

Based on all of these circumstances, the Court **ORDERED** that the defendant, Shane Eric Hagerman, upon his conviction by a jury to Second Degree Murder be sentenced to the custody of the Commissioner of Corrections for a determinate sentence of thirty (30) years, with credit for time served (35 days).

The Court remanded Defendant into custody as a State prisoner to serve his sentence.

It is further **ORDERED** that the defendant be assessed the court costs and all costs involved in the prosecution of this action, and the State of West Virginia is hereby granted a decretal judgment in the amount of said costs.

The Court appointed Gloria M. Stephens as appellate counsel for Defendant. Attorney Stephens announced her intention to file a Stay of Execution on Defendant's sentence so that Defendant may remain on bond. The Court **DENIED** this Motion, based upon WV Code 62-1C-1(b), which addresses acts of violence using a firearm, and the Court also cited the Defendant's history of violence drinking.

The Court advised the defendant of his appeal rights in this matter, including the necessity of filing notice of intent to appeal within 30 days of entry of this Order.

Defendant was remanded into the custody of the McDowell County Sheriff's Department for transport to the Southwestern Regional Jail to be held as a Division of Corrections offender.

Defendant and his surety are hereby released from bond.

The Clerk of this Court shall forward attested copies of the herein Order to counsel of record, Southwestern Regional Jail, West Virginia Division of Corrections, and the McDowell County Adult Probation Office.

/s/ Rudolph J. Murensky II
Circuit Court Judge
8th Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the

IN THE CIRCUIT COURT OF MCDOWELL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

PLAINTIFF

V.

FELONY NO. 19-F-11

SHANE ERIC HAGERMAN

DEFENDANT

**ORDER DENYING DEFENDANT'S MOTION FOR JUDGMENT OF
ACQUITTAL AND IN THE ALTERNATIVE A NEW TRIAL**

On the 13th day of December 2021, came the State of West Virginia by Dennie S. Morgan, Jr., Assistant Prosecuting Attorney for McDowell County, West Virginia; and also came the defendant, Shane Hagerman, in person, and by his attorney, Gloria M. Stephens, Esq., for Defendant's Motion For Judgment of Acquittal And In The Alternative A New Trial.

After reviewing the arguments made on behalf of the Defendant and the State and after reviewing the various responses made on behalf of the State and the Defendant and after reviewing the entire file in the matter, the Court Denies the Defendant's Motion for Judgment of Acquittal and In The Alternative A New Trial for the following reasons.

(1) The Defendant's first reason in support of his motion is that the Court unduly attempted to influence the composition of the jury. This is false. No juror was excluded from the case on account of race, color, religion, sex, national origin, economic status or being a qualified individual with a disability. See W.Va. Code 52-1-2. The jury was selected at random from a fair cross section of the population of the area served by the court, which is McDowell County. See W.Va. Code 52-1-1.

After the Circuit Clerk's Office selected the initial set of jurors for the case, the Court inquired of the Circuit Clerk's Office if any of the jurors lived in the community or neighborhood of the alleged crime. The Court was advised that six jurors were lived in the community or neighborhood of the alleged crime. The Court advised the clerk's office not to call them on the initial panel, hoping that the initial panel would be sufficient to sit a jury. Although six from this community or neighborhood were not notified to report, other jurors from surrounding communities were notified to report. In reviewing these six jurors it is doubtful that any of these would have been allowed to serve on the jury.

One of the six jurors is the father of the Prosecuting Attorney, who was prosecuting the case.

A second juror works for 911, whose supervisor was a witness.

A third juror works for Welch Community Hospital, who had an employee subpoenaed to testify.

A fourth juror is a retired employee from the Department of Health and Human Resources, who appeared in court on behalf of the DHHR, represented by the McDowell County Prosecuting Attorney's Office.

The fifth has a relative involved in a CPS case, in which the McDowell County Prosecuting Attorney's office is involved.

Juror six was part of an alleged sexual assault investigation, where she complained that she was a victim and was or is still part of an investigation in which the McDowell County Prosecuting Attorney's office is a part thereof.

There was no systemic disqualification of jurors. The alleged crime occurred in a small tight knit community of approximately two hundred fifty people. The people in this community

generally know each other and would be aware of the local knowledge or gossip of a shooting death in their community. The Court would be suspect of any juror who didn't know the parties involved or have some knowledge of the facts of this case.

Reason number one is a red herring and is not a reason for a judgment of acquittal or for a new trial.

