FILED
November 5, 2026
C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

State of West Virginia,
Plaintiff Below, Respondent

v.) No. 23-154 (Jackson County CC-18-2020-F-1)

Jeffrey Todd Hoskins,
Defendant Below, Petitioner

MEMORANDUM DECISION

Petitioner Jeffrey Todd Hoskins appeals his convictions for involuntary manslaughter, strangulation, and child abuse by a parent causing death, as reflected in the Circuit Court of Jackson County's February 14, 2023, sentencing order.[1] The petitioner claims that the circuit court erred when it denied his motion for a judgment of acquittal, admitted gruesome autopsy photos, and failed to sua sponte continue the trial after appointing co-counsel four days before the trial commenced. Upon our review, finding no substantial question of law and no prejudicial error, we determine that oral argument is unnecessary and that a memorandum decision affirming the circuit court's order is appropriate. *See* W. Va. R. App. P. 21(c).

Following the death of his one-year-old child, R.H., the petitioner was indicted in January 2020 on charges of first-degree murder, child abuse by a parent causing death, and strangulation. Jeffrey Davis was appointed by the circuit court as counsel for the petitioner in January 2020, and, in March 2021, the court appointed Roger Lambert as co-counsel. On February 7, 2022, Mr. Lambert filed a motion to appoint standby counsel because Mr. Davis was facing a suspension of his law license.[2] At a hearing on February 11, 2022, the court appointed Mark Plants as standby counsel. It appears that during this hearing, Mr. Plants immediately assumed a role as co-counsel and moved to continue the trial scheduled to begin on February 15, 2022, so that he would have additional time to prepare. The petitioner, however, was frustrated with "the constant delays" and refused to agree to a continuance. According to the petitioner, after questioning, the court found

[1] The petitioner appears by counsel John Balenovich. The State appears by Attorney General John B. McCuskey and Assistant Attorney General Holly Mestemacher. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel.

[2] *See Lawyer Disciplinary Board v. Davis*, No. 20-0871, 2022 WL 421119 (W. Va. Feb. 11, 2022) (memorandum decision) (suspending Mr. Davis's law license for six months and providing other sanctions).

that he made a knowing and voluntary decision to go forward with the trial four days after Mr. Plants was appointed.[3]

Before trial, the petitioner filed a motion in limine to exclude R.H.'s autopsy photos, arguing that they were gruesome and irrelevant to prove cause of death. The circuit court conducted a hearing on this motion and, citing *State v. Mongold*, 220 W. Va. 259, 647 S.E.2d 539 (2007), entered an order finding twelve autopsy photos to be admissible "upon establishment of the proper foundation[.]" At trial, six of the autopsy photos were admitted into evidence during the testimony of Dr. Willis Ennis, a forensic pathologist for the West Virginia Office of the Medical Examiner who conducted the autopsy. The photographs showed R.H.'s body at different angles, and Dr. Ennis utilized them to describe his findings to the jury, including his findings that the child's brain showed signs of an ischemic change, which is related to brain death, and that the child's brain was "half as big as it should be" for a similarly aged child. Dr. Ennis concluded that these conditions were caused by a blunt impact injury, likely due to shaken baby syndrome. Further, the State introduced the petitioner's confession that he shook and strangled R.H. on multiple occasions, and other inculpatory statements. R.H.'s mother also testified that she observed the petitioner handling R.H. roughly and causing the child pain when he was frustrated. Mr. Plants actively represented the petitioner during the trial by questioning witnesses, arguing objections to the admissibility of evidence, and giving the closing argument. On February 22, 2022, the jury convicted the petitioner of involuntary manslaughter, child abuse by a parent causing death, and strangulation.

On August 30, 2022, the petitioner filed motions for a new trial and for a judgment of acquittal; both motions alleged inconsistent verdicts. The circuit court conducted a hearing on these motions, and it also heard the petitioner's oral motion that he was denied due process for "denying a continuance to allow Mr. Plants the opportunity to prepare[.]" On November 1, 2022, the court denied the petitioner's motions for a judgment of acquittal and for a new trial because they were filed outside the ten-day period provided by Rule 29(c) of the West Virginia Rules of Criminal Procedure. The court noted that the "[d]efendant did not move this Court for leave to file the motion outside the ten-day required time frame. Instead Defendant's counsel's only grounds for filing late is he was not trial counsel, but he conveniently ignores that one of the two trial counsel remains as counsel." The court did not address counsel's motion that he was denied due process by failing to continue the trial over the petitioner's objection. Subsequently, the court sentenced the petitioner to a term of one year in jail for involuntary manslaughter, a term of one to five years of imprisonment for strangulation, and a term of fifteen years to life imprisonment for child abuse by a parent causing death, to be served consecutively. The petitioner now appeals.

