Jarrell’s house in the Wilson’s Creek area. App. R. vol. VIII, 83-86. Notably, this was not the first time that Stephens had seen Petitioner in this same area. In fact, earlier in December 2010, Stephens had seen Petitioner on at least 2 or 3 occasions in the same area. App. R. vol. VIII, 86-87.

On December 31, 2010, Joe Boyd (“Boyd”) was leaving his home in the Wilson’s Creek area when he saw Coach Jarrell driving his gray truck; Coach Jarrell was headed towards his mother’s, Dottie Dyer’s (“Dyer”), farm where he kept some cattle. App. R. vol. VIII, 99-100, 102. On this same day, Dyer likewise saw Coach Jarrell on her farm when he drove past her in his gray truck. App. R. vol. VIII, 102-04.

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<sup>2</sup> “Tammy’s” sets across the road from the BP station noted above. App. R. vol. VIII, 74.

<sup>3</sup> During this encounter, Petitioner appeared nervous and was pacing around, which made Maynard feel “uneasy.” App. R. vol. VIII, 75-77.

<sup>4</sup> It should be noted that Maynard could not positively identify, at trial, Petitioner as the man who came in her store. Maynard’s inability to so identify Petitioner was due to the fact that it had been 1½ years from the time that the man came into the store, to when she testified at Petitioner’s trial, i.e., December 30, 2010 to June 4, 2012. App. R. vol. VIII, 76.

Sometime after this sighting, Petitioner murdered Coach Jarrell by stabbing/cutting him 43 times with a knife. This murder took place at Coach Jarrell's home; Coach Jarrell was 73 years old at the time. App. R. vol. VI, 84; App. R. vol. VII, 13; App. R. vol. IX, 41, 133. The stab/cut wounds from this attack were inflicted upon numerous areas of Coach Jarrell's body, including his head, face, neck, arms, chest<sup>5</sup> and back. App. R. vol. IX, 41.

After murdering Coach Jarrell, Petitioner fixed himself a bowl of ice cream , a bowl of chili and something to drink, and then went into the living room, sat down on the couch and had his meal. *See generally* App. R. vol. VIII, 150-51, 169, 172-74, 179-80, 185; App. R. vol. IX, 60-63, 83-85, 93, 101-04. Also, after murdering Coach Jarrell, Petitioner took a 16 gauge shotgun from Coach Jarrell's house.<sup>6</sup> *See generally* App. R. vol. VIII, 151-52, 161-62.

Around 12:55 p.m. on December 31, 2010, James Berry ("Berry"), who was a resident in the Wilson's Creek area and a neighbor of Coach Jarrell, was taking his wife to a hair appointment. App. R. vol. VIII, 106-07. During this trip, Berry saw Coach Jarrell's gray truck in the area of his and Coach Jarrell's houses; Coach Jarrell was not driving the truck. *Id.* In fact, it was Petitioner who was driving Coach Jarrell's truck. App. R. vol. VIII, 160.

On December 31, 2010, during the 5:00 p.m. to 6:00 p.m. hour, Petitioner drove Coach Jarrell's gray truck to a Walmart in Huntington. Petitioner then entered the Walmart, purchased

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<sup>5</sup> Some of the stab wounds to Coach Jarrell's chest area penetrated his heart, lungs and liver. App. R. vol. IX, 43.

<sup>6</sup> This 16 gauge shotgun was never recovered. However, when Petitioner was arrested and a search made of the vehicle he was driving, Coach Jarrell's gray trunk, some 16 gauge shotgun shells were found laying in the front seat of the truck; some more 16 gauge shells were also found in Petitioner's clothing. App. R. vol. VIII, 162, 202-03; App. R. vol. IX, 19, 30, 33. It should also be noted that other guns, as well as a knife and various types of ammunition, were found at the murder scene strown out on a bed. App. R. vol. VIII, 160, 168, 179, 186-88.

some ammunition, and then left the store. *See generally* App. R. vol. VIII, 131-39, 141; App. R. vol. IX, 19-22.

At approximately 6:50 p.m. on December 31, 2010, Trooper D.J. Chapman, of the West Virginia State Police, pulled his police cruiser over on Route 152, in the Lavalette/Dickson area of Wayne County, to make a phone call. App. R. vol. IX, 10-11, 29. While sitting at this location, Petitioner drove up in Coach Jarrell's gray truck and parked in front of Trooper Chapman. App. R. vol. VIII, 202; App. R. vol. IX, 10-11, 14, 134. Petitioner then got out of the truck, took his shirt off, and approached Trooper Chapman. App. R. vol. VIII, 202; App. R. vol. IX, 12-13. Trooper Chapman then rolled his window down and asked Petitioner if he could help him, at which point Petitioner asked Trooper Chapman if he knew who he (Petitioner) was. App. R. vol. IX, 12-13. Trooper Chapman, in turn, replied "no." App. R. vol. IX, 13. Immediately thereafter, Petitioner twice stated to Trooper Chapman, "I'm the man that killed Scott Jarrell." App. R. vol. VIII, 202; App. R. vol. IX, 13, 26, 134.

Upon hearing this, Trooper Chapman got out of his police cruiser and told Petitioner to put his hands on the hood of the vehicle. App. R. vol. IX, 13, 26. In response to this command, Petitioner told Trooper Chapman, "why don't you f-ing make me?" App. R. vol. IX, 13, 27. At this point, Trooper Chapman got back in his car and began trying to radio for help, during which time Petitioner punched Trooper Chapman in the face. App. R. vol. IX, 13, 26. Trooper Chapman then got back out of his car and wrestled and pinned Petitioner to the ground. App. R. vol. IX, 13.

During this same moment, Terry Quigley ("Quigley"), who lives in the Westmoreland area of Wayne County, was on his way home from Walmart when he observed Trooper Chapman struggling with Petitioner in the middle of the road. App. R. vol. VIII, 109-10, 112-13; App. R. vol.

IX, 13. Upon seeing this struggle, Quigley jumped out of his car and asked Trooper Chapman whether he needed any help, to which the Trooper Chapman responded “yes.” App. R. vol. VIII, 110; App. R. vol. IX, 13. Trooper Chapman, who at the moment was busy keeping Petitioner subdued, then told Quigley to go to his patrol car and retrieve a pair of handcuffs, which Quigley did. App. R. vol. VIII, 110, 112-14; App. R. vol. IX, 13. Quigley returned the handcuffs to Trooper Chapman, who then handcuffed Petitioner, with Quigley helping to keep Petitioner subdued. App. R. vol. VIII, 110-12; App. R. vol. IX, 13-14, 30. Thereafter, Petitioner was arrested and taken to the police station.

On July 5, 2011, the Wayne County Grand Jury indicted Petitioner for murder. App. R. vol. I, 1.

Petitioner’s trial began on May 22 and 23, 2012, with jury selection.<sup>7</sup> *See generally* App. R. vol. VI, 1-308; App. R. vol. VII, 1-271. The remainder of the trial took place on June 4, 5, 6 and 7, 2012, and ended with the jury convicting Petitioner of first-degree murder without a recommendation of mercy. App. R. vol. I, 78, 83, 85, 87; App. R. vol. XI, 51.

