IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 2007 Term

FILED
April 5, 2007
released at 10:00 a.m.
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. 33037

STATE OF WEST VIRGINIA,
Plaintiff Below, Appellee,

V.

VALERIE WHITTAKER,
Defendant Below, Appellant.

Appeal from the Circuit Court of Mercer County
Honorable John R. Frazier, Judge
Criminal Action No. 04-F-099-F

AFFIRMED

Submitted: February 14, 2007
Filed: April 5, 2007

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The Opinion of the Court was delivered PER CURIAM.

JUSTICE MAYNARD concurs and reserves the right to file a concurring opinion.

JUSTICES STARCHER and ALBRIGHT dissent and reserve the right to file dissenting opinions.

SYLLABUS BY THE COURT

1. "A jury verdict should be set aside only when the record contains no evidence, regardless of how it is weighed, from which the jury could find guilt beyond a reasonable doubt." Syllabus point 3, in part, *State v. Guthrie*, 194 W. Va. 657, 461 S.E.2d 163 (1995).

2. "It is peculiarly within the province of the jury to weigh the evidence upon the question of self-defense, and the verdict of a jury adverse to that defense will not be set aside unless it is manifestly against the weight of the evidence." Syllabus point 5, *State v. McMillion*, 104 W. Va. 1, 138 S.E. 732 (1927).

3. """'Upon motion to direct a verdict for the defendant, the evidence is to be viewed in light most favorable to prosecution. It is not necessary in appraising its sufficiency that the trial or reviewing court be convinced beyond a reasonable doubt of the guilt of the defendant; the question is whether there is substantial evidence upon which a jury might justifiably find the defendant guilty beyond a reasonable doubt.' *State v. West*, 153 W. Va. 325, 168 S.E.2d 716 (1969)." Syl. pt. 1, *State v. Fischer*, 158 W. Va. 72, 211 S.E.2d 666 (1974).' Syl. Pt. 10, *State v. Davis*, 176 W. Va. 454, 345 S.E.2d 549 (1986)." Syllabus point 1, *State v. Rogers*, 209 W. Va. 348, 547 S.E.2d 910 (2001).

4. "The function of an appellate court when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, is sufficient to convince a reasonable person of the defendant's guilt beyond a reasonable doubt. Thus, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt." Syllabus point 1, *State v. Guthrie*, 194 W. Va. 657, 461 S.E.2d 163 (1995).

5. "A criminal defendant challenging the sufficiency of the evidence to support a conviction takes on a heavy burden. An appellate court must review all the evidence, whether direct or circumstantial, in the light most favorable to the prosecution and must credit all inferences and credibility assessments that the jury might have drawn in favor of the prosecution. The evidence need not be inconsistent with every conclusion save that of guilt so long as the jury can find guilt beyond a reasonable doubt. Credibility determinations are for a jury and not an appellate court. Finally, a jury verdict should be set aside only when the record contains no evidence, regardless of how it is weighed, from which the jury could find guilt beyond a reasonable doubt. . . ." Syllabus point 3, in part, *State v. Guthrie*, 194 W. Va. 657, 461 S.E.2d 163 (1995).

6. "When one without fault himself is attacked by another in such a manner or under such circumstances as to furnish reasonable grounds for apprehending a design to take away his life, or to do him some great bodily harm, and there is reasonable grounds for believing the danger imminent, that such design will be accomplished, and the person assaulted has reasonable ground to believe, and does believe, such danger is imminent, he may act upon such appearances and without retreating, kill his assailant, if he has reasonable grounds to believe, and does believe, that such killing is necessary in order to avoid the apparent danger; and the killing under such circumstances is excusable, although it may afterwards turn out, that the appearances were false, and that there was in fact neither design to do him some serious injury nor danger, that it would be done. But of all this the jury must judge from all the evidence and circumstances of the case." Syllabus point 7, *State v. Cain*, 20 W. Va. 679 (1882).

7. "Under his plea of self-defense, the burden of showing the imminency of the danger rests upon the defendant. No apprehension of danger previously entertained will justify the commission of the homicide; it must be an apprehension existing at the time the defendant fired the fatal shot." Syllabus point 6, *State v. McMillion*, 104 W. Va. 1, 138 S.E. 732 (1927).

8. "Once there is sufficient evidence to create a reasonable doubt that the killing resulted from the defendant acting in self-defense, the prosecution must prove

beyond a reasonable doubt that the defendant did not act in self-defense." Syllabus point 4, *State v. Kirtley*, 162 W. Va. 249, 252 S.E.2d 374 (1978).

9. "'The action of a trial court in admitting or excluding evidence in the exercise of its discretion will not be disturbed by the appellate court unless it appears that such action amounts to an abuse of discretion.' Syllabus point 10, *State v. Huffman*, 141 W. Va. 55, 87 S.E.2d 541 (1955), *overruled on other grounds by State ex rel. R.L. v. Bedell*, 192 W. Va. 435, 452 S.E.2d 893 (1994)." Syllabus point 2, *State v. Doonan*, ___ W. Va. ___, 640 S.E.2d 71 (2006).

10. "Generally, out-of-court statements made by someone other than the declarant while testifying are not admissible unless: 1) the statement is not being offered for the truth of the matter asserted, but for some other purpose such as motive, intent, state-of-mind, identification or reasonableness of the party's action; 2) the statement is not hearsay under the rules; or 3) the statement is hearsay but falls within an exception provided for in the rules." Syllabus point 1, *State v. Maynard*, 183 W. Va. 1, 393 S.E.2d 221 (1990).

11. "'Courts are not constituted for the purpose of making advisory decrees or resolving academic disputes.' *Mainella v. Board of Trustees of Policemen's Pension or Relief Fund of City of Fairmont*, 126 W. Va. 183, 185-86, 27 S.E.2d 486, 487-

88 (1943)." Syllabus point 2, in part, *Harshbarger v. Gainer*, 184 W. Va. 656, 403 S.E.2d 399 (1991).

Per Curiam:

The appellant herein and defendant below, Valerie Whittaker [hereinafter "Ms. Whittaker"], appeals from the January 14, 2005, order of the Circuit Court of Mercer County rendered after a jury adjudged Ms. Whittaker guilty of voluntary manslaughter in the death of her longtime boyfriend. In its order, the court adopted the jury's determination of guilt and sentenced Ms. Whittaker to a determinate term of ten years imprisonment. On appeal to this Court, Ms. Whittaker contends that the trial court erred by (1) not entering a judgment of acquittal[1] based upon her claim of self-defense; (2) limiting the testimony of various defense witnesses; (3) refusing to admit certain evidence proffered by Ms. Whittaker; and (4) admitting statements made by Ms. Whittaker. Upon a review of the parties' arguments, the record presented for our consideration, and the pertinent authorities, we affirm Ms. Whittaker's conviction.