(2) The second reason stated is witness intimidation of Hannah Muncy. Hannah Muncy is the girlfriend/fiance of the defendant, and they have had a child since the shooting. The video of inside the trailer was on her cell phone. She was a reluctant witness, who didn't want to say anything negative about her boyfriend and the father of her child. Prior to jury selection the Defendant by counsel told the Court that someone had told Hannah Muncy that she could be charged with a misdemeanor if her testimony was different than what she told the police. Counsel did not identify this person. Counsel wanted clarification as to the law concerning perjury. Assistant Prosecuting Attorney Morgan stated that neither he nor the Prosecuting Attorney Brittany Puckett told this to Hannah Muncy. The Court said that not all inconsistent statements are perjury or false swearing. That for it to be either perjury or false swearing that it would have to be done intentionally under oath, but that the Court didn't have the elements of either crime at the time. The Court further advised at as long as all witnesses tell the truth there should not be any issue.

Hannah's testimony during the trial had a lot of "I don't remembers", but this is not unusual. Ms Muncy's testimony testified to some matters that were against the interest of the Defendant. There is no credible evidence that Hannah Muncy was threatened with a misdemeanor, if she testified differently than her statements to the police.

Reason number two is not a reason for a judgment of acquittal or for a new trial.

(3) The Third reason is that the State failed to prove malice. The Court properly instructed the jury about malice and the inference with the use of a deadly weapon. Also, the statements by defendant were sufficient for the jury to find malice. For the reasons stated on the record during the hearing, Reason Three is not a reason for a judgment of acquittal or for a new trial.

(4) Reason Four related to the Court's Jury Charge relating to self-defense. The record will show the discussion relating to the Court's Charge on self-defense, which the Court modified because of certain concerns expressed the Defendant. The Defendant' quote in Reason 4 is not accurate. The Court's Charge was correct. This was not a typical self-defense or home invasion case, and an argument could be made that the Court would have been justified to not give a self-defense instruction, but the Court allowed it because this was the Defendant's strategy.

(5) Reason Five is that the State's evidence was not sufficient to disprove that Defendant had acted in self-defense, and that the State did not prove beyond a reasonable doubt that the Defendant did not act in self-defense. The jury was properly instructed as to the State having to prove beyond a reasonable doubt that the Defendant did not act in self-defense once the Defendant introduced sufficient evidence that he did act in self-defense. The jury is the finder of fact and so found that the State proved beyond a reasonable doubt that the Defendant did not act in self-defense upon being properly instructed.

(6) Reason Six is Prosecutorial Misconduct. The State did not commit any prosecutorial misconduct. Although the Court did not allow the State to use prior bad acts, the State was certainly within its rights to argue the Defendant's conduct that was inextricably intertwined with the shooting of the deceased, and the beating of the deceased was part of the res

gestae, giving the context the jury was entitled to hear to have the complete story. The Defendant and the deceased had been fighting at the scene for a considerable period of time.

(7) Reason Seven relates to jury deliberations. Reason seven has some inaccuracies. During the first day of deliberations, the jury did not deliberate into the evening. The jury was released at 4:57p.m.

Secondly, the jury foreman, Joshua Bowman, did not tell the Court that the jurors were deadlocked and could not reach a verdict. If he had, the Court would have read the Allen instruction, relating to deadlock juries. The jury deliberated in the courtroom, instead of the jury room. This provided the jury plenty of room for social distancing. The jury had use of the entire courtroom. Non jurors vacated the courtroom. Shortly before five, a jury (possibly Joshua Bowman) knocked on the secretary's door, leading into the courtroom. One of the bailiffs answered the knock and asked if the jury had reached a verdict. The juror answered either they had not or could not reach a verdict. This was relayed to the undersigned judge, and all parties returned to the courtroom. The Court recessed for the rest of the day as it was almost five p.m. and the jury was instructed to return the next morning. The foreman never told the Court they were unable to reach a verdict or that it would be useless to return the next day.

Upon being released for the day and as the jurors were leaving the jury box, Juror Riggins asked if he could get a doctor's excuse and be excused for the next day. The Court told him no. The Court noticed that Juror Riggins was coughing during the reading of the Court's Charge and during closing arguments. He was wearing a mask, as were all jurors.

Juror Riggins returned the next day and did not complain about being sick and did not ask to be excused for illness. If he had been sick, the Court is confident that he would have telephoned the Court and said that he was sick and unable to proceed. The Court observed that Juror Riggins

is a smoker, because he smoked when the Court took cigarette breaks. Neither the foreman nor any jurors complained to the Court about Juror Riggins' coughing or expressed any concern about his health or affecting their health.

For the reasons set forth on the record and set forth in this order, Defendant's Motion for Judgment of Acquittal and In the Alternative A New Trial is **DENIED**.

Sentencing originally scheduled for February 18, 2022, is **CONTINUED**, at the request of Defendant's attorney, Gloria M. Stephens, Esq.

Sentencing is scheduled for the 28th day of February, 2022 at 2:00 o'clock p.m.

The Clerk of this Court is directed to send a copy of the order to the McDowell County Prosecuting Attorney's Office; The Law Office of Gloria M. Stephens, Esq., and to the McDowell County Probation Office.

Entered this the 22th day of February, 2022.


RUDOLPH J. MURENSKY, II, JUDGE