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C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

State of West Virginia,
Petitioner Below, Respondent

v.) No. 22-895 (Fayette County CC-10-2021-F-183)

Douglas Joseph Greene,
Respondent Below, Petitioner

MEMORANDUM DECISION

Petitioner Douglas Joseph Greene appeals the Circuit Court of Fayette County's November 18, 2022, order sentencing him to life imprisonment with mercy upon his conviction for first-degree murder.[1] Here, the petitioner raises three assignments of error pertaining to evidentiary rulings. Upon our review, finding no substantial question of law and no prejudicial error, we determine oral argument is unnecessary and that a memorandum decision is appropriate. *See* W. Va. R. App. P. 21(c).

In the early morning hours of February 18, 2021, the petitioner shot and killed his neighbor, Anthony Cottle. Prior to trial, the petitioner filed a notice of intent to present the testimony of Quzell Ward, a neighbor of both the petitioner and Mr. Cottle, to show specific acts of violence by Mr. Cottle. The petitioner explained that he intended to call Mr. Ward to testify that on the day of the shooting, Mr. Cottle threatened to injure Mr. Ward. The petitioner claimed that Mr. Ward's testimony was relevant to his self-defense theory, as it showed Mr. Cottle's violent nature towards his neighbors. The State filed a motion to exclude this testimony.

The State also filed pre-trial motions requesting that the circuit court determine the voluntariness of two statements made by the petitioner, as it was clear that the petitioner had been drinking alcohol throughout the day leading up to the shooting. The petitioner filed motions to suppress these same statements based upon intoxication. The first statement, which occurred prior to the shooting, was taken at around 2:00 p.m. on February 17, 2021, after the petitioner called 9-1-1 to report what he suspected to be an arson attempt on a storage shelter he had been living in. Corporal Michael Sifers of the Fayette County Sheriff's Department responded to the call, and his bodycam recorded the petitioner's statement. The petitioner accused Mr. Cottle of burning the petitioner's camper in December 2020 and attempting to burn his storage shelter earlier that day, claiming that Mr. Cottle was angry about losing the lot on which the camper and shelter were located to the petitioner in a tax sale. Cpl. Sifers informed the petitioner that due to the nature of

[1] The petitioner appears by counsel E. Scott Stanton. The respondent appears by Attorney General Patrick Morrisey and Deputy Attorney General Andrea Nease Proper.

the arson allegations, he would be handing the case over to a detective who would investigate the case. The petitioner became angry and informed Cpl. Sifers that if Mr. Cottle was not immediately arrested, "Somebody is going to Hell and somebody is going to prison."

The second statement occurred after a neighbor called 9-1-1 in the early morning hours of February 18, 2021, to report that the petitioner had shot and killed Mr. Cottle. Law enforcement officers arrived at the scene, took the petitioner into custody, and transported him to a local detachment. There, Sergeant Kevin Willis informed the petitioner of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), which the petitioner waived, and Sgt. Willis conducted an interview regarding the events of that night. The petitioner admitted to shooting Mr. Cottle, setting forth various versions of events and claiming that he acted in self-defense. Sgt. Willis recorded the entire interview.

The circuit court took up the motions pertaining to the petitioner's statement to Sgt. Willis at a hearing held on November 29, 2021. Per Sgt. Willis' testimony, he took the petitioner's statement at approximately 3:39 in the early morning hours of February 18, 2021. Sgt. Willis testified that once the petitioner arrived at the detachment, Sgt. Willis activated a digital recorder and went over the petitioner's *Miranda* rights, which the petitioner waived. Sgt. Willis opined that although the petitioner had been drinking earlier, he did not appear to be intoxicated at the time of the statement. Sgt. Willis stated that because he was aware that the petitioner had been drinking that evening, he watched him carefully for signs of intoxication, but observed none. Sgt. Willis testified that the petitioner was able to walk on his own, did not stagger or stumble, and appeared lucid and appropriately responsive during questioning. Ultimately, the circuit court found the petitioner's statement to Sgt. Willis to be voluntary and, accordingly, denied the motion to suppress. The court specifically found that while the petitioner had been drinking, the evidence did not establish that his intoxication was such that it impaired his free agency or his ability to understand the rights that had been explained to him.