I.

FACTUAL AND PROCEDURAL HISTORY

At the time of the events relevant to this appeal, Valerie Whittaker and Jerry Calvin Mills, Jr. [hereinafter "Mr. Mills"], had been dating for approximately ten years and had one child together, J.W.[2] Throughout the parties' relationship, Ms. Whittaker

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[1]*See* note 14, *infra*.

[2]J.W. was nine years old at the time of the incidents at issue herein. Due to (continued...)

frequently sought shelter for herself and her daughter at a local battered women's shelter, her pastor's home, and her aunt's house in order to escape from Mr. Mills' physical and emotional abuse.[3] During this time, Ms. Whittaker obtained four separate domestic violence petitions against Mr. Mills in an effort to protect her daughter and herself; three of these protective orders were never served on Mr. Mills, including the one pending at the time of his death.[4]

The events leading up to the death of Mr. Mills began in the spring of 2003. In an effort to terminate their relationship, Ms. Whittaker purchased a mobile home and

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[2](...continued)
the tender age of the child involved in this case, we will continue our practice in similar cases and refer to her by her initials rather than by her full name. *See, e.g.*, *Wilson v. Bernet*, 218 W. Va. 628, 629 n.3, 625 S.E.2d 706, 707 n.3 (2005); *In re Clifford K.*, 217 W. Va. 625, 630 n.1, 619 S.E.2d 138, 143 n.1 (2005).

[3]The severity and duration of the abuse inflicted by Mr. Mills upon Ms. Whittaker and J.W. included hitting, yelling, threats of death and bodily harm, throwing them across the floor, torturing and eventually killing J.W.'s pet cat and pet rooster in front of her, and stalking.

[4]Ms. Whittaker first obtained a temporary protective order against Mr. Mills on January 12, 1995; this petition was dismissed without prejudice due to Ms. Whittaker's request on January 17, 1995, that it be dismissed. On February 19, 1997, a second temporary protective order was issued to Ms. Whittaker against Mr. Mills; a final ninety-day protective order was issued on February 21, 1997, which was the only protective order, final or temporary, that was actually served on Mr. Mills. Again, on October 14, 1997, Ms. Whittaker obtained a temporary protective order; however, this matter was dismissed on October 20, 1997, due to Ms. Whittaker's failure to appear at the final hearing thereon. The most recent temporary protective order was issued to Ms. Whittaker on June 18, 2003; the June 24, 2003, hearing was continued to July 1, 2003, on which date the protective order was terminated due to Ms. Whittaker having killed Mr. Mills.

moved it to property adjoining the residence of her parents. Nevertheless, Mr. Mills left his home in Princeton and moved into Ms. Whittaker's home with her and their daughter. Ultimately, Ms. Whittaker and J.W., apparently fearing Mr. Mills, left this residence and temporarily resided at Princeton Community Hospital where security guards could protect them twenty-four hours a day. Upon learning of their continued presence, hospital personnel directed Ms. Whittaker and J.W. to a local women's shelter, where they stayed for approximately five days.[5] During this time, the Mercer County Sheriff's Department unsuccessfully attempted to serve Mr. Mills with Ms. Whittaker's latest domestic violence petition. Nevertheless, Mr. Mills was made aware of the petition's existence when Ms. Whittaker called Mr. Mills' friend, James Duncan [hereinafter "Mr. Duncan"], and asked his wife, Carolyn, to inform Mr. Mills of the petition.[6]

Thereafter, Ms. Whittaker and J.W. left the shelter and went to Ms. Whittaker's aunt's home, where they stayed for a few days. On June 25, 2003, Ms. Whittaker, with J.W., traveled to Princeton to keep a scheduled doctor's appointment.

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[5]Ms. Whittaker and J.W. had stayed at this shelter on numerous prior occasions; the length of their stays ranged from two days to three months.

[6]Apparently, Ms. Whittaker believed that her repeated domestic violence petitions against Mr. Mills charging him with threatening to harm her with various deadly weapons placed him in jeopardy of losing his hunting license, and she asked Carolyn to relay this information to Mr. Mills as well. *See* W. Va. Code § 20-2-38 (1969) (Repl. Vol. 2002) (revoking hunting license for conviction under W. Va. Code § 61-7-11); W. Va. Code § 61-7-11 (1994) (Repl. Vol. 2000) (establishing crime of brandishing deadly weapon and imposing penalties therefor).

Upon leaving the doctor's office building, they encountered Mr. Mills in the parking lot, where he was waiting for them and allegedly threatened them. Driving in two separate vehicles, Ms. Whittaker, with J.W., and Mr. Mills then drove to a nearby pharmacy to have prescriptions filled, to a gas station, and back to Ms. Whittaker's mobile home. From there, they left in one vehicle to go to Mr. Duncan's house to retrieve an item, where they stayed and visited for some time. Afterwards, Mr. Mills, Ms. Whittaker, and J.W. traveled to a convenience store and returned to Ms. Whittaker's home, at which time Mr. Mills began threatening to kill both Ms. Whittaker and J.W. Once inside the home, Mr. Mills picked up J.W. by her hair and her shirt and, as recounted by Ms. Whittaker, "rolled her . . . across the floor like [a] bowlin[g] ball." Apparently afraid of Mr. Mills' next actions, Ms. Whittaker retrieved Mr. Mills' .38 caliber revolver from a kitchen cabinet and shot him one time, instantly killing him. At the time of the shooting, Ms. Whittaker was approximately seventeen feet away from Mr. Mills.[7]

Immediately following the shooting, Ms. Whittaker, seemingly in a state of panic, placed a shotgun in Mr. Mills' hand to bolster her claim of self-defense.[8] She then called the West Virginia State Police to report her actions. Because they could not locate

[7]Testing of Mr. Mills' blood following his fatal wound revealed concentrations of alcohol, hydrocodone, and Valium.

[8]Whether Ms. Whittaker and J.W. discussed placing the gun in Mr. Mills' hand is disputed by the record evidence.

her house, the State Police asked Ms. Whittaker to meet them at a local landmark. She then gave four statements to investigating officers: (1) in the state police car while she was being driven from the landmark back to her house, which statement was not recorded; (2) at her trailer, which statement was tape recorded; (3) at the state police barracks, which statement was not recorded and of which no notes were taken; and (4) in the state police car while she was being transported for arraignment before a magistrate in Princeton, which statement was not recorded.