On June 7, 2012, following the jury’s verdict, the circuit court (“court”) sentenced Petitioner to a term of life in the penitentiary without the possibility of parole. App. R. vol. I, 85-88; App. R. vol. XI, 59, 60. Thereafter, Petitioner brought the current appeal.

## II.

### SUMMARY OF ARGUMENT

The court did not commit error in refusing to instruct the jury on the lesser included offense

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<sup>7</sup> Jury selection, the bulk of which took place on these two days, carried over to June 4, 2012, when Petitioner’s trial picked back up again. *See generally* App. R. vol. VIII, 28-49.

of voluntary manslaughter, as the evidence in this case did not warrant the giving of such instruction. Contrary to Petitioner's contention, the element of malice necessary for first degree murder was not negated by Petitioner's mental condition at the time that he murdered Coach Jarrell. Even Petitioner's own expert, Dr. Bobby Miller, testified that Petitioner's mental condition, at the time of the murder, did not prevent him from forming all of the necessary mental states for first degree murder, including malice.

The court did not abuse its discretion in refusing to grant Petitioner's motion for a change of venue based on Petitioner's assertion that there was a present hostile sentiment against him due to the media coverage of Coach Jarrell's murder. After conducting a very thorough and fair *voir dire* of the potential jurors in this case, the court found that, despite the media coverage of the case, a fair and impartial jury was empaneled to try Petitioner's case. In so finding, the court did not abuse its discretion.

### III.

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

Because this is a first-degree murder case resulting in Petitioner receiving a life without mercy sentence, the State believes that this case should be set for oral argument. The State further believes that a Rule 19 argument and an opinion, rather than memorandum decision, are appropriate in this case. Finally, the State defers to the discretion and wisdom of the Court on all these points.

## IV.

### ARGUMENT

#### A. THE TRIAL COURT DID NOT COMMIT ERROR IN REFUSING PETITIONER'S REQUESTED JURY INSTRUCTION ON VOLUNTARY MANSLAUGHTER, AS THE EVIDENCE DID NOT WARRANT THE GIVING OF SUCH INSTRUCTION.

##### 1. Standard of Review

A trial court's refusal to give a requested instruction is reversible only if: (1) the instruction is a correct statement of the law; (2) it is not substantially covered in the charge actually given to the jury; and (3) it concerns an important point in the trial so that the failure to give it seriously impairs a defendant's ability to effectively present a given defense.

Syl. Pt. 2, *State v. Wilkerson*, 230 W. Va. 366, 738 S.E.2d 32 (2013) (citations omitted) (internal quotation marks omitted). "As a general rule, the refusal to give a requested jury instruction is reviewed for an abuse of discretion. By contrast, the question of whether a jury was properly instructed is a question of law, and the review is *de novo*." Syl. Pt. 1, *Wilkerson*, *supra* (citations omitted) (internal quotation marks omitted). "The decision of whether there is enough evidence to justify a lesser included offense charge rests within the sound discretion of the trial judge." *Bates v. Lee*, 308 F.3d 411, 418 (4th Cir. 2002).

Further, "[w]here . . . the highest court of a state has reviewed a defendant's request for a lesser included offense instruction and concluded that it is not warranted by the evidence elicited at trial, that conclusion is axiomatically correct, as a matter of state law. Accordingly, the circumstances that would induce a federal court to overturn the state court determination would need to be extraordinary, indeed."

*Id.*

##### 2. Rules on Request for Lesser Included Offense Instruction

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.

Syl. Pt. 3, *Wilkerson, supra* (citations omitted) (internal quotation marks omitted).

In capital cases, due process requires the court to give an instruction on any lesser included offense when the evidence warrants such an instruction. But [a] defendant is not entitled to have the jury instructed as to lesser degrees of the crime simply because the crime charged is murder. Instead, due process requires that a lesser included offense instruction be given only when the evidence warrants such an instruction.

*Bates*, 308 F.3d at 418 (citations omitted) (internal quotation marks omitted).

**3. Petitioner Was Properly Convicted of First-Degree Murder in This Case, As the Evidence Adduced at His Trial Overwhelmingly Satisfied All of the Elements of This Charge.**

On appeal, Petitioner asserts that the court committed error in refusing to instruct the jury on the lesser included offense of voluntary manslaughter. The State disagrees with this allegation of error, which will be fully discussed below. Before doing so, however, it is important to point out that the evidence presented at Petitioner's trial overwhelmingly satisfied each and every element of the charge of which he was convicted, first-degree murder, including specific intent, deliberation, premeditation and malice. Correctly, in denying Petitioner's motion for a directed verdict of acquittal, so too was the finding of the court:

THE COURT: Okay. It's my belief that evidence presented in this case from several witnesses would indicate that the Defendant in this case was looking for the victim, for whatever reason, but for several weeks prior to the actual crime -- that, establishing elements of premeditation.

Also, the purchase of weapons, and I believe that was maybe 10 days or so prior to the killing. That establishes, in my opinion, the element of deliberation.

Maliciousness was shown from the brutality of the crime, itself.

The Defendant's own excited utterance to a law enforcement officer amounting to a confession certainly, in my opinion, is sufficient evidence that a jury could find him guilty of first degree murder.

So, your motion for a directed verdict of acquittal will be denied.

App. R. vol. IX, 143.

Again, the evidence adduced at Petitioner's trial fully supports the court's findings that all of the elements of first-degree murder were met in this case, whether it be specific intent, deliberation, premeditation and/or malice. First, Petitioner has openly admitted that he intentionally killed Coach Jarrell. This admission came before his trial, when Petitioner unequivocally told Trooper Chapman that he killed Coach Jarrell. In fact, Petitioner said it twice, telling Trooper Chapman, "I'm the man that killed Scott Jarrell." His admission of intentionally killing Coach Jarrell also came during his trial, when Petitioner clearly testified as much. Frankly, for Petitioner to argue otherwise—i.e., that he did not intentionally kill Coach Jarrell—would be silly. In other words, you do not stab someone 43 times and, at the same time, not intend to kill them, which is exactly what Petitioner did in this case.

The other elements of first-degree murder—deliberation, premeditation and malice—were also clearly met in this case. First, Petitioner's deliberate and premeditated murder of Coach Jarrell was several weeks in the making. Specifically, as early as December 6-7, 2010, Petitioner began to hunt down Coach Jarrell. This was done, of course, when Petitioner approached Howard Whaley outside of the BP station in Wayne and asked Whaley if he knew where Coach Jarrell lived. After Whaley informed Petitioner where Coach Jarrell lived, Petitioner immediately left the BP station and began walking in the direction of Coach Jarrell's house.