On appeal, the petitioner presents multiple issues for this Court's consideration. Given the various standards of review applicable to the different issues presented, specific standards of review will be discussed in relation to the alleged errors to which they pertain.

The petitioner first assigns as error the circuit court's decision to go forward with the petitioner's trial when Mr. Plants was appointed as co-counsel just four days prior to the start of voir dire. While the petitioner acknowledges that he refused a continuance and that, as such, this

[3] The record before the Court does not include a transcript of the February 11, 2022, hearing.

Court must analyze the matter under a plain error analysis, he nevertheless claims that the circuit court's actions constitute reversible error. According to the petitioner, it was unreasonable for the court to expect Mr. Plants to be ready for trial in only a few days, particularly given the amount of discovery and the complexities of the case. The petitioner further claims that although he refused a continuance, the court was responsible for ensuring his rights were protected and preserved. The petitioner argues that the court's failure to continue the trial directly impacted his constitutional rights to the effective assistance of counsel and due process because Mr. Plants was deprived of adequate time to prepare and effectively represent the petitioner, preventing him from receiving a fair trial. In sum, the petitioner contends, the court's "management of the timeline and resources for this critical case constitutes a 'plain' error."

Our consideration of this issue is controlled by *State v. Miller*, 194 W. Va. 3, 459 S.E.2d 114 (1995).[4] We have previously explained that plain error is only available to correct an error if it was not waived:

> The first inquiry under the "plain error rule" codified in Rule 52(a) of the West Virginia Rules of Criminal Procedure is whether "error" in fact has been committed. Deviation from a rule of law is error unless it is waived. Waiver is the intentional relinquishment or abandonment of a known right. When there has been such a knowing waiver, there is no error and the inquiry as to the effect of the deviation from a rule of law need not be determined.

Syl. Pt. 6, *State v. Crabtree*, 198 W. Va. 620, 482 S.E.2d 605 (1996); *see also Miller*, 194 W. Va. at 7, 459 S.E.2d at 118, Syl. Pt. 8, in part ("When 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."). Simply put, "when a right is waived, it is not reviewable even for plain error." *Crabtree*, 198 W. Va. at 631, 482 S.E.2d at 616. Here, the record reveals, and the petitioner admits, that after Mr. Plants requested a continuance to prepare as co-counsel for the petitioner's trial, the petitioner refused to agree to a continuance and insisted on going to trial as scheduled. As such, the petitioner voluntarily waived any right to a continuance, and we have repeatedly rejected plain error arguments when a defendant voluntarily waived the right forming the basis of their claims of error. *See State v. Hagerman*, 249 W. Va. 361, 895 S.E.2d 216 (2023) (rejecting plain error arguments where a defendant specifically indicated that he had no objection to the jury obstructions used by the trial court and later claimed error); *Crabtree*, 198 W. Va. at 623, 482 S.E.2d at 616 (rejecting plain error arguments where a defendant affirmatively approved of the trial judge's request to enter the jury room to respond to juror questions without his presence and later claimed error); *Miller*, 194 W. Va. at 19, 459 S.E.2d at 130 (rejecting plain error arguments where a defendant explicitly stated that he was satisfied with the proposed jury instructions of which he later complained) Accordingly, we conclude that there was no error given the petitioner's waiver of any right to a continuance, and, as such, our analysis must end here.

[4] In Syllabus Point 7 of *Miller*, we held that "[t]o trigger application of the 'plain error' doctrine, there must be (1) an error; (2) that is plain; (3) that affects substantial rights; and (4) seriously affects the fairness, integrity, or public reputation of the judicial proceedings." *Id*., 194 W. Va. at 7, 459 S.E.2d at 118, Syl. Pt. 7.

In his second assignment of error, the petitioner argues that the circuit court abused its discretion when it admitted autopsy photographs of R.H. because they were gruesome, their probative value was substantially outweighed by their prejudicial effect, and they were needlessly cumulative.

"The admissibility of photographs over a gruesome objection must be determined on a case-by-case basis pursuant to Rules 401 through 403 of the West Virginia Rules of Evidence." Syl. Pt. 8, *State v. Derr*, 192 W. Va. 165, 451 S.E.2d 731 (1994). Under Rule 401, the circuit court is required to "determine the relevancy of the exhibit on the basis of whether the photograph is probative as to a fact of consequence in the case." *Derr*, 192 W. Va. at 168, 451 S.E.2d at 734, Syl. Pt. 10, in part. The court "then must consider whether the probative value of the exhibit is substantially outweighed by," among other things, "unfair prejudice . . . or needlessly presenting cumulative evidence." *Id.* (citing W. Va. R. Evid. 403). "As to the balancing under Rule 403, the trial court enjoys broad discretion. The Rule 403 balancing test is essentially a matter of trial conduct, and the trial court's discretion will not be overturned absent a showing of clear abuse." *Derr*, 192 W. Va. at 168, 451 S.E.2d at 734, Syl. Pt. 10, in part; *see also State v. Copen*, 211 W. Va. 501, 505, 566 S.E.2d 638, 642 (2002) ("[A] trial court's exercise of discretion in ruling on the admission of potentially gruesome photographs should not be overturned by this Court absent a showing of clear abuse.").