The Mercer County grand jury returned an indictment on February 11, 2004, charging Ms. Whittaker with first degree murder.[9] At the conclusion of her jury trial on

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[9]W. Va. Code § 61-2-1 (1991) (Repl. Vol. 2000) defines first-degree murder as follows:

> Murder by poison, lying in wait, imprisonment, starving, or by any willful, deliberate and premeditated killing, or in the commission of, or attempt to commit, arson, kidnaping, sexual assault, robbery, burglary, breaking and entering, escape from lawful custody, or a felony offense of manufacturing or delivering a controlled substance as defined in article four [§§ 60A-4-401 et seq.], chapter sixty-a of this code, is murder of the first degree. All other murder is murder of the second degree.
>
> In an indictment for murder and manslaughter, it shall not be necessary to set forth the manner in which, or the means by which, the death of the deceased was caused, but it shall be sufficient in every such indictment to charge that the defendant did feloniously, willfully, maliciously, deliberately and unlawfully slay, kill and murder the deceased.

(continued...)

September 3, 2004, the jury found Ms. Whittaker to be guilty of voluntary manslaughter.[10] The trial court, by order entered January 14, 2005, then adopted the jury's finding of guilt and sentenced Ms. Whittaker to a determinate term of ten years[11] imprisonment in the state penitentiary.[12] This appeal follows.[13]

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[9](...continued)
The penalty for first degree murder is "confinement in the penitentiary for life." W. Va. Code § 61-2-2 (1965) (Repl. Vol. 2000).

[10]"Voluntary manslaughter" is discussed in W. Va. Code § 61-2-4 (1994) (Repl. Vol. 2000) as follows:

> Voluntary manslaughter shall be punished by a definite term of imprisonment in the penitentiary which is not less than three nor more than fifteen years. A person imprisoned pursuant to the provisions of this section is not eligible for parole prior to having served a minimum of three years of his or her sentence or the minimum period required by the provisions of section thirteen [§ 62-12-13], article twelve, chapter sixty-two, whichever is greater.

See Section III.A.2., *infra*, for further discussion of the elements of voluntary manslaughter.

[11]*See* note 10, *supra*.

[12]Ms. Whittaker received credit for the 524 days she previously had served for this crime. Although she requested to be released on post-conviction bond pending her appeal to this Court, the circuit court denied this request. The court did, however, order that Ms. Whittaker be placed in the Southern Regional Jail rather than in the state penitentiary while this Court is considering her appeal.

[13]During oral argument before this Court, counsel for Ms. Whittaker represented that she was released on parole on February 9, 2007.

II.

STANDARD OF REVIEW

In this case, we are asked to reverse the jury's verdict finding Ms. Whittaker guilty of voluntary manslaughter. The burden Ms. Whittaker must bear to secure the reversal of her conviction is a heavy one. We previously have held that "a jury verdict should be set aside only when the record contains no evidence, regardless of how it is weighed, from which the jury could find guilt beyond a reasonable doubt." Syl. pt. 3, in part, *State v. Guthrie*, 194 W. Va. 657, 461 S.E.2d 163 (1995). With particular relevance to the instant appeal, we also have held that "[i]t is peculiarly within the province of the jury to weigh the evidence upon the question of self-defense, and the verdict of a jury adverse to that defense will not be set aside unless it is manifestly against the weight of the evidence." Syl. pt. 5, *State v. McMillion*, 104 W. Va. 1, 138 S.E. 732 (1927). In arguing that her conviction should be reversed, Ms. Whittaker identifies many rulings of the trial court which she claims were erroneous. Because these alleged errors are considered under different standards of review, we will discuss these more specific standards in connection with the issues to which they pertain.

III.

DISCUSSION

On appeal to this Court, Ms. Whittaker assigns numerous errors to the circuit court's entry of judgment and sentence against her: (1) the trial court failed to enter a judgment of acquittal based upon her claim of self-defense; (2) the trial court limited the testimony of various defense witnesses; (3) the trial court refused to admit certain evidence proffered by Ms. Whittaker; and (4) the trial court erred by admitting Ms. Whittaker's prior statements to police officers. We will address each of these assignments in turn.

A. Failure to Enter Judgment of Acquittal Based upon Self-Defense

Ms. Whittaker first assigns error to the trial court's refusal to enter a judgment of acquittal based upon her claim of self-defense. In presenting her argument on this point, however, Ms. Whittaker actually raises two distinct issues: (1) whether the evidence was sufficient to support her motion for a directed verdict[14] and (2) whether the evidence was sufficient to support her conviction and resultant sentence. We will separately consider these issues.

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[14]In her brief, Ms. Whittaker repeatedly refers to her "motion for a directed verdict"; however, Rule 29(a) of the West Virginia Rules of Criminal Procedure abolished this phrase and replaced it with "motions for judgment of acquittal." *See* W. Va. R. Crim. P. 29(a) ("Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place."). To maintain consistency with the current state of the law, we will thus refer to Ms. Whittaker's motion as one for a judgment of acquittal.

1. Sufficiency of evidence to support motion for judgment of acquittal.

Ms. Whittaker's first contention is that the State's evidence was not sufficient to disprove that she had acted in self-defense and that the trial court thus improperly refused her motion for judgment of acquittal at the close of the State's case-in-chief. In this regard, she asserts that the weight of the evidence overwhelmingly supports her claim that she acted in self-defense when she shot and killed Mr. Mills. The State replies that the evidence was sufficient to support Ms. Whittaker's conviction and proved her guilt beyond a reasonable doubt. In refusing to enter a judgment of acquittal in Ms. Whittaker's favor, the trial court ruled that

> [l]ooking at the evidence most favorable to the State, I believe that the State has established a prima facie case of murder in the first degree and all the lesser included offenses under that, so the Court will deny the motion for a directed verdict of a judgment of acquittal.

When reviewing a lower court's refusal to direct a verdict, this Court is bound to consider the evidence in the light most favorable to the prosecution to determine whether a verdict of acquittal should have been directed for the defendant.

> """Upon motion to direct a verdict for the defendant, the evidence is to be viewed in light most favorable to prosecution. It is not necessary in appraising its sufficiency that the trial or reviewing court be convinced beyond a reasonable doubt of the guilt of the defendant; the question is whether there is substantial evidence upon which a jury might justifiably find the defendant guilty beyond a reasonable doubt." *State v. West*, 153 W. Va. 325, 168 S.E.2d 716 (1969).' Syl. pt. 1, *State v. Fischer*, 158 W. Va. 72, 211 S.E.2d

> 666 (1974)." Syl. Pt. 10, *State v. Davis*, 176 W. Va. 454, 345 S.E.2d 549 (1986).

