COMMONWEALTH OF KENTUCKY
LETCHER CIRCUIT COURT
INDICTMENT NO. 24-CR-00204

COMMONWEALTH OF KENTUCKY PLAINTIFF

V.

ORDER GRANTING MOTION FOR BOND HEARING

SHAWN M. STINES DEFENDANT

The defendant, Shawn Stines, moves this Court to set an adversarial bail hearing, a hearing at which he seeks to introduce portions of the sealed KCPC evaluation. The Commonwealth objects, asserting that as an initial matter, under Section 16 of the Kentucky Constitution, the defendant is not entitled to bail. For reasons stated below, the defendant's Motion for a Bond Hearing is granted. The Court will first hear evidence to determine whether the defendant is bailable. If the defendant is found to be bailable, the Court may then consider setting a bond. However, the defendant may **not** introduce portions of the sealed KCPC evaluation into evidence at the hearing.

On September 19, 2024, the defendant, then the Letcher County Sheriff, shot and killed Letcher County District Judge Kevin Mullins. The event occurred in Judge Mullins' chambers and was recorded on video. The defendant was arrested and charged with murder the same day. The video footage showing the defendant shooting Judge Mullins multiple times was played at the defendant's October 1, 2024 preliminary hearing and entered into the record as an exhibit. The same video footage was played for the Letcher County Grand Jury convened November 21, 2024, the meeting at which the Commonwealth sought, and the grand jury returned, an indictment charging the defendant with one count of aggravated murder, a capital offense.

To sustain a charge of murder, the Commonwealth must show that a person was unlawfully killed, the accused committed the killing, and the accused acted with a specific intent to kill, the requisite *mens rea* to support a murder conviction. *See* KRS 507.020(1)(a).[1] The defendant has given notice that he intends to present a defense of extreme emotional disturbance (EED)[2] and a defense of insanity. Notably, "[e]xtreme emotional disturbance for which there is a reasonable explanation or excuse does not exonerate or relieve one of criminal responsibility. It simply reduces the degree of a homicide from murder to manslaughter. In that respect, it serves the same function as "acting in sudden heat of passion" in pre-penal code times." *McClellan v. Commonwealth*, 715 S.W.2d 464, 468 (Ky. 1986). In contrast, "[a] person who is

[1] KRS 507.020(1)(a) pertinently states: " A person is guilty of murder when . . .[w]ith intent to cause the death of another person, he causes the death of such person . . . ."

[2] KRS 507.020(1)(a) also explains that "in any prosecution a person [charged with murder under this subsection] shall not be guilty . . . if he acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be. However, nothing contained in this section shall constitute a defense to a prosecution for or preclude a conviction of manslaughter in the first degree or any other crime."

KRS 507.030(1)(b) provides that "[a] person is guilty of manslaughter in the first degree when . . . [w]ith intent to cause the death of another person, he or she causes the death of such person or of a third person under circumstances which do not constitute murder because he or she acts under the influence of extreme emotional disturbance, as defined in subsection (1)(a) of KRS 507.020."

> "Extreme emotional disturbance may reasonably be defined as follows: Extreme emotional disturbance is a temporary state of mind so enraged, inflamed, or disturbed as to overcome one's judgment, and to cause one to act uncontrollably from the impelling force of the extreme emotional disturbance rather than from evil or malicious purposes. It is not a mental disease in itself, and an enraged, inflamed, or disturbed emotional state does not constitute an extreme emotional disturbance unless there is a reasonable explanation or excuse therefor, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under circumstances as defendant believed them to be."

McClellan, 715 S.W.2d at 468–69.

insane is not responsible for criminal conduct.[3] Insanity absolves one of criminal intent and is therefore a complete defense." *Id*. (citing KRS 504.020).

The defendant, who is currently incarcerated as a result of the pending charge, requests that this Court grant him bail and moves the Court for an evidentiary hearing. Under Section 16 of the Constitution of Kentucky, "[a]ll prisoners shall be bailable by sufficient securities, unless for capital offenses when the proof is evident or the presumption great . . . ."