Following this incident, Petitioner continued to zero in on Coach Jarrell's location. Namely, in early December 2010, Petitioner entered the BP station, where Sherry Rowe was working, and asked Rowe where Coach Jarrell lived. Again, around 4 or 5 days prior to murdering Coach Jarrell, December 26-27, 2010, Petitioner went to James Stephens' house, where he stated to Stephens, "I'm looking for Coach Jarrell." After being told where Coach Jarrell lived, Petitioner immediately left Stephens' house and began walking in the direction of Coach Jarrell's house. Once again, on December 30, 2010, one day before murdering Coach Jarrell, Petitioner approached Nancy Maynard, who was working at "Tammy's Florist and Gift Shop" at the time, and asked Maynard whether she knew where Coach Jarrell lived.

On top of all of this, in planning to commit this murder, Petitioner gathered his tools to murder Coach Jarrell prior to actually doing so. This was done on December 19, 2010, 12 days prior to actually murdering Coach Jarrell, when Petitioner went to a Kroger store in Huntington and purchased two knives, at least one of which was used to actually kill Coach Jarrell and was found at the murder scene. All of these factors clearly show that Petitioner's killing of Coach Jarrell was deliberate and premeditated.

"Although premeditation and deliberation are not measured by any particular period of time, there must be some period between the formation of the intent to kill and the actual killing, which indicates the killing is by prior calculation and design. This means there must be an opportunity for some reflection on the intention to kill after it is formed."

*State v. LaRock*, 196 W. Va. 294, 305, 470 S.E.2d 613, 624 (1996) (quoting Syl. Pt. 5, *State v. Guthrie*, 194 W. Va. 657, 461 S.E.2d 163 (1995)).

In addition, as a practical matter, premeditation generally can be proved only by circumstantial evidence. Because the defendant's mental processes are wholly subjective, it is seldom possible to prove them directly. If premeditation is found, it

must ordinarily be inferred from the objective facts. Accordingly, if one voluntarily does an act, the direct and natural tendency of which is to destroy another's life, it fairly may be inferred, in the absence of evidence to the contrary, that the destruction of that other's life was intended.

*LaRock*, 196 W. Va. at 305, 470 S.E.2d at 624.

As far as the element of malice is concerned, one only need look at the manner in which Petitioner murdered Coach Jarrell. Specifically, in murdering Coach Jarrell, Petitioner brutally stabbed/cut Coach Jarrell 43 times. Petitioner inflicted these stabs/cuts to numerous areas of Coach Jarrell's body, including his head, face, neck, arms, chest and back. In other words, Petitioner butchered this man. If this were not enough, after viciously murdering Coach Jarrell, Petitioner fixed himself something to eat—i.e., a bowl of chili and a bowl of ice cream—and then sat down and had his meal. Bluntly stated, if all of this does not show malice, then nothing does.

“[T]he term ‘malice’ . . . is essentially a ‘form of criminal intent.’” *State v. Hatfield*, 169 W. Va. 191, 198, 286 S.E.2d 402, 407 (1982). “‘Malice express or implied is an essential element of murder of the first or second degree.’” Syl. Pt. 4, *State ex rel. Combs v. Boles*, 151 W. Va. 194, 151 S.E.2d 115 (1966) (quoting Syl. Pt. 1, *State v. Bowyer*, 143 W. Va. 302, 101 S.E.2d 243 (1957)). However, “the distinguishing feature for first degree murder is the existence of premeditation and deliberation.” *Hatfield*, 169 W. Va. at 198, 286 S.E.2d at 407-08. “[I]n regard to first degree murder, the term ‘malice’ is often used as a substitute for ‘specific intent to kill’ or ‘an intentional killing.’” *Hatfield*, 169 W. Va. at 198, 286 S.E.2d at 407.

The term “malice” has been described in various ways. For example, in *State v. Starkey*, 161 W. Va. 517, 524, 244 S.E.2d 219, 223-24 (1978), we quoted from our earlier case, *State v. Douglass*, 28 W. Va. 297, 299 (1886), which defines it 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.”

*State v. Bongalis*, 180 W. Va. 584, 587, 378 S.E.2d 449, 452 (1989).

“Certainly, malice can . . . include ‘not only anger, hatred and revenge, but other unjustifiable motives. . . . It may be inferred from any deliberate and cruel act done by the defendant without any reasonable provocation or excuse, however sudden.’” *Bongalis*, 180 W. Va. at 588, 378 S.E.2d at 453. Finally, “[m]alice may be implied from the use of a deadly weapon.” *State v. Bowyer*, 143 W. Va. 302, 310, 101 S.E.2d 243, 247 (1957).

**4. Despite his Contention to the Contrary, Petitioner did not Introduce Substantial Evidence at the Trial Level Showing That his Mental Condition Prevented him From Forming the Malice Element of First-Degree Murder, Which, According to Petitioner, Warranted the Giving of a Voluntary Manslaughter Instruction to the Jury by the Court.**

“[V]oluntary manslaughter . . . is an intention[al] unlawful killing upon sudden heat of passion with great provocation and without malice.” *State v. Zannino*, 129 W. Va. 775, 780, 41 S.E.2d 641, 644 (1947). *See also State v. Beegle*, 188 W. Va. 681, 685, 425 S.E.2d 823, 827 (1992) (“This Court has rather consistently defined voluntary manslaughter as a sudden, intentional killing upon gross provocation and in the heat of passion.”).

Provocation for the sudden passion which will reduce a homicide to voluntary manslaughter must arise from something more than a quarrel or altercation, which consists of a warm contention in words or a dispute carried on with heat or anger. Such provocation can arise only from a physical injury inflicted or attempted.

Syl., *State v. Murphy*, 89 W. Va. 413, 109 S.E. 771 (1921). *See also State v. Wade*, 200 W. Va. 637, 645, 490 S.E.2d 724, 732 (1997) (citing *State v. Kirtley*, 162 W. Va. 249, 253-54, 252 S.E.2d 374, 376-77 (1979)) (“[P]rovocation is used to reduce a murder charge to voluntary manslaughter by negating the element of malice where the killing was committed in the heat of passion.”).

It is intent without malice, not heat of passion, which is the distinguishing feature of

voluntary manslaughter. Generally speaking, with respect to an unlawful killing, “[i]f malice is proven, the crime becomes second [or first] degree murder; if intent is not proven, the crime becomes involuntary manslaughter.”

*State v. McGuire*, 200 W. Va. 823, 835, 490 S.E.2d 912, 924 (1997) (footnote omitted) (citation omitted).

From a number of different angles, Petitioner asserts on appeal that his mental condition, at the time that he killed Coach Jarrell, i.e., bipolar disorder, was such that he could not form the requisite malice element of first-degree murder. In support of this assertion, Petitioner essentially argues that his bipolar condition had degenerated to the point that he had become psychotic/delusional and that, as part of his psychotic/delusional thinking, he believed he needed to kill Coach Jarrell, as Coach Jarrell was raping and killing his ex-wife and stepdaughter. All of this, further argues Petitioner, resulted in him not being under the “sway of reason,”<sup>8</sup> but rather under

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<sup>8</sup> This phrase, i.e., “sway of reason,” as used by Petitioner, comes from some of this Court’s decisions.

“This term [malice], 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.”