Syl. pt. 1, *State v. Rogers*, 209 W. Va. 348, 547 S.E.2d 910 (2001). In this case, we must consider whether the evidence was sufficient to support Ms. Whittaker's conviction at the time she moved for judgment of acquittal at the close of the State's case.

Despite Ms. Whittaker's claim that she shot Mr. Mills in self-defense, a review of the trial transcript demonstrates that the State presented evidence sufficient to deny Ms. Whittaker's motion for judgment of acquittal. During its case-in-chief, the State presented the testimony of nine witnesses. Through these witnesses, the State presented evidence that Ms. Whittaker did not have a gun on her person at the time of the shooting but that she knew where Mr. Mills kept one in the kitchen of her trailer. The State also proved that Ms. Whittaker shot Mr. Mills and killed him from seventeen feet away with a single gunshot wound between his eyes, despite her claim that she had never before fired the gun used in the shooting. Furthermore, the State presented evidence that, after the shooting but before she called to report Mr. Mills' death, Ms. Whittaker placed a shotgun in Mr. Mills' hand presumably to bolster her claim of self-defense. The State further demonstrated that, in order to retrieve and plant the shotgun in Mr. Mills' hand, Ms. Whittaker had to step through Mr. Mills' blood and that, in doing so, she left bloody footprints around his body. Finally, the State introduced into evidence Ms. Whittaker's numerous statements to law enforcement officials which provided contradictory accounts

of the shooting. We believe this evidence was sufficient to deny Ms. Whittaker's motion for judgment of acquittal.

2. Sufficiency of evidence to support voluntary manslaughter conviction.

Ms. Whittaker additionally argues that the evidence was insufficient to sustain her conviction. On this point, Ms. Whittaker appears to argue that the State failed to prove beyond a reasonable doubt that she did not act in self-defense. Such an argument necessarily requires us to consider whether the evidence was sufficient to permit the jury to find Ms. Whittaker guilty beyond a reasonable doubt.

> The function of an appellate court when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, is sufficient to convince a reasonable person of the defendant's guilt beyond a reasonable doubt. Thus, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt.

Syl. pt. 1, *State v. Guthrie*, 194 W. Va. 657, 461 S.E.2d 163 (1995). In other words,

> [a] criminal defendant challenging the sufficiency of the evidence to support a conviction takes on a heavy burden. An appellate court must review all the evidence, whether direct or circumstantial, in the light most favorable to the prosecution and must credit all inferences and credibility assessments that the jury might have drawn in favor of the prosecution. The evidence need not be inconsistent with every conclusion save that of guilt so long as the jury can find guilt beyond a reasonable doubt. Credibility determinations are for a jury and not an appellate court. Finally, a jury verdict should be set aside only when the record contains no evidence,

> regardless of how it is weighed, from which the jury could find guilt beyond a reasonable doubt. . . .

Syl. pt. 3, in part, *State v. Guthrie*, 194 W. Va. 657, 461 S.E.2d 163.

Ms. Whittaker bases her argument that the evidence was insufficient to support her conviction on her claim of self-defense. This Court previously set forth the elements of self-defense in *State v. Cain*, 20 W. Va. 679 (1882):

> When one without fault himself is attacked by another in such a manner or under such circumstances as to furnish reasonable grounds for apprehending a design to take away his life, or to do him some great bodily harm, and there is reasonable grounds for believing the danger imminent, that such design will be accomplished, and the person assaulted has reasonable ground to believe, and does believe, such danger is imminent, he may act upon such appearances and without retreating, kill his assailant, if he has reasonable grounds to believe, and does believe, that such killing is necessary in order to avoid the apparent danger; and the killing under such circumstances is excusable, although it may afterwards turn out, that the appearances were false, and that there was in fact neither design to do him some serious injury nor danger, that it would be done. But of all this the jury must judge from all the evidence and circumstances of the case.

Syl. pt. 7, *id.* In any event, however, imminency of the danger apprehended is a crucial component of self-defense: "Under his plea of self-defense, the burden of showing the imminency of the danger rests upon the defendant. No apprehension of danger previously entertained will justify the commission of the homicide; it must be an apprehension existing at the time the defendant fired the fatal shot." Syl. pt. 6, *State v. McMillion*, 104 W. Va. 1, 138 S.E. 732 (1927). "Once there is sufficient evidence to create a reasonable

doubt that the killing resulted from the defendant acting in self-defense, the prosecution must prove beyond a reasonable doubt that the defendant did not act in self-defense." Syl. pt. 4, *State v. Kirtley*, 162 W. Va. 249, 252 S.E.2d 374 (1978).

In this case, the State originally had charged Ms. Whittaker with first-degree murder.[15] Upon the conclusion of the trial, however, the jury concluded that Ms. Whittaker was guilty of the lesser-included offense of voluntary manslaughter. The absence of malice distinguishes the crime of voluntary manslaughter from the crime of murder. "Malice, express of implied, is an essential element of murder. . ., and if absent the homicide is of no higher grade than voluntary manslaughter." *State v. Jones*, 128 W. Va. 496, 499, 37 S.E.2d 103, 105 (1946) (citations omitted), *overruled on other grounds by Proudfoot v. Dan's Marine Serv., Inc.*, 210 W. Va. 498, 558 S.E.2d 298 (2001). *Accord State v. Kirtley*, 162 W. Va. at 254, 252 S.E.2d at 376-77 ("It is the element of malice which forms the critical distinction between murder and voluntary manslaughter." (citation omitted)). Thus, manslaughter has been described as "'[a] sudden intentional killing with a deadly weapon, by one who is not in any way at fault, in immediate resentment of a gross provocation, is *prima facie* a killing in heat of blood, and, therefore, an offense of no higher degree than voluntary manslaughter.' Point 10, syllabus, *State v. Clifford*, 59 W. Va. 1[, 52 S.E. 981 (1906)]." Syl. pt. 3, *State v. Bowyer*, 143 W. Va. 302,

[15]*See supra* note 9.