> It is clear that this section of the Constitution means that all offenses, including capital offenses, are bailable with the exceptions noted, and these exceptions relate only to capital offenses. A prisoner charged with a capital offense is entitled to bail unless (1) the proof of his guilt is evident, or (2) the presumption of his guilt is great. The right to bail is a constitutional right guaranteed to every prisoner as defined in that section of the Constitution. When he claims his constitutional right, the question naturally arises as to whether the proof of his guilt is evident, or whether the presumption of his guilt is great. In our jurisdiction the presumption of innocence follows a person charged with crime until his conviction through the legal procedure provided for the trial of the case against him.

Commonwealth v. Stahl, 35 S.W.2d 563, 563 (Ky. 1931).

At a bail hearing, the prosecution has the burden of proving that the defendant should not be granted bail. *Id*. at 564. In relation to that burden, *Stahl* explains:

> Generally there is one chief prosecuting witness in every case and his evidence alone may be sufficient to show that the proof of guilt is evident, or the presumption of guilt is great. The commonwealth should only be required to introduce such proof as shows a state of facts making the proof evident or the presumption great, and this may be done without going greatly into detail. . . .

Id.

[3] "Insanity" means, "as a result of mental condition, lack of substantial capacity either to appreciate the criminality of one's conduct or to conform one's conduct to the requirements of law." K.R.S. 504.060(7).

The Commonwealth, citing *Commonwealth v. Jones*, 2023-CA-1132-MR, 2024 WL 2982769 (Ky. App. June 14, 2024),[4] argues that Section 16 of the Kentucky Constitution settles that the defendant is not entitled to bail. The Commonwealth asserts that in lieu of a bond hearing this Court may take judicial notice of the video recording of the defendant shooting and killing Judge Mullins, which is in the record from the preliminary hearing, and conclude that the proof is evident or the presumption is great that the defendant committed murder.

In *Jones*, the Kentucky Court of Appeals considered the question whether the defendant was entitled to bail under Section 16 of the Kentucky Constitution and Kentucky Rule of Criminal Procedure 4.02(1) "because the Commonwealth stated its intention not to seek the death penalty, as so found by the circuit court, or whether, as the Commonwealth argue[d], bail is not available to a person charged with a capital offense irrespective of whether the death penalty is sought." 2024 WL 2982769, at *3. The Court of Appeals concluded that as death was a possible punishment at the moment the defendant was charged with capital offenses, the initial question for the trial court is whether the Commonwealth has proven that guilt is evident or the presumption of guilt is great. *Id*. at *3-4. The Court of Appeals remanded the case to the trial court for further proceedings on the defendant's bail motion. *Id*. at *4. As explained during oral argument, the Commonwealth relies upon *Jones* as a recent statement that if a Court concludes that the proof is evident or the presumption great that a capital defendant is guilty, the defendant is not entitled to bail and a hearing to set a bond under the Kentucky Revised Statutes and Kentucky Rules of Criminal Procedure will not be held. According to the defendant's motion,

[4] The Kentucky Supreme Court granted discretionary review Feb. 13, 2025. Although not a final decision at this point, on October 23, 2025, the Kentucky Supreme Court vacated the Kentucky Court of Appeals' decision and dismissed the appeal, concluding that the defendant's entry of the subsequent guilty plea rendered the controversy relating to his bond moot. As noted below, with the parties agreeing on the bond hearing procedure, the Kentucky Supreme Court's October 23, 2025 decision does not impact the analysis in this case.

his brief in support of an evidentiary bond hearing and setting of bail, and oral argument, the defendant agrees that to be proper procedure.