*Bongalis*, 180 W. Va. at 587-88, 378 S.E.2d at 452-53.

[T]his Court, [in] discussing malice as an essential element of murder, [has] said: ‘If this element be lacking, the killing is not murder, if an offense at all. 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. Passion and malice are not convertible terms, so that an act prompted by the one cannot be said to proceed from the other.’

(continued...)

psychosis, when he killed Coach Jarrell. Because of this substantial evidence, as characterized by Petitioner, the element of malice in first-degree murder was negated. Thus, as lastly argued by Petitioner, the court committed error in refusing to instruct the jury on voluntary manslaughter, as this refusal essentially denied the jury an opportunity to consider that he acted without malice due to his mental illness, and therefore only find him guilty of voluntary manslaughter. *See generally* Pet'r's Br. 12-24. The State disagrees.

To begin with, from a commonsense standpoint, the jury heard all of Petitioner's evidence and arguments that he was psychotic at the time that he murdered Coach Jarrell. After hearing such, the jury did not, and correctly so, buy it. If they had, then they would have, at the very least, convicted him of second degree murder, of which the court fully instructed the jury.<sup>9</sup> *See generally* App. R. vol. XI, 8-11, 16-17. Along this same line of thought, if the jury was unwilling to give Petitioner second degree murder, then they certainly were not going to give him voluntary manslaughter. Interestingly, Petitioner also asserts in this appeal that the court committed error by refusing his request for a change of venue, as the publicity surrounding his case prejudiced the jury pool in Wayne County to the point that a fair and impartial jury was not empaneled to try his case. This begs the question—if this be the case, and the State certainly disagrees, then why would this same unfair jury choose to convict Petitioner only of voluntary manslaughter had they been

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<sup>8</sup>(...continued)  
*Bowyer*, 143 W. Va. at 310-11, 101 S.E.2d at 248.

<sup>9</sup> It should also be noted that Petitioner made a voluntary, knowing and intelligent decision not to plead and argue an insanity defense in this case. Presumably, in refraining from doing so, Petitioner made a conscious decision that if he was going down in this case, he would rather spend the rest of his life in the penitentiary rather than a mental institution.

instructed on such by the court?<sup>10</sup>

At any rate, the great weight of the credible and reliable evidence in this case overwhelmingly shows that Petitioner's mental condition did not affect his ability to deliberate, premeditate and maliciously carry out this murder. In other words, despite his mental condition, Petitioner knew exactly what he was doing before, during and after picking up a knife and stabbing Coach Jarrell 43 times and killing him.

Petitioner was seen by several people shortly before and after he murdered Coach Jarrell. In his interactions with these people, Petitioner did not exhibit any psychotic behavior. Specifically, when Howard Whaley saw and talked to Petitioner at the BP station on December 6-7, 2010, Petitioner's demeanor was normal when asking where Coach Jarrell lived. App. R. vol. VIII, 58, 59. On December 26-27, 2010, Petitioner went to James Stephens' house and inquired where Coach Jarrell lived. In speaking with Stephens, Petitioner's demeanor was again calm. App. R. vol. VIII, 70. On the morning of December 31, 2010, and prior to murdering Coach Jarrell, Robert Stephens saw Petitioner walking towards Coach Jarrell's house. Although Stephens did not speak with Petitioner on this occasion, he did notice that Petitioner was walking in a normal fashion.<sup>11</sup> App. R.

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<sup>10</sup> The change of venue issue will be fully discussed below.

<sup>11</sup> In fairness, when Coach Jarrell went into the BP station in early December 2010, a store employee, Sherry Rowe, told Coach Jarrell that Petitioner was not the same "guy" that he was 30 years ago when he played football for Coach Jarrell. From the record, it appears that Rowe and Petitioner were in a relationship and lived together from approximately 1999 to 2003. App. R. vol. VIII, 62-64. According to Rowe, Petitioner took a lot of pain and nerve pills during the time that he was seeing Rowe. App. R. vol. VIII, 64. Also, when Petitioner went into "Tammy's Florist and Gift Shop" on December 30, 2010, and asked a store employee, Nancy Maynard, where Coach Jarrell lived, Petitioner appeared nervous and was pacing around. App. R. vol. VIII, 75-77. Of course, none of these things translates into the type of psychotic behavior and thinking that Petitioner asserts he was under at the time that he murdered Coach Jarrell.

vol. VIII, 87-89, 91.

After murdering Coach Jarrell, in the evening hours of December 31, 2010, Petitioner got into an altercation with and was arrested by Trooper Chapman. During this altercation and arrest, other than appearing to be in an aggressive and agitated mood, Petitioner “seemed to have his . . . wits about him.” App. R. vol. IX, 24-25, 28. Following this arrest, in the early morning hours of January 1, 2011, Petitioner was taken to Cabell Huntington Hospital, where he was treated for pain in his shoulder and ribs by Dr. Thomas Hamilton; the pain in Petitioner’s shoulder and ribs resulted from the struggle between himself and Trooper Chapman during his arrest. App. R. vol. X, 130-31. While being treated by Dr. Hamilton, Petitioner did not exhibit any behavior that caused Dr. Hamilton to believe that he needed to call in a psychiatric/psychological consult for Petitioner, which would have been the normal course had there been any such need. App. R. vol. X, 131.

On appeal, in support of his assertion that he did not act with malice in killing Coach Jarrell, Petitioner relies heavily on Dr. Bobby Miller’s testimony at his trial. In what appears to be his biggest play, as it regards Dr. Miller’s testimony, Petitioner states as follows:

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. Thus, Dr. Miller concluded that Mr. Skeens suffered from a form of psychosis (bipolar disorder) when he committed the homicide. This evidence clearly negates malice as one cannot be rational and psychotic at the same time.

Pet’r’s Br. 18 (citations omitted).

Dr. Miller only testified that Petitioner’s reason for killing Coach Jarrell was based on an irrational idea—i.e., that Coach Jarrell was going to rape and kill his ex-wife and stepdaughter—and that this irrational idea was brought on by Petitioner’s mental condition. However, Dr. Miller did

not testify that Petitioner's mental condition, at the time that he murdered Coach Jarrell, prevented him from forming all of the mental states for first-degree murder, including intent, deliberation, premeditation, and yes—even malice. In denying Petitioner's requested instruction on voluntary manslaughter, the court, as evidenced by the court's discussion of the same with defense counsel, found likewise:

THE COURT: [I]s there any evidence to support a voluntary manslaughter [instruction]?

MR. WIBLE: Well, I think it's a lesser included homicide, Your Honor, and any -- any time we're dealing with a homicide, I think you need to give the jury every possible option.

THE COURT: No, you don't. You have to have evidence to support it, and really, you don't in this case, do you?

MR. WIBLE: Well, I think it fits into our defense as we put it on with Dr. Miller.

THE COURT: You don't -- you don't have any evidence of a sudden heat of passion. It is -- you don't have any evidence that what was done was not malicious. So, how does that fit voluntary manslaughter, the intentional act, but not done maliciously?