101 S.E.2d 243 (1957).

Although the events leading up to Mr. Mills' death could suggest that Ms. Whittaker was acting in self-defense[16] as she claims, the evidence presented a question as to whether Ms. Whittaker "apprehend[ed] . . . danger," Syl. pt. 6, in part, *State v. McMillion*, 104 W. Va. 1, 138 S.E. 732, at the time she shot Mr. Mills insofar as she admitted that Mr. Mills did not have a gun in his hand at that moment and that she later placed one in his hand to bolster her self-defense claim. The evidence presented by the State could also be construed as indicating a premeditated intent to kill Mr. Mills, as "'[a] sudden intentional killing with a deadly weapon, by one who is not in any way at fault, in immediate resentment of a gross provocation," Syl. pt. 3, *State v. Bowyer*, 143 W. Va. 302, 101 S.E.2d 243. Simply stated, the jury could have accorded the State's evidence numerous interpretations. For example, one view is that Ms. Whittaker shot Mr. Mills in self-defense, panicked after the shooting, and placed a gun in Mr. Mills' hand because she felt guilty and afraid. By contrast, the evidence could be viewed as showing that Ms. Whittaker was not really acting in self-defense, was not remorseful for her actions when she tracked Mr. Mills' blood through her trailer, and that she placed a gun in his hand because she needed to create a believable claim of self-defense.

[16]We do not address whether the evidence supported a claim of defense of others vis-a-vis her daughter insofar as Ms. Whittaker based her motion for a directed verdict upon her claim of self-defense.

In any event, determinations as to the credibility of witnesses are matters for the jury to resolve, not matters to be decided by either the trial court or this Court. Syl. pt. 3, in part, *State v. Guthrie*, 194 W. Va. 657, 461 S.E.2d 163. Also within the province of the jury is the question of whether the defendant acted in self-defense. *See* Syl. pt. 5, *State v. McMillion*, 104 W. Va. 1, 138 S.E. 732. Upon the evidence presented, we are convinced that "there [wa]s substantial evidence upon which a jury might justifiably find the defendant guilty beyond a reasonable doubt," Syl. pt. 1, in part, *State v. Rogers*, 209 W. Va. 348, 547 S.E.2d 910, and that the verdict of the jury adverse to Ms. Whittaker's claim of self-defense was not "manifestly against the weight of the evidence." Syl. pt. 5, *State v. McMillion*, 104 W. Va. 1, 138 S.E. 732. Thus, in this case, we find the evidence was sufficient to prove beyond a reasonable doubt that Ms. Whittaker did not act in self-defense.

B. Evidentiary Rulings

Ms. Whittaker also assigns error to several evidentiary rulings made by the trial court, namely the trial court's decision to limit the testimony of certain defense witnesses; the trial court's refusal to admit certain items into evidence; and the trial court's admission into evidence of prior statements she had made to law enforcement officials. When reviewing the decision of a trial court concerning the admission or refusal to admit evidence, we accord the trial court broad discretion and consider whether the trial court abused that discretion in rendering its ruling.

> "The action of a trial court in admitting or excluding evidence in the exercise of its discretion will not be disturbed by the appellate court unless it appears that such action amounts to an abuse of discretion." Syllabus point 10, *State v. Huffman*, 141 W. Va. 55, 87 S.E.2d 541 (1955), *overruled on other grounds by State ex rel. R.L. v. Bedell*, 192 W. Va. 435, 452 S.E.2d 893 (1994).

Syl. pt. 2, *State v. Doonan*, ___ W. Va. ___, 640 S.E.2d 71 (2006). *Accord* Syl. pt. 2, *State v. Peyatt*, 173 W. Va. 317, 315 S.E.2d 574 (1983) ("'Rulings on the admissibility of evidence are largely within a trial court's sound discretion and should not be disturbed unless there has been an abuse of discretion.' *State v. Louk*, [171] W. Va. [639, 643], 301 S.E.2d 596, 599 (1983) [(citations omitted), *overruling on other grounds recognized by State v. Bradshaw*, 193 W. Va. 519, 457 S.E.2d 456 (1995)]."). Thus, we will consider whether the trial court abused its discretion in making the evidentiary rulings of which Ms. Whittaker now complains.

1. Limitations on defense witnesses' testimony. With respect to the trial court's evidentiary rulings, Ms. Whittaker first argues that the trial court erred by limiting the testimony of various defense witnesses: Ermajean Hudgins, Sandra Brinkley, and Debra Fowler. Because the trial court precluded these witnesses from testifying about statements she had made to them, Ms. Whittaker contends that she was not able to fully develop her claim of self-defense because she was not able, through these witnesses, to demonstrate the full extent of abuse she had suffered while living with Mr. Mills. The State responds that the trial court did not err by limiting the testimony proffered by these

witnesses because the precluded testimony was inadmissible hearsay.

When this Court is asked to review a trial court's rulings on the admissibility of evidence, as well as the trial court's application of evidentiary rules, we accord the trial court great deference and will reverse such rulings only if the trial court has abused its discretion. "A trial court's evidentiary rulings, as well as its application of the Rules of Evidence, are subject to review under an abuse of discretion standard." Syl. pt. 4, *State v. Rodoussakis*, 204 W. Va. 58, 511 S.E.2d 469 (1998). *Cf.* Syl. pt. 1, *Gentry v. Mangum*, 195 W. Va. 512, 466 S.E.2d 171 (1995) ("An interpretation of the West Virginia Rules of Evidence presents a question of law subject to *de novo* review.").

The issue presented by this assignment of error concerns hearsay. "Hearsay" is defined by Rule 801 of the W. Va. Rules of Evidence as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Generally, hearsay is not admissible. W. Va. R. Evid. 802 ("Hearsay is not admissible except as provided by these rules."). However, hearsay may be admissible if it comes within one of the recognized exceptions. *See* W. Va. R. Evid. 803 (recognizing exceptions to hearsay as including, among others, present sense impression; excited utterance; then existing mental, emotional, or physical condition; and statements for purposes of medical diagnosis or treatment). *See also* W. Va. R. Evid. 804 (citing additional exceptions to hearsay rule when declarant is unavailable). In other

words,

> [g]enerally, out-of-court statements made by someone other than the declarant while testifying are not admissible unless: 1) the statement is not being offered for the truth of the matter asserted, but for some other purpose such as motive, intent, state-of-mind, identification or reasonableness of the party's action; 2) the statement is not hearsay under the rules; or 3) the statement is hearsay but falls within an exception provided for in the rules.

Syl. pt. 1, *State v. Maynard*, 183 W. Va. 1, 393 S.E.2d 221 (1990). Thus, we must determine whether the trial court properly limited the testimony of the three witnesses to which Ms. Whittaker assigns error.