The defendant disagrees, however, that the Court may determine that he is not entitled to bail without an evidentiary hearing. The defendant cites *Burton v. Commonwealth*, 212 S.W.2d 310 (Ky. 1948); *Day v. Caudill*, 300 S.W.2d 45 (Ky. 1957); and *Thacker v. Asher*, 394 S.W.2d 588 (Ky. 1965), as supporting the premise that he is constitutionally entitled to an evidentiary hearing before any determination regarding bail can be made, but furthermore, *mens rea* is relevant to the issue of bond in a capital case, and seeks to introduce portions of the sealed KCPC report into evidence at the bail hearing. Here, as reflected in the evidence introduced and defenses raised in the cited cases and the defenses noticed on the defendant's own behalf, none of which apparently involve negating the "intent" to commit murder, the defendant uses the term "*mens rea*" in a broad, common-law sense of a person's blameworthiness.[5]

At the time *Burton*, *Day*, and *Thacker* were before then-Kentucky's highest appellate court, pre-penal code, "a homicide that would otherwise have constituted wilful murder was classified as the lesser degree of voluntary manslaughter." *Gall v. Commonwealth*, 607 S.W.2d 97, 108 (Ky. 1980). Thus, voluntary manslaughter was a defense against the higher charge. *Brown v. Commonwealth*, 555 S.W.2d 252, 257 (Ky. 1977). Voluntary manslaughter was defined as an intentional killing, without previous malice, in a sudden affray — which is a difficulty or fight suddenly resulting from the mutual agreement of two or more parties — or in

[5] *See Kahler v. Kansas*, 589 U.S. 271, 304 (2020):

> At common law, the term *mens rea* ordinarily incorporated the notion of "general moral blameworthiness" required for criminal punishment. Sayre, Mens Rea, 45 Harv. L. Rev. 974, 988 (1932); 3 Encyclopedia of Crime and Justice 995 (2d ed. 2002) (as used at common law, the term *mens rea* "is synonymous with a person's blameworthiness"). The modern meaning of *mens rea* is narrower and more technical. *Ibid.* It refers to the "state of mind or inattention that, together with its accompanying conduct, the criminal law defines as an offense." *Ibid.*.

the sudden heat of passion and upon such provocation as would have naturally overcome and suspended the self-control of a man of fair, ordinary and average disposition or will power or cause such a one to act rashly or without due deliberation or reflection. *Gall*, 607 S.W.2d at 108; *Jones v. Commonwealth*, 311 S.W.2d 190, 194 (Ky. 1958); *Dean v. Commonwealth*, 83 S.W.2d 887 (Ky. 1935); *Cavanaugh v. Commonwealth*, 190 S.W. 123, 127 (Ky. 1916) (defining "sudden affray); *Tarrence v. Commonwealth*, 265 S.W.2d 40, 51 (Ky. 1954) (describing the required provocation).

> Voluntary manslaughter has been replaced in the Penal Code by manslaughter in the first degree, ... In lieu of sudden affray or sudden heat of passion upon reasonable provocation, the mitigating circumstance now reducing the crime from murder to manslaughter is that the defendant "acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be." KRS 507.030(1)(b).

Gall, 607 S.W.2d at 108.

In *Burton*, Burton was indicted for murdering Herbert Crowe. 212 S.W.2d at 311. The evidence introduced at the bail hearing is summarized as follows:

> Burton and [Crowe] had some words in a pool room on the afternoon of Dec. 24, 1947, which terminated in them grabbing each other and falling to the floor, but they were separated before either was hurt. Thereupon, Burton left the pool room and went to the street where he waited from five to fifteen minutes in front of or near the pool room where he was to meet a friend, Carl Hopper. Presently, Crowe came out of the pool room and he and defendant engaged in another fist fight on the street. The evidence is conflicting as to who was the aggressor or who struck the first blow. Deceased was a much larger man than Burton and one of his blows knocked the latter several feet between some cars parked at the curb. Then Burton drew his knife and when they went into a clinch he inflicted the fatal wounds upon his adversary. Immediately after the killing, Burton was lodged in jail and the jailer testified he had a 'right smart bruise' over his right ear, and a 'right smart knot' on the side of his head.