MR. WIBLE: Well, I think the jury's the finder of fact, and they could -- they could read into Dr. Miller's testimony the level to which --

THE COURT: Dr. Miller said, "He's capable of forming intent. He was capable of forming premeditation, deliberation and malice."

MR. WIBLE: But, Dr. Miller --

THE COURT: Just, he made an irrational decisions.

MR. WIBLE: The jury's the finder of how that affected --

THE COURT: But, that -- I'm still got the instruction has to fit the facts and the evidence. I don't believe there is any evidence that would support a giving of voluntary manslaughter [instruction].

App. R. vol. X, 184-85.

THE COURT: Can you convince me that there's any evidence of -- that voluntary manslaughter could be -- a verdict could be returned on voluntary manslaughter in this case?

MR. WIBLE: Not unless my previous argument about Dr. Miller's testimony. I believe that the jury, as a finder of fact, could find that -- that his ability was affected to form. These elements were affected.

THE COURT: Well, I'm going to deny it because I don't think they can find a verdict of voluntary manslaughter, based most predominantly on Dr. Miller's testimony. So, I'm going to deny it as not supported by the evidence.

App. R. vol. X, 191.<sup>12</sup>

The court's findings on this point are in absolute keeping with Dr. Miller's testimony:

Q Now, bipolar, is it what they used to call manic depressive -- people were up and people were down?

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<sup>12</sup> In deciding whether the jury should be given a diminished capacity instruction, the following exchange took place between the court and defense counsel:

MR. MORGAN: A rational intent.

THE COURT: No. Not a rational is absolutely not the law. He's incapable of forming premeditation, deliberation, and malice.

MR. WIBLE: What about -- what about the due process, Your Honor? Did you read my memo in support of the defense?

THE COURT: Yeah. Yeah, due process. I mean, due process only means if there's evidence to support it, we've got to let the defendant put it to the jury. So, we have done up to that point, we have given everything. But, Dr. Miller did not say that -- that he was -- that he didn't have the ability to form intent; he didn't have the ability to premeditate and deliberate.

Dr. Miller has said that's not true. The only thing I'm saying is that his plan was an irrational plan. That's not what the law is.

App. R. vol. X, 202.

- A In 1980, it was manic depressive; now it's bipolar.
- Q Okay. That's what they've changed, as well, correct?
- A Changed the name, not necessarily the symptoms.
- Q Do these people all kill?
- A Oh, no. Rarely.
- Q But, it happened, you're saying in this case, bipolar disease, did it lead him to that?
- A The delusional thinking related to the psychosis, I believe, contributed to his planning and execution of what he did. Yes.
- Q Okay. But, you're not telling this jury he didn't have the ability to form the intent to commit the crime, correct?
- A I'm not saying that.
- Q That he had the ability to premeditate the crime, correct?
- A He did that.
- Q And deliberate about the crime?
- A He did that.
- Q Okay. And the maliciousness of the crime, he had the ability to formulate that; did he not?
- A He had that capacity.
- Q You're just saying it wasn't rational, what he did?
- A I'm saying because of his psychosis, his actions were not rational; we agree.

App. R. vol. X, 108-09.<sup>13</sup>

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<sup>13</sup> It should be noted that Dr. Ralph Smith, Jr., the prosecution's rebuttal witness, testified similarly at Petitioner's trial:

(continued...)

On appeal, Petitioner also points to his own trial testimony to support his assertion that his killing of Coach Jarrell was the result of his psychotic mental illness, which, as further argued by Petitioner, is incompatible with malice. Among other things, Petitioner argues that he was, as evidenced by his trial testimony, having audio and visual hallucinations at the time of the murder.<sup>14</sup> These voices and visions, further argues Petitioner, were telling him that Coach Jarrell was raping and killing his ex-wife and stepdaughter. This, Petitioner further argues, necessitated him, in his mind, killing Coach Jarrell. Again, the State disagrees.

To begin with, as properly found by the court, at no time did Petitioner testify that he did not

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<sup>13</sup>(...continued)

Q Did you believe that he was competent at that time to go on to trial?

A Yes. I testified previously that he was competent, and yes.

Q Okay. Did you have an opinion at that time with regard to criminal responsibility? In other words, was he capable of forming the intent necessary to commit the crimes that he was accused of?

A Yes. In my opinion, he was.

App. R. vol. X, 160.

Q Based upon the new information, you say medical records from the various doctors and hospitals, since the time that you saw Mr. Skeens at the forensic unit, is there any information there that would cause you to change your opinion as to whether, or not, he was criminally responsible and capable of forming the specific intent to commit the crime of murder?

A I found nothing that would change my opinion.

App. R. vol. X, 163.

<sup>14</sup> Based on his trial testimony, Petitioner even says that his hallucinations involved battles between righteousness and evil, and that he had angels in his hallucinations, i.e., Lord God Dougie, Lord God Alisa and Lord God Almighty, all of whom he relied on.

intend to kill Coach Jarrell, or that his killing of Coach Jarrell was not deliberated and/or premeditated upon:

THE COURT: [T]hat's not what the law is in West Virginia. It doesn't say you're exonerated by acting irrationally. You're exonerated only if you're suffering from a mental disease. You're exonerated from first-degree [murder] only if you're suffering from a mental disease or mental defect that renders you incapable of forming those mental states.

Nobody's testified to that, including your client. He knew what -- he said he planned it; he knew what he was doing; he was searching for it. It's just it was in his head and may not have been reality. But, yet, he was acting on those plans, intents, the premeditation, the deliberation.

App. R. vol. X, 200.

Furthermore, Petitioner is an habitual malingerer and a well-documented one at that. Doctor after Doctor after Doctor has found such to be the case. Specifically, at trial, Dr. Smith<sup>15</sup> testified as follows:

A He just did not appear psychotic to me. Therefore, we have these specialized tests for malingering or faking, which he showed that he was faking a mental illness.

App. R. vol. X, 155.

A [W]hen it came down to this MMPI, which is a personality inventory, and it has these built-in scales for malingering or faking, and he was faking on that. Then, we gave him a specialized test called a SIRS or Structured Interview of the Reported Symptoms. He showed quite a number of fakes on that.

Q What did that tell you?

A Well, it just confirmed what I was observing during my interview, that this

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<sup>15</sup> Dr. Smith interviewed Petitioner at the forensic unit of the South Central Regional Jail on June 13, 15 and 24, 2011. App. R. vol. X, 151-52; App. R. vol. XII, 1. Dr. Smith also interviewed the staff on this unit, who reported that Petitioner had not exhibited any unusual behavior while he was on the unit. App. R. vol. X, 152.

man was not having a real psychotic disturbance but it was a faked one.

Q From your review of the records of this faking that he'd done, the malingering, was that something that was present in the other evaluators that looked at him.

A He had done the same thing with Dr. Miller, and he had been seen that way even by his treating psychiatrist at one time and suspicion on another case.

Q Okay. That's even dating back to 2007?

A Yes.

App. R. vol. X, 156.

Q Do you believe that the malingering that you detected throughout your testing, and noted, and has been noted in the record, was Mr. Skeens' attempt to influence this process to make him appear to be more disturbed than he is?