(a) Ermajean Hudgins. During her trial, Ms. Whittaker called Ermajean Hudgins [hereinafter "Ms. Hudgins"] as a witness on her behalf. On approximately five occasions in the two years before Mr. Mills' death, Ms. Whittaker and her daughter had sought refuge at the New Life Tabernacle Church, where Ms. Hudgins serves as a pastor. Ms. Hudgins was permitted to testify freely about the physical appearance and demeanor of Ms. Whittaker on these occasions, how fearful Ms. Whittaker was when she sought shelter, and how Ms. Hudgins had offered assistance to Ms. Whittaker and her daughter. The only testimony objected to by the State was Ms. Hudgins' testimony as to what Ms. Whittaker specifically had told her on those occasions; the trial court excluded such testimony, determining such statements to be inadmissible hearsay. Ms. Whittaker contends, however, that these statements were admissible as original evidence or to show

her then-existing state of mind. We disagree.

Ms. Whittaker claims that Ms. Hudgins should have been permitted to testify as to the statements she made to Ms. Hudgins regarding Mr. Mills' threats and abuse to show not the truth of the matter asserted but rather to show her state of mind at the time she sought shelter. While on the surface this argument seems to make perfect sense, in actuality this argument is inconsistent with Ms. Whittaker's claim of self-defense. In order to prove that she shot Mr. Mills in self-defense, Ms. Whittaker would also need to establish that she had had an abusive relationship with Mr. Mills in which he was the aggressor. Insofar as Ms. Hudgins was permitted to testify as to Ms. Whittaker's fearful state of mind and her physical appearance regarding the presence or absence of bruises or other marks indicative of abuse, the only purpose which Ms. Hudgins' excluded statements could have served would have been to prove the truth of the matter asserted: that Ms. Whittaker had been abused and that Mr. Mills was the abuser.

Neither do we agree with Ms. Whittaker's characterization of the excluded statements as constituting original evidence. The concept of "original evidence" typically contemplates that "conversation[s] contemporaneous with the facts in controversy and explaining such fact[s] are admissible. . . . But they must be so connected with the main fact under consideration as to illustrate its character, to further its object, or to form in conjunction with it one continuous transaction." *Sample v. Consolidated Light & Ry. Co.*,

50 W. Va. 472, 478, 40 S.E. 597, 600 (1901) (internal quotations and citations omitted), *reh'g denied*, 50 W. Va. 472, 40 S.E. 694 (1902). Here, the fact in controversy, *i.e.* whether Ms. Whittaker acted in self-defense when she shot and killed Mr. Mills on June 25, 2003, is simply too remote in time from the few occasions on which Ms. Whittaker sought shelter at Ms. Hudgins' church, the dates of which Ms. Hudgins could not recall, to render Ms. Whittaker's statements on those occasions admissible as original evidence. Because the excluded statements do not satisfy any exceptions to the hearsay rule, the trial court properly limited Ms. Hudgins' testimony.

(b) Sandra Brinkley and Debra Fowler. During Ms. Whittaker's case-in-chief, the trial court sustained objections by the State which precluded several defense witnesses, including Ms. Hudgins, from testifying about statements Ms. Whittaker had made to them regarding her abuse by Mr. Mills. Before calling additional defense witnesses, counsel for Ms. Whittaker proffered the testimony of her aunts, Sandra Brinkley [hereinafter "Ms. Brinkley"] and Debra Fowler [hereinafter "Ms. Fowler"], to the trial court *in camera* to preserve their testimony for appellate review.[17] Following their testimony, the trial court stated that "the Court will continue to rule that hearsay will not be permitted by either side in the case."

[17]After Ms. Brinkley and Ms. Fowler had testified *in camera*, the trial court instructed them each to return to the courtroom the following morning, apparently presuming that Ms. Whittaker would call them both as witnesses at trial.

On appeal, Ms. Whittaker complains that the trial court erred by limiting the testimony of both of these witnesses. While the trial court did rule that it would not permit Ms. Whittaker's aunts to testify about hearsay statements she had made to them, it did not entirely preclude these witnesses from testifying. Nevertheless, Ms. Whittaker did not call Ms. Brinkley as a witness to testify at trial before the jury. Because Ms. Brinkley was not called to testify, her testimony was neither objected to by the State nor limited by the trial court. Accordingly, we find this assignment of error as it relates to Ms. Brinkley's testimony to be without merit.

Ms. Whittaker did, however, call Ms. Fowler as a witness during her case-in-chief. Ms. Fowler was permitted to testify about providing shelter to Ms. Whittaker and J.W. during the days immediately preceding the shooting and her personal observations that Ms. Whittaker was nervous and afraid of Mr. Mills. She was not permitted to testify, though, as to any statements Ms. Whittaker had made to her. Although Ms. Whittaker contends that the excluded testimony should have been allowed as an exception to the hearsay rule, we conclude that the excluded testimony of Ms. Fowler, like that of Ms. Hudgins, does not qualify as an exception to inadmissible hearsay. Any statements Ms. Whittaker made to Ms. Fowler were either on June 25th, the day of Mr. Mills' death, or on the days leading up to that date. Given the lapse of time between Ms. Whittaker's departure from Ms. Fowler's home in the late morning hours of June 25, 2003, and her shooting of Mr. Mills later that evening, Ms. Whittaker's statements to Ms. Fowler are

simply too remote in time to be relevant as evidence of her state of mind at the time of Mr. Mills' death or as evidence as to whether, at the precise moment of the shooting, she was acting in self-defense. Because the trial court limited Ms. Fowler's testimony to exclude these inadmissible hearsay statements, we find no error with the trial court's ruling in this regard.

2. Limited admissibility of cock fighting paraphernalia. Next, Ms. Whittaker argues that the trial court erred by not allowing Mr. Mills' cock fighting paraphernalia into evidence. Ms. Whittaker asserts that she wished to introduce this evidence to demonstrate Mr. Mills' cruelty, but that "[t]he trial court permitted [it] to be exhibited to the jury but not introduced into evidence." The State responds that the trial court did, in fact, admit this evidence but denominated it as demonstrative evidence that would not be given to the jury. After reviewing the trial transcript, we find the State's representations to be a more accurate recitation of the trial court's rulings on this evidence.

During the course of Ms. Whittaker's testimony, her counsel asked her to identify a blue plastic box that belonged to Mr. Mills and contained paraphernalia he used to prepare his birds for cock fighting, including bladed spurs, syringes, and medications for "doping" the birds. Thereafter, counsel for Ms. Whittaker moved for the introduction of this evidence, which the trial court allowed. The trial court ruled, however, that this evidence would not be permitted to go to the jury.

BY: Mr. Smith [counsel for Ms. Whittaker]

Q So he [Mr. Mills] was into chicken hunting?

A Chicken–cock fighting, yes sir.