Id. Although the appellate court did not have jurisdiction to decide Burton's appeal of the trial court's bond denial, *id*. the appellate court commented on the evidence to prevent an unnecessary

appeal on a writ of habeas corpus while the appellate court was in recess for the Summer, *id.* at 311-12. It stated: "[W]e have read the evidence introduced on that [bail] hearing [and] we believe it shows appellant not to be guilty of wilful murder but only of voluntary manslaughter, should the jury conclude he did not act in self defense." *Id*. at 311.

In *Day,* Ed Day (father) and Melvin Day (son) were indicted for murdering Jack Fields, a deputy sheriff. 300 S.W.2d at 46. At the bond hearing, Smallwood, a deputy sheriff, was the only witness introduced by the Commonwealth who testified concerning the shooting. *Id*. at 47. Smallwood described the officers walking up to Ed Day and others, apparently to check whether anyone was drinking. *Id*. Smallwood stated that Ed Day's pistol fired into Fields' body, that Melvin Day started firing a pistol immediately, and that Fields never touched his pistol. *Id*. Smallwood admitted firing five or six times toward Ed and Melvin Day. *Id*. Ed Day, a state forest warden authorized to carry a weapon, also testified and presented an account of events differing from Smallwood's. *See id.* at 47-48. Ed Day testified that Fields threatened to kill him and shot him. *Id*. As Ed Day got to his feet, Fields hit him with something before Ed Day obtained his pistol from the truck. *Id*. at 47-48. Ed Day shot Fields three or four times. *Id*. at 48. Ed Day was wounded four times, including a a gunshot wound to the chest, as Fields, Smallwood, and two others shot at him. *Id*. at 47-48. Melvin Day had no pistol but obtained Fields' gun after Fields fell. *Id*. at 48. Ed Day's account was corroborated in substance by the testimony of Melvin Day and two other witnesses. *Id.* The appellate court concluded that the proof offered in the face of the presumption of innocence was not sufficient to warrant a denial of the constitutional right to bail. *Id*. at 48 (citation omitted).

In *Thacker*, Thacker was charged with murdering Luke Maiden. 394 S.W.2d at 588. The appellate court described the bond hearing evidence as follows:

> The shooting occurred at dusk when an out of doors poker game broke up because of the darkness. The record discloses that the deceased, Luke Maiden, and other players, had been drinking moonshine most of the afternoon and that Thacker, a late arrival at the game, apparently drank no alcoholic beverage while there. An hour or so before the shooting Thacker had whipped out a pistol and threatened Maiden when the latter started to rake in the pot which Thacker had just won. Peace was immediately restored by the participants and the game continued for a couple of hours afterward without a recorded, untoward incident.
>
> The best we can make out of the testimony offered on the hearing in the circuit court is that shots were fired after the game broke up, two men were hit in the legs, and Luke Maiden's dead body lay sprawled on its back with a revolver lying two to three inches from his hand. Maiden's revolver smelled of gunpowder indicating it had been fired recently, and two live cartridges were in the cylinder and three empty hulls. No one testified [that] Thacker or any specific person fired a shot, but only that shots had been fired and that they probably came from two guns. Thacker voluntarily went to the jailer later that evening and told the jailer that he had been in a shooting scrape, but didn't know whether anyone had been hit because he left. The testimony of the coroner suggested that Maiden had been shot in the back and that the bullets had passed through his body, emerging in the front.

Id. at 588-89.

Thacker argued that the record did not sustain a denial of bail because there is nothing to sustain a charge of premeditated or willful killing and if Thacker did shoot and kill Maiden, it was either in self-defense or in sudden heat and passion. *Id*. at 589. The appellate court concluded that the proof offered was not evident nor the presumption great. *Id*.