A That's what it's all about. Yes, that's what malingering is.

App. R. vol. X, 163.

Even Petitioner's own expert at trial, Dr. Miller,<sup>16</sup> testified that, when he first evaluated Petitioner, he was malingering, and that other physicians had found likewise:

Q Okay. Would you agree with me that Mr. Skeens, throughout the number of times that he's been interviewed by psychiatric experts, that this issue of whether he's faking it has come up?

A At least four times, if not five.

Q Okay. And you believe that he was faking?

A Absolutely.

App. R. vol. X, 114.

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<sup>16</sup> Dr. Miller interviewed Petitioner on April 6, 2011 and January 9, 2012. App. R. vol. XII, 17, 29.

Q You believe he was malingering when you first saw him?

A I do. Well, I'm confident that he was.

....

Q Well, you were here when he [Dr. Smith] testified at another proceeding; did you not?

A That's correct.

Q Okay. He said that he was malingering.

A I don't think I disagree.

Q The people at Sharp's [hospital] suspected his description of these voices, they characterized it as atypical, in other words, unusual.

A That's correct.

Q And suspected that it could be due to malingering.

A Yes.

App. R. vol. X, 115. Notably, in addition to his malingering problem, Petitioner also seems to have a bad case of convenient memory. For example, when he was interviewed by Dr. Smith on June 13, 2011, Petitioner clearly stated that he stabbed Coach Jarrell 46 times, including 23 in front and 23 in back. App. R. vol. X, 154. However, when he testified at trial, Petitioner stated that he only stabbed Coach Jarrell two or three times, and that he did not remember stabbing Coach Jarrell 43 times. App. R. vol. X, 73.

In his quest to convince this Court of his position, Petitioner also argues that there was not any logical motive for him to kill Coach Jarrell and his other bizarre behavior further supports his contention that he did not act with malice in killing Coach Jarrell. This other bizarre behavior that Petitioner speaks of includes: (1) An incident on December 20, 2010, where Petitioner was found

lying in Kimberly Adkins' yard in the snow moving his fingers and mumbling; (2) Petitioner eating ice cream in Coach Jarrell's home after killing him; (3) Petitioner arranging Coach Jarrell's shotguns on Coach Jarrell's bed; and (4) Petitioner facilitating his own arrest by taking off his shirt and approaching Trooper Chapman and assaulting this officer for no reason. Again, the State disagrees.

For starters, we are obviously not dealing with some international assassin or *mafioso* killer with umpteen hits under his belt in this case, but that does not make Petitioner any less of a murderer. With that said, and more to the point, it is always nice, from a prosecution standpoint, to have motive in a first-degree murder case, but it is not required under our law. *See* Syl. Pt. 17, *State v. Hamric*, 151 W. Va. 1, 151 S.E.2d 252 (1966) (“It is not necessary to show motive in case of a homicide in order to warrant a verdict of murder.”).<sup>17</sup>

Furthermore, while it is true that the lying in the snow and mumbling incident did occur, it is also true that Petitioner sure was able to snap out of this behavior in a hurry once the police arrived. Specifically, when Kimberly Adkins found Petitioner, she immediately called 911. Following this call, Deputy Chris Booten, of the Wayne County Sheriff's Department, was dispatched to the scene. When he arrived, Deputy Booten found Petitioner lying in the snow with a knife beside him. Deputy Booten immediately grabbed the knife and asked Petitioner whether he was okay. Petitioner responded that he was having a seizure. Deputy Booten then asked Petitioner if he needed an ambulance, to which Petitioner said “no,” and that he would be okay in a moment. During his interaction with Deputy Booten, Petitioner's demeanor was calm and Deputy Booten had

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<sup>17</sup> *See generally also Pointer v. United States*, 151 U.S. 396 (1894) (Proof of a motive for the crime is not indispensable to conviction, for malice may be inferred from the mere fact of the killing. But the absence of evidence suggesting a motive is a circumstance in favor of the accused, to be given such weight as the jury deems proper.).

no reason to believe that Petitioner was mentally ill. Eventually, Deputy Booten got Petitioner back up on his feet, after which Deputy Booten, who had no real reason to arrest and hold Petitioner, took Petitioner back to Huntington where he lived. During this 15-18 mile trip, Petitioner's demeanor was calm, as he sat quietly in the back of Deputy Booten's police cruiser. *See generally* App. R. vol. X, 122-26, 142-45, 149.

As far as Petitioner eating ice cream in Coach Jarrell's house after killing him, this does not show a lack of malice—it fortifies it! That is, it shows Petitioner's total disregard for what he had just done—brutally, with a depraved and malignant heart, murdering Coach Jarrell by stabbing him 43 times and then having the gall to sit down and have a bite to eat!

Additionally, it may be correct that, after murdering Coach Jarrell, Petitioner arranged Coach Jarrell's shotguns on the bed, but it is also correct that Petitioner took one of these shotguns, a 16 gauge shotgun to be exact, with him when he left Coach Jarrell's house. From there, Petitioner went to a Walmart and purchased 16 gauge ammunition for this shotgun. Thus, despite his so-called lack of malice due to his ongoing mental state, Petitioner had the presence of mind to know exactly what type of weapon he had in his possession, the exact type of ammunition needed to arm this weapon, and exactly where to obtain this ammunition.

On Petitioner approaching Trooper Chapman, with his shirt off, and then attacking Trooper Chapman, who is to say. Maybe Petitioner just plain ol' did not care anymore, knew he was going to get caught anyway, which he certainly was, and decided to give up. This possibility is further evidenced by the fact that, before actually attacking Trooper Chapman, Petitioner twice stated that he was "the man that killed Scott Jarrell." Also, and perhaps most importantly, other than appearing to be in an aggressive and agitated mood, Trooper Chapman found Petitioner to have his "wits"

about him. This was also Dr. Hamilton's assessment, who treated Petitioner at the emergency room within hours of his arrest. Otherwise, Dr. Hamilton would have ordered a psychiatric/psychological consult for Petitioner, which he did not, as there was no need for doing so.

Finally, as an afterthought, Petitioner, as support for his position, also makes much of his walking long distances in the cold during the days and weeks prior to killing Coach Jarrell. Presumably, Petitioner did not have a car and had no choice but to walk. If he would have had such a car, then Petitioner would certainly have driven around during this period rather than walk. One thing is for certain, Petitioner sure did not take off walking after he murdered Coach Jarrell—he stole and drove off in Coach Jarrell's truck.

**B. THE TRIAL COURT DID NOT COMMIT ERROR IN DENYING PETITIONER'S REQUEST FOR A CHANGE OF VENUE.**

**1. Standard of Review**

“To warrant a change of venue in a criminal case, there must be a showing of good cause therefor, the burden of which rests on the defendant, the only person who, in any such case, is entitled to a change of venue. The good cause aforesaid must exist at the time application for a change of venue is made. 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.”

