

Davis, Chief Justice, dissenting:

The majority decision in this case is disturbing by the manner with which it has taken serious law enforcement errors and forced a specific conclusion. Because the majority opinion has abandoned long-settled legal principles, it reaches a tragic result in this case that compounds injustice by forever nullifying the prompt presentment rule. Under the majority decision, it is now legally possible for law enforcement officers to make a warrantless arrest and detain a suspect for the express purpose of interrogating him or her about other crimes prior to bringing the suspect to a magistrate for formal arrest and notification of constitutional rights. In view of this Court's prior precedents regarding the prompt presentment rule, I must respectfully dissent from the majority opinion.

***The Defendant Was Legally Under Arrest The
Moment She Confessed To Committing Arson***

The record in this case is clear. The defendant confessed to committing arson. The confession was made to a police officer who was investigating the arson incident. Under well established principles of law, the moment the defendant confessed to arson probable cause to arrest her was triggered. "We have interpreted Section 6 of Article III [of the West Virginia Constitution] as requiring that a warrantless arrest be

based upon probable cause.” *State v. Todd Andrew H.*, 196 W. Va. 615, 619 n.8, 474 S.E. 2d 545, 549 n.8 (1996). In addition, this Court held, in syllabus point 3 of *State v. Duvernoy*, 156 W. Va. 578, 195 S.E. 2d 631 (1973), that “[p]robable cause to make an arrest without a warrant exists when the facts and the circumstances within the knowledge of the arresting officers are sufficient to warrant a prudent man in believing that an offense has been committed.” Before the police obtained the arson confession from the defendant, she was a suspect in the crime. I do not believe a prudent person would deny, under those circumstances, that probable cause to arrest the defendant for arson existed the moment she confessed to the crime. As this Court stated in *State v. Wickline*, 184 W. Va. 12, 16, 399 S.E. 2d 42, 46 (1990) “[w]hen the defendant orally confessed to the crime, the police had probable cause to arrest her.” Obviously “[t]here was no chance this defendant would be released without being charged.” *State v. Hopkins*, 192 W. Va. 483, 494, 453 S.E. 2d 317, 328 (1994) (Cleckley, J. concurring, in part, and dissenting). This Court has further noted, in *State v. Humphrey*, 177 W. Va. 264, 268, 351 S.E. 2d 613, 617 (1986), that “ordinarily once an accused confesses to a crime during custodial interrogation, the police will not let [her] leave freely[.]”

The majority opinion holds that once the defendant confessed to arson, she was not under arrest. This is wrong. Our case law long ago abandoned the notion that law enforcement officers must formerly state to a suspect that he or she is under arrest in order for an arrest to actually occur. This Court has recognized “de facto” arrest

precisely for situations like the instant case. *See State v. Mays*, 172 W. Va. 486, 489, 307 S.E. 2d 655, 658 (1983) (recognizing de facto arrest). In this regard, we rationally reasoned in *Humphrey*, 177

W. Va. at 268-269, 351 S.E. 2d at 617-18, that it was necessary to recognize de facto arrest because “[t]o hold otherwise would allow the police to avoid the prompt presentment requirement by simply delaying the formal arrest. We do not believe the prompt presentment requirement can be skirted so easily.” The majority opinion has, in fact, blazed a macabre trail that our prior precedent said must never be followed.

Justice Cleckley observed in *State v. Jones*, 193 W. Va. 378, 382 n.5, 456 S.E. 2d 459, 463 n.5 (1995), that “a de facto arrest is sufficient to invoke the prompt presentment rule when the defendant is taken into custody and there is probable cause justifying an arrest.” Our prior cases support this view. Indeed, in syllabus point 3 of *State v. Wickline*, 184

W. V a. 12, 399 S.E. 2d 42 (1990) we held:

Our prompt presentment rule contained in W.Va. Code § 62-1-5, and Rule 5(a) of the West Virginia Rules of Criminal Procedure, is triggered when an accused is placed under arrest. Furthermore, once a defendant is in police custody with sufficient probable cause to warrant an arrest, the prompt presentment rule is also triggered.

The purpose of our prompt presentment statute, W. Va. Code § 62-1-5, and its counterpart in W.Va.R.Crim.P. 5(a) has previously been explained by this Court:

By statute, our mandated preliminary appearance before a magistrate serves other vital purposes in addition to informing the defendant of his right against self-incrimination and his right to counsel. The magistrate is required to “in plain terms inform the defendant of the nature of the complaint against him.” W.Va. Code § 62-1-6. Moreover, the defendant must be informed “if the offense is to be presented for indictment, of his right to have a preliminary hearing.” W.Va. Code § 62-1-6. The defendant at his initial appearance must be provided “reasonable means to communicate with an attorney or with at least one relative or other person for the purpose of obtaining counsel or arranging bail.” W.Va. Code § 62-1-6. Finally, it is at this initial appearance that the defendant is entitled to obtain bail.

State v. Persinger, 169 W. Va. 121, 134, 286 S.E. 2d 261, 269-70 (1982) (footnote

omitted). The decision by the majority opinion in this case has abandoned forever the principles embodied in the prompt presentment rule. No citizen is safe from endless hours of interrogation once law enforcement officers have probable cause to arrest them. Thus, a generation of rights have been swept away by this opinion.

In the final analysis, the defendant's murder confession should have been suppressed because it was obtained after the arson confession gave the police probable cause to arrest her and because it was violative of the prompt presentment rule. Moreover, because all of the charges against the defendant were joined for trial purposes, all of the convictions

should have been reversed due to the prejudicial impact of the unlawfully obtained murder confession.