Nickell v. Kelly, 357 S.W.2d 856, 857 (Ky. 1962), discusses the evidence in *Day* and *Burton*. The *Nickell* Court stated: "In *Day v. Caudill* . . . and *Burton v. Commonwealth* . . . it was held [that evidence was not sufficient to support a denial of bail] in view of conflicting evidence creating a plausible basis for the defense of self protection or a reduction of the offense to a non-capital degree." *See also Marcum v. Broughton*, 442 S.W.2d 307, 309–10 (Ky. 1969) ("In the *Nickell* case, the cases of *Day v. Caudill* . . . and *Burton v. Commonwealth* . . . were cited with approval and were characterized as holding that where conflicting evidence creates a plausible basis for the defense of self-protection or the reduction of the offense to a noncapital degree, the

Commonwealth has failed to sustain its burden and the accused is entitled to reasonable bail.").

Thacker was decided after *Nickell*. In contrast to *Day* and *Burton*, the accused in *Thacker* was not the identified killer. To the extent the defense arguments played a role in the *Thacker* Court's decision, as in *Day* and *Burton*, only self-defense and a defense to reduce the offense to a noncapital degree were presented; a defense which has been abandoned and supplanted by the EED defense.[6] In summary, *Day*, *Burton*, and *Thacker* do not demonstrate that proof related to an insanity defense is relevant information to be taken into consideration at an evidentiary hearing on bond.

The Commonwealth does not dispute that due process applies to bail decisions. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action.) As reflected in habeas corpus cases, because of the liberty interests involved, the Commonwealth must carry its burden of proof at a hearing necessary to determine whether the proof is evident or presumption great. *See Stahl*, 35 S.W.2d at 563; *Day*, 300 S.W.2d at 46.[7] In that vein, as explained in *Stahl*, 35 S.W.2d at 563, the hearing is focused upon the factual, *see e.g.*, *Day*, *Burton*, and *Thacker*, and is not for exploration of guilt or innocence.

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[6] *Gall*, 607 S.W.2d at 108, explains:

> According to the Commentary prepared by the drafter of this portion of the Penal Code, "The most significant change brought about by [KRS 507.030] subsection (1)(b) is an abandonment of the common law requirement that the killing occur in 'sudden heat of passion' upon 'adequate provocation.' Adopted in its place is the requirement that the homicide be committed 'under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse.' Under this standard, which was borrowed from the Model Penal Code, mitigation is not restricted to circumstances which would constitute provocation 'in the ordinary meaning of the term, i. e., an injury, injustice or affront perpetrated by the deceased upon the actor.' . . . In other words, it is possible for any event, or even words, to arouse extreme mental or emotional disturbance, as that phrase is used here." (Emphasis added.)

[7] This Court's review of habeas corpus cases did not reveal a case in which a defendant's killing of another was captured on video.

The defendant seeks to unseal the KCPC evaluation and "introduce portions of the psychological evaluation at an evidentiary bond hearing to support his defense and ensure the Court has a full and fair understanding of the relevant facts." However, a bail hearing is not a trial rehearsal. Subject to the Kentucky Rules of Evidence, *Young v. Russell*, 332 S.W.2d 629, 633 (Ky. 1960), upon request for bail, a defendant may testify and call witnesses to show the proof is not evident or the presumption is not great that he committed murder. The narrow issue of the hearing is whether the facts adduced by the Commonwealth, notwithstanding the contradiction of them by the defendant's proof, warrant the conclusion that the proof of guilt is evident or presumption of guilt is great. Any proof which may exist and be used to contradict the Commonwealth's facts naturally exists apart from the sealed KCPC evaluation. *See Nickell*, *Day*, and *Burton*. The KCPC sealed evaluation or portions thereof may not be introduced into evidence at a bail hearing.

So Ordered, this 3rd day of December, 2025.

/s/ JUDGE CHRISTOPHER T. COHRON
electronically signed
12/3/2025 12:48:10 PM ET

CHRISTOPHER T. COHRON, SPECIAL JUDGE
LETCHER CIRCUIT COURT

Clerk, send copies to:

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