On April 19, 2022, the circuit court held a hearing on the motions pertaining to the petitioner's statement that was captured by Cpl. Sifers' bodycam. Upon reviewing the footage and considering the parties' arguments, the court concluded that the petitioner's intoxication did not render his statement involuntary. The court noted that the petitioner effectively communicated with Cpl. Sifers and ambulated without difficulty. The court opined that the petitioner's "level of intoxication was not high enough to take away [his] free agency in agreeing to speak with the officer nor did [his] intoxication rise to the level that it impacted [his] ability to comprehend the questions asked." Given the forgoing, the court denied the petitioner's motion to suppress his statement to Cpl. Sifers.[2] Accordingly, both statements made by the petitioner were deemed admissible and were used by the State at trial. Ultimately, the jury returned a verdict of guilty of first-degree murder with a recommendation of mercy.

The petitioner first assigns as error the circuit court's ruling denying his motion to suppress his statement to Cpl. Sifers. According to the petitioner, his statement made to Cpl. Sifers was too far removed from the time of the murder to be relevant or material. The petitioner also claims that

[2] Cpl. Sifers' bodycam footage included interviews with some neighbors and Mr. Cottle. However, the State only admitted the portion of the footage showing the petitioner's statements.

the footage was unfairly prejudicial as the jury requested to review it again during deliberations. As such, the petitioner argues that the circuit court erred in allowing testimony and footage of the statement at trial.

In our review of the circuit court's ruling on the petitioner's motion to suppress, we "construe all facts in the light most favorable to the State, as it was the prevailing party below," and review the court's findings of fact for "clear error." Syl. Pt. 1, in part, *State v. Lacy*, 196 W. Va. 104, 468 S.E.2d 719 (1996). Ultimately, "a circuit court's denial of a motion to suppress evidence will be affirmed unless it is unsupported by substantial evidence, based on an erroneous interpretation of the law, or, based on the entire record, it is clear that a mistake has been made." *Id.* at 107, 468 S.E.2d at 722, Syl. Pt. 2, in part.

At the outset, we note that the petitioner did not challenge in circuit court the relevance or materiality of his statement to Cpl. Sifers but, rather, only argued that the statement was involuntary due to the alleged severity of the petitioner's intoxication. Generally, "nonjurisdictional questions raised for the first time on appeal will not be considered." *State v. Ward*, 245 W. Va. 157, 162, 858 S.E.2d 207, 212 (2021) (citation omitted). Nevertheless, we will address the petitioner's argument because the record is sufficiently developed to decide the issue.

"Whether evidence offered is too remote to be admissible upon the trial of a case is for the trial court to decide in the exercise of a sound discretion[.]" Syl. Pt. 5, in part, *Yuncke v. Welker*, 128 W. Va. 299, 36 S.E.2d 410 (1945). We have previously held that "[e]vidence which is immaterial and irrelevant to any issue in the case, and which tends to raise immaterial issues or to becloud the real issue, should be rejected." Syl. Pt. 4, *State v. Lockhar*t, 200 W. Va. 479, 490 S.E.2d 298 (1997) (citation omitted). West Virginia Rule of Evidence 401 provides that "[e]vidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." "Under Rule 401, evidence having *any* probative value whatsoever can satisfy the relevancy definition." *McDougal v. McCammon*, 193 W. Va. 229, 236, 455 S.E.2d 788, 795 (1995). Here, we conclude that the petitioner's statement to Cpl. Sifers was both material and relevant. First, the statement, made mere hours before the murder, was not so remote in time that it was immaterial. *See State v. McIntosh*, 207 W. Va. 561, 573, 534 S.E.2d 757, 769 (2000) (listing cases in which courts found evidence admissible despite temporal spans of more than eleven years, thirteen years, and seven to eight years). Moreover, the evidence of the petitioner's statements to Cpl. Sifers accusing Mr. Cottle of arson and stating that "[S]omeone is going to Hell and someone is going to prison," were relevant in that they tended to make the petitioner's motive and/or premeditation in the shooting more probable. Although the petitioner claims that the footage was unfairly prejudicial, we conclude that the jury's request to review the footage during deliberations in and of itself does not establish that the probative value was substantially outweighed by unfair prejudice under West Virginia Rule of Evidence 403.[3] Upon our review, we find no abuse of discretion in the circuit

[3] Rule 403 provides that "[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence."

court's denial of the petitioner's motion to suppress and, therefore, conclude that the petitioner is entitled to no relief in this regard.

The petitioner next assigns as error the circuit court's denial of his motion to suppress his statement to Sgt. Willis. According to the petitioner, he was so intoxicated that it affected the voluntariness of his statement and he was unable to comprehend the rights read to him or the seriousness of the situation. In support, the petitioner notes that Sgt. Willis attempted to take another statement from him at approximately 11:19 on the morning of February 18, 2021, and the petitioner asserted his right to counsel, which he claims "demonstrates his failure to fully comprehend his rights during the 3:39 a.m. statement." We disagree.