MR. SMITH: Mark that?

(Defendant's Exhibit No. 3, Blue Plastic Box with cock fighting paraphernalia, marked for identification.)

Q Do you recognize what's been marked Defendant's Exhibit No. 3?

A That is one of the boxes that he would always take with him whenever he went to a cock fight to prepare his chickens for the fight, what he would use.

Q Are you familiar with the contents of this box?

A Pretty much, not exactly but pretty much.

Q What are those?

A Those are spurs, those are cock spurs, they cut their regular spurs off, they saw them down as close to the chicken as they can–their feet so that those will fit on, and then they have to take string and tape, and all, and then put–slip that down on it and tape it on there, and there may be blades in there but that is the spurs that goes one on each foot.

MR. BOGGESS [counsel for the State]: Again I'm gonna object as to relevancy, Your Honor, I–

THE COURT: What is the relevance here, Mr. Smith?

MR. SMITH: Your Honor, it's a blood sport and I think I'm entitled to show the deceased was into what amounts to illegal blood sports, I think it goes to her knowledge of his–what he was capable of.

THE COURT: I'll leave that up to the jury so I'll overrule the objection.

BY: Mr. Smith

Q These were his, right?

A Yes.

MR. SMITH: At this time I'd move the introduction of Defendant's Exhibit No. 3?

THE COURT: Any objection?

MR. BOGGESS: Only as to relevancy, Your Honor.

THE COURT: Well since it's–I'm not sending all that back to the jury,–

MR. SMITH: Sure.

THE COURT: –the jury's seen this so I'm not gonna allow that–

MR. SMITH: Okay.

THE COURT: –as an Exhibit to go back to them. You're not offering those trophies, or anything like that at this point?

MR. SMITH: No, Your Honor.

THE COURT: Thank you.

(Defendant's Exhibit No. 3, Blue Plastic Box with cock fighting paraphernalia, introduced into evidence but not to go to jury.)

MR. SMITH: Those were demonstrative.

On appeal, counsel for Ms. Whittaker suggests that the trial court did not allow this evidence to be introduced, and he also seeks to challenge the trial court's rulings in this regard. The problem with this assignment of error is twofold. First, that of which Ms. Whittaker complains is not what actually occurred at trial as reflected by the trial transcript. Contrary to her assertions, the trial court did admit Mr. Mills' cock fighting paraphernalia into evidence. Accordingly, her assertion that the trial court did not admit these items into evidence is without merit.

Additionally, Ms. Whittaker attempts to complain about the trial court's ruling whereby it permitted the jury to see the evidence during trial but prohibited it from being sent to the jury during their deliberations. However, during the trial discourse regarding this evidence, counsel for Ms. Whittaker did not object to the limited purpose for which the trial court admitted this evidence and, in fact, specifically acquiesced in the trial court's ruling in this regard.

Ordinarily, a party must raise his or her objection contemporaneously with the trial court's ruling to which it relates or be forever barred from asserting that that ruling was in error.[18]

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[18]The "raise or waive" rule is not absolute where, in extraordinary circumstances, the failure to object constitutes plain error. "The 'plain error' doctrine grants appellate courts, in the interest of justice, the authority to notice error to which no (continued...)

> When a litigant deems himself or herself aggrieved by what he or she considers to be an important occurrence in the course of a trial or an erroneous ruling by a trial court, he or she ordinarily must object then and there or forfeit any right to complain at a later time. The pedigree for this rule is of ancient vintage, and it is premised on the notion that calling an error to the trial court's attention affords an opportunity to correct the problem before irreparable harm occurs. There is also an equally salutary justification for the raise or waive rule: It prevents a party from making a tactical decision to refrain from objecting and, subsequently, should the case turn sour, assigning error (or even worse, planting an error and nurturing the seed as a guarantee against a bad result). In the end, the contemporaneous objection requirement serves an important purpose in promoting the balanced and orderly functioning of our adversarial system of justice.

State v. LaRock, 196 W. Va. 294, 316, 470 S.E.2d 613, 635 (1996). Thus,

> [t]o preserve an issue for appellate review, a party must articulate it with such sufficient distinctiveness to alert a [trial] court to the nature of the claimed defect. The rule in West Virginia is that parties must speak clearly in the [trial] court on pain that, if they forget their lines, they will likely be bound forever to hold their peace . . . .

State ex rel. Cooper v. Caperton, 196 W. Va. 208, 216, 470 S.E.2d 162, 170 (1996)

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[18](...continued)
objection has been made." *State v. Miller*, 194 W. Va. 3, 18, 459 S.E.2d 114, 129 (1995). "Under plain error, appellate courts will notice unpreserved errors in the most egregious circumstances. Even then, errors not seasonably brought to the attention of the trial court will justify appellate intervention only where substantial rights are affected." *State v. LaRock*, 196 W. Va. 294, 316, 470 S.E.2d 613, 635 (1996). Where, however, "there has been a knowing and intentional relinquishment or abandonment of a known right, there is no error and the inquiry as to the effect of a deviation from the rule of law need not be determined." Syl. pt. 8, in part, *State v. Miller*, 194 W. Va. 3, 459 S.E.2d 114. The failure of counsel to object to the trial court's ruling in the case *sub judice* does not necessitate a plain error analysis insofar as counsel not only failed to object to, but affirmatively agreed with, the trial court's decision.

(citations omitted). *Accord State v. Miller*, 194 W. Va. 3, 17, 459 S.E.2d 114, 128 (1995) ("'One of the most familiar procedural rubrics in the administration of justice is the rule that the failure of a litigant to assert a right in the trial court likely will result' in the imposition of a procedural bar to an appeal of that issue." (quoting *United States v. Calverley*, 37 F.3d 160, 162 (5th Cir. 1994) (en banc))).

Here, counsel for Ms. Whittaker simply did not object to the trial court's ruling limiting the admissibility of this evidence and thus waived her objection thereto. Because Ms. Whittaker waived her objection, she cannot now complain about the trial court's ruling on appeal. Consequently, we find this assignment of error also to be without merit.

3. Admissibility of Ms. Whittaker's prior statements to police officers. Lastly, Ms. Whittaker complains that the trial court should not have allowed the State to admit into evidence her statements to police officers when those statements had not been recorded to preserve her exculpatory comments. Specifically, she complains of the statement she gave to Trooper Christian, which statement she made while accompanying him to the crime scene, and her statement to Sergeant Mankins, which statement she made while she was being interrogated at the state police barracks. As to these statements, Ms. Whittaker says in her brief that "Appellant concedes that she was properly Mirandized before speaking to the officers, that she went to the barracks of her own accord, and that

she was not promised or threatened into giving the statement." However, she asserts that neither of these statements was recorded, although the officers taking them had recording equipment available to them at that time, and that, as a result, any exculpatory comments she made in those statements were not adequately preserved.