Relevant to this appeal, the petitioner was charged with child abuse by a parent causing death, which consists of a parent maliciously and intentionally inflicting "substantial physical pain, illness, or any impairment of physical condition by other than accidental means" upon a child under his care, custody, or control, thereby causing the death the child. W. Va. Code § 61-8D-2a(a). Upon review, the circuit court did not err in determining that the photographs were probative of these elements. The challenged photographs illustrated the extent of R.H.'s injuries, her condition after medical interventions,[5] and the brain injury that ultimately caused her death, which evidenced the petitioner's malicious, intentional infliction of substantial pain and injury upon the child, resulting in death. Further, the court did not err in concluding that the probative value of the photographs was not substantially outweighed by the danger of unfair prejudice due to our prior recognition that "[g]ruesome photographs simply do not have the prejudicial impact on jurors as once believed by most courts." *Derr* at 177 n.12, 451 S.E.2d at 743 n.12. Instead,"[t]he average juror is well able to stomach the unpleasantness of exposure to the facts of a murder without being unduly influenced. . . . [G]ruesome or inflammatory pictures exist[] more in the imagination of judges and lawyers than in reality." *Id*. Here, the jurors were asked during voir dire if they would have difficulty viewing "very graphic and very disturbing images" from the autopsy but none of them responded in the affirmative; this mitigated the danger of unfair prejudice. Likewise, the court did not abuse its discretion in concluding that the probative value was not substantially outweighed by the danger of needlessly presenting cumulative evidence because the photographs showed different views of R.H.'s injuries. Accordingly, the court did not abuse its discretion in admitting the challenged photographs.

[5] According to Dr. Ennis, the physical evidence of medical interventions displayed by the autopsy photographs included a tracheotomy tube, a PEG tube, and intravascular access catheters.

Finally, the petitioner assigns as error the circuit court's denial of his motion for judgment of acquittal based upon inconsistent verdicts. Specifically, the petitioner argues that the petitioner's convictions are inconsistent verdicts because involuntary manslaughter does not require evidence of malice or intent to kill, and child abuse by a parent causing death requires evidence of malicious and intentional infliction of "substantial physical pain, illness, or any impairment of physical condition by other than accidental means, thereby causing the death of the child." W. Va. Code § 61-8D-2a(a).

At the outset, we note that the petitioner's motion for a judgment of acquittal was not timely filed. However, we notice no plain error[6] and, moreover, we decline to address this argument as this Court has long held that "[a]ppellate review of a claim of inconsistent verdicts is not generally available." Syl. Pt. 5, in part, *State v. Bartlett*, 177 W. Va. 663, 355 S.E.2d 913 (1987). This rule is grounded in "the Government's inability to invoke review, the general reluctance to inquire into the workings of the jury, and the possible exercise of lenity[.]" *State v. Hall*, 174 W. Va. 599, 603, 328 S.E.2d 206, 211 (1985) (citing *United States v. Powell*, 469 U.S. 57, 68 (1984)). Even though the petitioner was convicted of child abuse by a parent causing death, there are "any number of possible explanations for the jury's acquittal" of the petitioner for first-degree murder, *see Schiro v. Farley*, 510 U.S. 222, 233 (1994) (rejecting the application of the collateral estoppel doctrine in a criminal case) (quoting *Dowling v. United States*, 493 U.S. 342, 452 (1990)), and his convictions may have been a product of "the possible exercise of lenity" by the jury. *See Powell*, 469 U.S. at 68. Given the foregoing, we decline to disturb the jury's verdict; the petitioner is entitled to no relief in this regard.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: November 5, 2026

CONCURRED IN BY:

Chief Justice C. Haley Bunn
Justice William R. Wooton
Justice Charles S. Trump IV
Justice H.L. Kirkpatrick
Justice James W. Flanigan

[6] *See* Syl. Pt. 1, *State v. Myers*, 204 W. Va. 449, 513 S.E.2d 676 (1998) (holding that "[t]his Court's application of the plain error rule in a criminal prosecution is not dependent upon a defendant asking the Court to invoke the rule. We may, sua sponte, in the interest of justice, notice plain error.").