In addition to the standard of review set forth above, "[w]e apply an abuse of discretion standard of review to a circuit court's decision on the admissibility of a confession." *State v. Campbell*, 246 W. Va. 230, 237, 868 S.E.2d 444, 451 (2022). A trial court "has wide discretion in regard to the admissibility of confessions and ordinarily this discretion will not be disturbed on review." Syl. Pt. 2, in part, *State v. Vance*, 162 W. Va. 467, 250 S.E.2d 146 (1978). Moreover, "[a] trial court's decision regarding the voluntariness of a confession will not be disturbed unless it is plainly wrong or clearly against the weight of the evidence." *Id.* at 467, 250 S.E.2d at 148, Syl. Pt. 3. Regarding the impact of intoxication on the voluntariness of a confession, we have held that "[a] claim of intoxication may bear upon the voluntariness of a defendant's confession, but, unless the degree of intoxication is such that it is obvious that the defendant lacked the capacity to voluntarily and intelligently waive his rights, the confession will not be rendered inadmissible." Syl. Pt. 1, *State v. Hall*, 174 W. Va. 599, 328 S.E.2d 206 (1985).

In determining whether the petitioner's waiver of his *Miranda* rights and subsequent statement to Sgt. Willis were voluntary, the circuit court considered the only evidence offered—Sgt. Willis' testimony that the petitioner appeared to be lucid, responded appropriately to questions, and walked without staggering or stumbling. The petitioner did not present any witnesses or submit any evidence at the suppression hearing regarding how much alcohol he had consumed or his state of inebriation. The circuit court ultimately concluded that, in light of the evidence before it, the petitioner's intoxication did not impact his ability to comprehend his rights or detract from his free agency in waiving those rights. Based upon our review, we find no abuse of discretion in the circuit court's conclusion that the evidence demonstrated that the petitioner was capable of voluntarily waiving his *Miranda* rights. While it is true that the petitioner later asserted his right against self-incrimination, he fails to establish that he was so intoxicated at the time of his statement that its voluntariness was impacted. Accordingly, we find no error in the court's denial of the petitioner's motion to suppress in this regard.

Lastly, the petitioner argues that the circuit court erred in "suppressing the testimony of [Mr. Ward] that earlier in the day Mr. Cottle directly threatened him when the last person to see [the petitioner] before Mr. Cottle was shot was Mr. Ward." According to the petitioner, part of his defense was eliciting testimony as to the reputations of himself and Mr. Cottle and that, as the last person to see the petitioner before the murder, Mr. Ward should have been permitted to testify to Mr. Cottle's threats towards him.

The petitioner fails to cite to any portion of the record demonstrating that the circuit court precluded the petitioner from eliciting this testimony at trial. The petitioner's sole citation to the record in support of this argument is to a transcript of Mr. Ward's testimony. However, there are no rulings or orders from the court pertaining to Mr. Ward's testimony on the pages cited. This failure to adequately cite to the record is in direct contravention of Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure, which requires that

> [t]he brief must contain an argument clearly exhibiting the points of fact and law presented, the standard of review applicable, and citing the authorities relied on, under headings that correspond with the assignments of error. *The argument must contain appropriate and specific citations to the record on appeal, including citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal.* The Intermediate Court and the Supreme Court may disregard errors that are not adequately supported by specific references to the record on appeal.

(Emphasis added). Additionally, in an Administrative Order entered December 10, 2012, that was styled Re: Filings That Do Not Comply With the Rules of Appellate Procedure, this Court specifically noted that "[b]riefs with arguments that . . . do not 'contain appropriate and specific citations to the record on appeal . . . .' as required by rule 10(c)(7)" are not in compliance with this Court's rules. This Court has made clear that "'[a] skeletal "argument," really nothing more than an assertion, does not preserve a claim . . . . Judges are not like pigs, hunting for truffles buried in briefs.'" *State, Dep't of Health v. Robert Morris N.*, 195 W. Va. 759, 765, 466 S.E.2d 827, 833 (1995) (quoting *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991)). Given the petitioner's failure to cite to any portion of the record demonstrating error on the part of the circuit court, we reject this assignment of error.

For the reasons stated above, this Court affirms the November 18, 2022, final order of the Circuit Court of Fayette County.

Affirmed.

ISSUED: July 31, 2024

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Elizabeth D. Walker
Justice John A. Hutchison
Justice William R. Wooton
Justice C. Haley Bunn