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)). *See also State v. Bail*, 140 W. Va. 680, 688, 88 S.E.2d 634, 641 (1955) (“Whether a defendant has established good cause warranting a change of venue rests very largely within the discretion of the trial court.”).

**2. Rules on Request for Change of Venue**

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.

W. Va. R. Crim. P. 21(a). “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.”

W. Va. Code § 62-3-13.<sup>18</sup>

“Widespread publicity, of itself, does not require change of venue, and neither does proof that prejudice exists against an accused, unless it appears that the prejudice against him is so great that he cannot get a fair trial.” Syl. Pt. 3, *State v. Blevins*, 231 W. Va. 135, 744 S.E.2d 245 (2013) (quoting Syl. Pt. 1, *State v. Gangwer*, 169 W. Va. 177, 286 S.E.2d 389 (1982)).

The “good cause” which an accused must show to be entitled to a change of venue on the ground of prejudicial pretrial publicity is the existence of a present, hostile sentiment against him, arising from the adverse publicity, which extends throughout the county in which the offense was committed, and which precludes the accused from receiving a fair trial in that county.

Syl. Pt. 3, *Williams, supra*.<sup>19</sup>

**3. Despite his Contention to the Contrary, the Pretrial Publicity Surrounding This Case did not so Infect the Jury Pool Such That Petitioner Could not, and did not, Receive a Fair Trial Made up of Fair and Impartial Jurors.**

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<sup>18</sup> See *Bail*, 140 W. Va. at 688, 88 S.E.2d at 640 (“Except as permitted by statute, trial of a defendant in a felony prosecution must be in the county wherein the offense is alleged to have been committed, before a jury composed of jurors of that county.”). See also *Bail*, 140 W. Va. at 688, 88 S.E.2d at 641 (“Only upon petition of an accused, and then only after good cause shown, may the venue of the trial of a criminal case be removed to a county other than the one wherein the offense was committed.”).

<sup>19</sup> See also *State v. Young*, 173 W. Va. 1, 9, 311 S.E.2d 118, 126 (1983) (citations omitted) (“[A] showing of good cause must be made in order to warrant a change of venue, and the burden of making such showing rests upon the defendant. ‘Good cause shown’ for a change of venue . . . has been interpreted by this Court to mean proof that the defendant cannot get a fair trial in the county where the offense occurred as a result of extensive present hostile sentiment against him.”).

On appeal, Petitioner asserts that the court committed error in denying his motion for a change of venue. In support of this assertion, Petitioner argues that, at the time of his trial, there was a present hostile sentiment towards him in Wayne County such that a fair and impartial jury could not be empaneled to try his case. In arguing this point, Petitioner seems to key in on three areas: (1) the media, i.e., television and newspaper, attention given to the case and its negative impact on the countywide pool of jurors, as reflected in a telephone opinion survey (“survey”) of eligible jurors in Wayne County; (2) the number of potential jurors that were struck for cause during the jury selection process; and (3) the popularity of the victim—Coach Jarrell. *See generally* Pet’r’s Br. 24-33. As fully explained below, the State disagrees.

First of all, the evidence was so overwhelmingly lopsided against Petitioner that had this case been tried by a different jury in any other county, or state or country for that matter, you would have gotten the same result—guilty of first-degree murder. At any rate, Petitioner’s arguments will now be addressed in turn.

Petitioner murdered Coach Jarrell on December 31, 2010 and his trial did not begin until almost 1½ years later on May 22, 2012. Despite his contention to the contrary, the media attention to the case was not overly repetitive and did not saturate the Wayne County community. Rather, as remembered by a large number of the potential jurors during *voir dire*, the murder was reported in the press after it first occurred, in January 2011, and did not reappear in the press until shortly before jury selection, which took place on May 22 and 23, 2012. *See generally* App. R. vols. VI and VII. The point being that if the media attention to the case been overly repetitive to the point of saturating the community, then it would have been in the press during the entire 1½ year period, or a good portion thereof, between the murder and the trial—but it was not. Again, as remembered by the

potential jurors during *voir dire*, the press on this case was not overly prejudicial, as these jurors basically remembered only that Coach Jarrell had been murdered, that Petitioner had been accused and arrested for committing this murder, and that Coach Jarrell died as a result of being stabbed to death. *See generally* App. R. vols. VI and VII. Had the press been overly negative, then it would have informed the public that, after committing this murder, Petitioner sat down and had something to eat. Such was not the case.

The survey that Petitioner relies on in this appeal was carried out during the period of March 21 through April 9, 2012; 201 persons were surveyed. App. R. vol. I, 21. The survey consisted of asking these 201 persons a series of questions. These questions basically consisted of asking these eligible jurors: (1) whether they had seen in the media that Petitioner, who was a former football player under Coach Jarrell, had been charged with murdering Coach Jarrell by stabbing him multiple times; (2) if so, how they first learned about this information in the media, i.e., newspaper, television, radio or other; (3) based on what they had learned from the information in the media, whether they had formed an opinion as to Petitioner's guilt or innocence; and (4) if they had formed such an opinion, what was their opinion. App. R. vol. I, 12-13.

The results of the survey indicated that, of the 201 persons surveyed,<sup>20</sup> 85% (171 persons) knew about the information reported by the media. This, of course, left 15% (30 persons) who did not know about the information reported in the media. App. R. vol. I, 23. Of the 171 persons who knew about the information, a total of 81% had learned about this information from media sources, including 18% from the newspaper, 62% from television, and 1% from radio; 19% learned about this

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<sup>20</sup> Based on this 201 survey sample size, the results of the survey, in estimating how great a prejudice there was against Petitioner, had a 7% plus or minus margin of error. App. R. vol. I, 28-29.

information from other sources.<sup>21</sup> *Id.* Of the 171 persons who knew about the information reported by the media, 50% (87 persons) had formed an opinion as to Petitioner's guilt or innocence, leaving 50% who had not formed such an opinion.<sup>22</sup> *Id.* Of the 87 persons (50% of 171 persons) who had formed an opinion as to Petitioner's guilt or innocence, 78 persons (90%) had negative opinions, i.e., persons saying or implying Petitioner was guilty, leaving 9 persons (10%) with other opinions, i.e., persons expressing doubt about Petitioner's guilt or not addressing his guilt altogether.<sup>23</sup> App. R. vol. I, 23-24.

Based on all of these numbers, Petitioner argues that a present hostile sentiment against him existed in the entire pool of eligible Wayne County jurors, such that a fair and impartial jury could not be, and was not, obtained in this case. Again, the State disagrees. To begin with, it appears that Petitioner has left out, or so it appears, a very important, if you will, piece of the puzzle. That is, despite all of these numbers, whether eligible voters in Wayne County, if chosen to be on the jury and knowing that Petitioner was to be tried for first-degree murder, could follow the court's instructions to presume that he was innocent until proven guilty based solely on the evidence presented at trial. The survey relied upon by Petitioner in this appeal asked this very question:

Clinton Douglas Skeens will be tried in Wayne County on the charge of 1<sup>st</sup> degree

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<sup>21</sup> Although the survey indicates that 18% learned about the information reported in the media from other sources, in actuality, if undersigned counsel's math serves him right, 19% learned about this information from other sources. In other words, 18% (newspaper) + 62% (television) + 1% (radio) = 81% (media sources). 100% (total sources) - 81% (media sources) = 19% (other sources), not 18% (other sources).

