VIRGINIA:

In the Court of Appeals of Virginia on Wednesday *the* 9th *day of* October, 1991.

Jens Soering, Appellant,

against Record No. 1610-90-3
Circuit Court Nos. CR86000475-01 and
CR86000475-02

Commonwealth of Virginia, Appellee.

From the Circuit Court of Bedford County

Before Judge Coleman, Retired Judges Griffith and Lam*

This petition for appeal is denied for the following reasons:

1. The trial judge did not abuse his discretion in refusing to recuse himself. A trial judge shall disqualify himself in any proceeding in which he is biased, or in which his impartiality might reasonably be questioned. Canon 3C(a), Pt. 6, Sec. III, Rules of Supreme Court of Virginia. The fact that the trial judge presided in a separate proceeding involving a confederate in which the trial judge made findings, or issued rulings, or made extrajudicial statements that were reported in the media, which findings, rulings or statements may have acknowledged that evidence existed of the petitioner's involvement in the crimes does not establish bias or prejudice requiring recusal of the trial judge. Slayton v. Commonwealth, 185 Va. 371, 376, 38 S.E.2d, 485, 488 (1946).

In regard to the trial judge's connection with Risque Benedict, brother of one of the victims, evidence that the trial judge and victim's brother attended the same high school and college over

forty-three years ago, and that there had been infrequent casual social contact between them since that time, did not establish bias, prejudice, or the appearance of impropriety. Also, the record fails to establish that the trial judge refused to provide the petitioner an opportunity to present evidence discovered post-trial in support of the motion for recusal. Rather, the petitioner failed to make a preliminary showing that he had obtained after-discovered evidence.

2. "Change of venue is within the sound discretion of the trial court, and refusal to grant it will not constitute reversible error unless the record affirmatively shows an abuse of discretion....There is a presumption that a defendant can receive a fair trial from the citizens of the county or city in which the offense occurred. To overcome this presumption, the accused has the burden of clearly showing 'that there is such a widespread feeling of prejudice on the part of the citizenry as will be reasonably certain to prevent a fair and impartial trial.' A showing of either extensive publicity or widespread knowledge of the crime or the accused is insufficient by itself to justify a change of venue." Stockton v. Commonwealth, 227 Va. 124, 137, 314 S.E.2d 371, 379-80 (1984)(citing Coppola v. Commonwealth, 220 Va. 243, 248, 257 S.E.2d 797, 801 (1979)).

The trial court granted the petitioner's motion for a change of venue to the extent that it summoned a venire from Nelson County rather than from Bedford County. The petitioner's objection to that ruling, which in effect was a challenge to the venire from Nelson County, was not supported by any evidence showing or suggesting that

the citizenry of Nelson County was biased or prejudiced due to pretrial publicity. We cannot presume that, because the trial judge granted a change of venue from Bedford County, a venire summoned from Nelson County was biased because the two areas were served by essentially the same media coverage. Moreover, a jury free from bias and prejudice was seated from the Nelson County venire. Accordingly, the record fails to provide support for the petitioner's challenge to the venue or venire.

3. "Neither the constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect to our own citizens." United States v. Curtis-Wright Export Corporation, 299 U.S. 304, 318 (1936). See United States v. Verdugo-Urquidez, 110 S.Ct. 1056 (1990). The petitioner, a German citizen, in custody in Great Britain on British charges, is not entitled to invoke the protection of the Fifth Amendment to the United States Constitution even where, during custodial interrogation by British authorities on British charges, the interrogation touches upon offenses committed in the United States.

4. "The standard of review on appeal where the admissibility of expert testimony is challenged is whether the trial court abused its discretion. It is well established that no formal training or education is necessary to qualify as an expert. Expertise may be acquired through an avocation or a hobby. Knowledge may be the product of home study or experience, or both. All that is necessary for a witness to qualify as an expert is that he have 'sufficient knowledge of his subject to give value to his opinion,' and that he be better qualified than the jury to form an inference from the facts."

Kern v. Commonwealth, 2 Va. App. 84, 86, 341 S.E.2d 397, 398-99 (1986). The trial court did not err by qualifying Robert Hallett as an expert witness based upon his experience and training as a forensic scientist with the FBI and The Division of Consolidated Laboratory Services for the Commonwealth of Virginia. The trial court did not err by limiting his range of expertise, but permitting him to testify concerning the comparison of a known foot impression with an unknown impression. Spencer v. Commonwealth, 238 Va. 275, 290, 384 S.E.2d 775, 783 (1989); Jones v. Commonwealth, 228 Va. 427, 323 S.E. 554 (1984); Harward v. Commonwealth, 5 Va. App. 468, 364 S.E.2d 511 (1988).

5. The trial court did not err by permitting the Commonwealth's attorney to cross-examine the petitioner on issues relating to the extradition proceedings when the petitioner had raised these issues on direct examination in order to explain that he had given a false confession in order to be extradited to Germany rather than to the United States.

6. The trial court did not err by admitting as evidence statements which the petitioner made to a German prosecutor, in the presence of German defense counsel, when the statements were not the product of an interrogation conducted by any official of the United States, the Commonwealth of Virginia, or Bedford County. Consequently, neither the Fifth Amendment of the United States Constitution nor the exclusionary rule prevents admission of the statement. See, paragraph No. 3 supra.

7. The trial court did not err in refusing to grant a jury instruction on voluntary manslaughter where there was not a scintilla

of evidence of an intentional killing committed in the sudden heat of passion or upon reasonable provocation. Miller v. Commonwealth, 5 Va. App. 22, 24, 359 S.E.2d 841, 842 (1987); Johnson v. Commonwealth, 2 Va. App. 447, 457, 345 S.E.2d 303, 309 (1986).

8. The petitioner did not offer at trial a jury instruction, or request the trial court to give a jury instruction, pertaining to an accessory after the fact. The trial court made no ruling upon a motion to give an instruction or proffer of an instruction on accessory after the fact. Accordingly, the trial court committed no error. Rule 5A:18.

9. Jury Instruction Nos. 7 and 3 were accurate statements of the law and were supported by the evidence. The trial court did not err in granting the instructions. Giarratano v. Commonwealth, 220 Va. 1064, 1074, 266 S.E.2d 94, 100 (1980); see also Jackson v. Virginia, 443 U.S. 307, reh'g denied, 444 U.S. 890 (1979). The trial court did not err in refusing to grant an instruction on voluntary manslaughter because the record contained no evidence to support granting such instruction. Where there was no motion or request to grant a jury instruction on accessory after the fact, the trial court did not err in failing to grant such an instruction sua sponte.

10. The trial court did not err by denying the defendant's motion to set aside the verdict. The motion to set aside the verdict was filed on Friday, September 21, 1990, three months after the trial was concluded, and only several days before the trial court lost jurisdiction over the case. Rule 1:1. While the motion requested a hearing, the petitioner did not request that the judgment order be vacated. On this record, the trial court did not err in denying the motion to set aside the verdict.

*Retired Judges Lewis H. Griffith and Henry L. Lam took part in the consideration of this case by designation pursuant to Code § 17-116.01.

A Copy,

Teste:

Patricia G. Davis, Clerk

By:

Deputy Clerk