The argument presented by Ms. Whittaker on this point is a novel one. She does not complain that her statements were not voluntary, but admits that they were freely given. And while she presents this assignment of error by claiming that "[t]he trial court erred in admitting [her] statements," the argument that she makes in her brief actually discusses her concern that the officers should have recorded these statements to preserve not only her incriminating comments but her exculpatory ones as well. Ms. Whittaker supports her argument by relying heavily upon information from the Innocence Project.[19]

Although the issue of mandatory recording of confessions or interrogations is one of first impression for this Court, it has been addressed by a few courts in other jurisdictions. For example, the Supreme Court of Minnesota specifically determined that

> in the exercise of our supervisory power to insure the fair administration of justice, we hold that all custodial

[19]According to its website, the "Innocence Project" is "a national litigation and public policy organization dedicated to exonerating wrongfully convicted people through DNA testing and reforming the criminal justice system to prevent future injustice." Innocence Project homepage, *available at* http://www.innocenceproject.org (last visited March 7, 2007).

> interrogation including any information about rights, any waiver of those rights, and all questioning shall be electronically recorded where feasible and must be recorded when questioning occurs at a place of detention. If law enforcement officers fail to comply with this recording requirement, any statements the suspect makes in response to the interrogation may be suppressed at trial.

Minnesota v. Scales, 518 N.W.2d 587, 592 (Minn. 1994). Likewise, the Alaska Supreme Court has also ruled that such recording is generally required: "we hold that an unexcused failure to electronically record a custodial interrogation conducted in a places of detention violates a suspect's right to due process, under the Alaska Constitution, and that any statement thus obtained is generally inadmissible." *Stephan v. Alaska*, 711 P.2d 1156, 1158 (Alaska 1985). This issue has also been addressed by a few state legislatures. *See, e.g.*, 20 Ill. Comp. Stat. 3930/7.2(d) (2004) (creating two-year pilot program requiring Illinois police to record custodial interviews of suspects investigated for first-degree murder); Me. Rev. Stat. Ann. tit. 25, § 2803-B(1)(K) (2006) (requiring establishment of policies for digital, electronic, audio, video, or other recording of law enforcement interviews of suspects in serious crimes and preservation of investigative notes and records in such cases); Texas Code Crim. Proc. Ann. art. 38.22, §§ 3(a)(1)-(2) (2006) (barring admission in any criminal proceeding of any statement made during custodial interrogation unless electronic recording is made of statement). *See generally* Steven A. Drizin & Mariss J. Reich, *Heeding the Lessons of History: The Need for Mandatory Recording of Police Interrogations to Accurately Assess the Reliability and Voluntariness of Confessions*, 52 Drake L. Rev. 619 (2004).

Under the facts of this case, we decline to decide whether there is a state constitutional right for a criminal suspect to have his or her confession or interrogation recorded. Ms. Whittaker has not argued that there were some specific "exculpatory" statements that she gave to the police which the police now deny. In other words, there is no controversy regarding what Ms. Whittaker stated to the police. This Court will not decide abstract issues where there is no controversy. "'Courts are not constituted for the purpose of making advisory decrees or resolving academic disputes.' *Mainella v. Board of Trustees of Policemen's Pension or Relief Fund of City of Fairmont*, 126 W. Va. 183, 185-86, 27 S.E.2d 486, 487-88 (1943)." Syl. pt. 2, in part, *Harshbarger v. Gainer*, 184 W. Va. 656, 403 S.E.2d 399 (1991). *Accord State ex rel. ACF Indus., Inc. v. Vieweg*, 204 W. Va. 525, 533 n.13, 514 S.E.2d 176, 184 n.13 (1999) (recognizing that "this Court cannot issue an advisory opinion with respect to a hypothetical controversy); *State ex rel. West Virginia Deputy Sheriff's Ass'n, Inc. v. Sims*, 204 W. Va. 442, 445, 513 S.E.2d 669, 672 (1998) (reiterating that "this Court has held that we are not a body that gives advisory legal opinions"). Accordingly, we need not further consider this assignment of error.

IV.

CONCLUSION

After considering all of Ms. Whittaker's assignments of error, we conclude that the circuit court did not err by upholding Ms. Whittaker's jury conviction of voluntary manslaughter and sentencing her in accordance therewith. Nevertheless, we remain deeply troubled by the facts underlying this case. Under no circumstances do we condone vigilante justice. However, we sympathize with the plight in which Ms. Whittaker found herself after her numerous attempts to seek help from law enforcement authorities were unsuccessful. Ms. Whittaker's inability to obtain such assistance was due, in part, to the fact that most of Ms. Whittaker's domestic violence petitions were not served on Mr. Mills, and, thus, they were not enforced.[20] "Simply put, our law enforcement/criminal justice system utterly failed" Ms. Whittaker and J.W. *State v. Miller*, 204 W. Va. 374, 387, 513 S.E.2d 147, 160 (1998) (per curiam) (Starcher, J., concurring). Perhaps even more troubling, though, is the fact that Ms. Whittaker's case is not an isolated incident; we previously have been asked to review the convictions of domestic violence victims who have felt the need to end the cycle of abuse by resort to whatever means were at their disposal. *See, e.g.*, *State v. Miller*, 204 W. Va. 374, 513 S.E.2d 147; *State v. McClanahan*,

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[20]We appreciate the fact that two of these petitions were dismissed due to Ms. Whittaker's action or inaction. *See supra* note 4. However, we also recognize that fear of retaliation by Mr. Mills may have motivated Ms. Whittaker to permit the dismissal of these filings. *See generally State v. Mechling*, 219 W. Va. 366, ___, 633 S.E.2d 311, 324-25 (2006) (discussing why domestic violence victims often do not cooperate with, or seek assistance from, law enforcement officials vis-a-vis their batterers).

193 W. Va. 70, 454 S.E.2d 115 (1994) (per curiam). Although our decision of this case stands firm, we nonetheless wish to renew our continuing commitment to ensuring the safety, security, and dignity of victims of domestic abuse, and we encourage our coordinate branches of government to do likewise.

Accordingly, the conviction of Valerie Whittaker of voluntary manslaughter, and her resultant sentence of ten years imprisonment,[21] is hereby affirmed.

Affirmed.

[21]Ms. Whittaker is currently on parole. *See* note 13, *supra*.