<sup>22</sup> Notably, of the total 201 persons surveyed, 43% (87 persons) had formed an opinion as to Petitioner's guilt or innocence. App. R. vol. I, 24.

<sup>23</sup> Again, notably, of the total 201 persons surveyed, 39% (78 persons) had negative opinions as to Petitioner's guilt or innocence. App. R. vol. I, 24.

murder. Do you believe that if you were a member of the jury, you could follow the Court's instruction to presume that Clinton Douglas Skeens is innocent until proven guilty, based solely on the evidence presented in the court room?

App. R. vol. I, 13 (emphasis omitted).

When this question was put to those surveyed (201 total persons) this, 71% (142 persons) responded that they could follow the court's instructions that Petitioner was presumed innocent until proven guilty based solely on the evidence presented at trial. App. R. vol. I, 24, 58. Notably, of this 71%, 24% (47 persons), who had a negative opinion of Petitioner, also responded that they could follow the court's instructions that Petitioner was presumed innocent until proven guilty based solely on the evidence presented at trial. *Id.*

Furthermore, rather than ruling upon Petitioner's motion for a change of venue based solely on the results of the survey, as well as his other arguments, the court, and correctly so, tabled Petitioner's motion until after the *voir dire* to see if a fair and impartial jury could be empaneled in this case. As for the actual *voir dire*, it was extremely thorough and fair, consisting not only questioning the entire jury panel collectively, but also questioning a large number of the jurors individually *in camera*. During these *in camera* proceedings, each individual juror was questioned at length about his or her exposure to press reports about this case, including, among other things: (1) when they were exposed to these reports, i.e., around the time that the murder occurred (early January 2011) or more recent in time to jury selection (late May 2012); (2) the type of media that they were exposed to, i.e., television, newspaper, radio and/or the Internet; and (3) specifically what they remembered from their media exposure. *See generally* App. R. vols. VI and VII. Needless to say, the Court's approach in this regard was legally sound. *See* Syl. Pt. 5, *Williams, supra* ("If it is determined that publicity disseminated by the media during trial raises serious questions of possible

prejudice, the court may on its own motion or shall on motion of either party question each juror, out of the presence of the others, about his exposure to that material.”).

Additionally, of the jurors who were individually questioned, many, if not most, of them had not been exposed to any press concerning this case since around the time that the murder occurred in early January 2011—nearly 1½ years prior to the *voir dire* in late May 2012. Of those who had seen something more recent in time to jury selection, many, and again if not most, of these jurors remember only that jury selection was about to begin in the case, and not any specifics about the facts of the case.

Along these same lines, the jurors remembrance of the facts contained in all of the press reports was rather sketchy, consisting mostly of general type of information, such as that Coach Jarrell had been murdered, that Petitioner was accused and had been arrested for this murder, and that Coach Jarrell died as a result of being stabbed to death. *See generally* App. R. vols. VI and VII. This general type of information, as remembered by the jurors, is hardly overly prejudicial towards Petitioner. Furthermore, this information would have come out at trial no matter where it was held—in Wayne County or elsewhere. Finally, and most tellingly, during the individual *voir dire*, the court specifically asked the jurors whether they would be able to set aside what they had seen or heard in the press and decide this case solely on the evidence presented at trial. From the record, with the exception of one juror, it appears that all of these jurors responded affirmatively.<sup>24</sup> *See generally* App. R. vols. VI and VII.

In his quest to convince this Court that there was a present hostile sentiment against him

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<sup>24</sup> Notably, out of an abundance of caution, as well as in fairness to Petitioner, the court struck a good number of these individual jurors because of their media exposure and other matters as well. *See generally* App. R. vols. VI and VII. This point will be addressed below.

necessitating a change of venue in this case, Petitioner also points to the number of potential jurors that were struck for cause during *voir dire*. By Petitioner's count, of the 64 jurors *voir dired*, 34 were excused for cause. Admittedly, this is a good number of jurors to be removed for cause. However, the removal of these 34 jurors does not show a present hostile sentiment against Petitioner. Rather, it shows that these jurors were very honest and forthcoming about the matters for which they were excused, whether it be for their exposure to the media, their knowledge about the facts of the case, as well as their connection to Coach Jarrell, Petitioner, the prosecutors (and other members of their office), the defense lawyers (and other members of their office), and/or the witnesses in the case.

These same jurors, who were excused for cause, could have just as easily clammed up in the hope that they would be allowed to sit on the jury where they could really sock it to Petitioner, if they indeed had some hidden hostile sentiment towards Petitioner. On this note, at no time during the *voir dire*, or at trial for that matter, did any of the jurors ever express any disdain or hatred towards Petitioner. Furthermore, the fact that so many potential jurors (34) were struck for cause shows something else—that the court was absolutely determined to get it right by making sure that Petitioner would be judged by a fair and impartial jury—and he was.

In support of his position, Petitioner also makes much of Coach Jarrell being a well-known football coach, as well as a well-liked, i.e., beloved, member of the community. On this theory, hypothetically, should someday, but certainly not this year, West Virginia University's football team have a banner year and go on to win the national championship and, thereafter, its coach be tragically murdered, then the defendant's case in this hypothetical would have to be moved to another state.

Lastly, in denying Petitioner's motion for a change of venue, the court found as follows:

The Court is satisfied that the jury selection process was successful in empanelling 28 qualified and impartial jurors from which the parties can select a duly qualified and impartial trial jury.

It is, therefore, the opinion of the Court that there was not widespread prejudicial publicity that would jeopardize a fair trial for the Defendant. It is, therefore, ORDERED and ADJUDGED that the Motion For Change of Venue is hereby DENIED.

App. R. vol. I, 76 (emphasis omitted).

In short, in coming to these findings, the court did not, as insisted by Petitioner in this appeal, abuse its discretion.

V.

**CONCLUSION**

Petitioner's conviction should be affirmed.

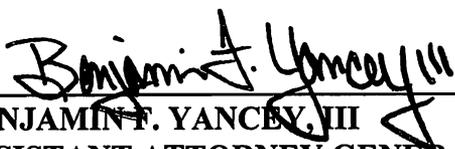
**Respectfully submitted,**

**STATE OF WEST VIRGINIA,**

**Respondent,**

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 12-0887

STATE OF WEST VIRGINIA,

*Plaintiff Below, Respondent,*

v.

CLINTON DOUGLAS SKEENS,

*Defendant Below, Petitioner.*

**CERTIFICATE OF SERVICE**

I, Benjamin F. Yancey, III, Assistant Attorney General and counsel for the Respondent, do hereby verify that I have served a true copy of the *Brief of Respondent State of West Virginia* upon Petitioner by depositing said copy in the United States mail, with first-class postage prepaid, on this 27th day of September, 2013, addressed as follows:

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