

IN THE SUPREME COURT OF APPEALS FOR WEST VIRGINIA

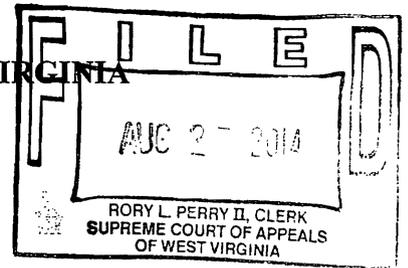
STATE OF WEST VIRGINIA, Plaintiff Below,
Respondent

V.

CASE NO. 14-0400

CARLETTA WATSON, Defendant Below,
Petitioner

APPELLANT CARLETTA WATSON'S BRIEF IN SUPPORT OF APPELLATE RELIEF



Nicholas Forrest Colvin, Esquire
Counsel for the Appellant, Carletta Watson
The Law Office of Nicholas Forrest Colvin, Esq., PLLC
WV Bar ID# 9746
P. O. Box 1720
Martinsburg, WV 25402
Phone: (304) 260-8823
Fax: (304) 205-0606
ColvinLaw@live.com

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Assignments of Error

1. **Sufficiency of the Evidence**
2. **Admission of Defendant's Statements**
3. **Lack of 404(b) Protection**
4. **Finding of No Mercy**
5. **Exclusion of Presentment of Evidence in re: Decedent Dontrell Curry's Status as a Drug Dealer**
6. **Improper Jury Instructions**

STATEMENT OF FACTS

Nature of the Case

The Defendant/Appellant, Carletta Watson, was indicted on charges of felony murder (1st degree), aggravated robbery, burglary, conspiracy to commit burglary, conspiracy to commit robbery, malicious assault and attempted murder initially during the January 2013 term of the Grand Jury for Jefferson County, West Virginia and reindicted on the same charges during the April 2013 term. On or about April 25th, 2012, at Apple Tree Garden Apartments in Charles Town, West Virginia, it was alleged that the Defendant/Appellant and two unknown, masked gunmen entered the residence of Dontrell Curry and Rachel Cooke. With no sign of forced entry, the parties allegedly requested money and pre-paid cards from Dontrell Curry and Rachel Cooke. Ultimately, during this encounter, Dontrell Curry was shot dead and Rachel Cooke was injured via a gunshot wound. Approximately one month later, the Defendant/Appellant was arrested in Baltimore, Maryland and extradited back to West Virginia to await trial.

After a three day trial, the Defendant/Appellant, Carletta Watson, was convicted of felony murder (1st degree), aggravated robbery, burglary, conspiracy to commit burglary and conspiracy to commit robbery. The charges of malicious assault and attempted murder were dismissed per the State's motion prior to the impaneling of the jury. In a bifurcated proceeding, the petit jury recommended that no mercy be attached to their verdict for felony murder and the

Court sentenced the Defendant/Appellant to life without the possibility of parole. The Defendant's remaining sentences were ordered to run concurrently with all convictions. It is from the respective Order of Conviction and Sentencing Order levied by the lower Jefferson County, West Virginia Circuit Court with the Honorable Judge David Sanders presiding that the Defendant/Appellant now appeals.

SUMMARY OF ARGUMENT

1. **Assignment I: The Defendant/Appellant argues that there was insufficient evidence adduced at trial to secure her convictions.**

The Petit Jury's verdict of guilty to Counts I through V of the Indictment was contrary to the weight of the evidence. The State relied upon speculation and innuendo merely upon the purported establishment of the presence of the Defendant at the scene of the crime. No corroborating witnesses outside of identification of the Defendant were produced by the State and no independent evidence was presented to the Petit Jury.

2. **Assignment II: The Defendant/Appellant argues that reversible error was committed via the unlawful admission of the Defendant/Appellant's statements.**

The Defendant's statement was not voluntary and coerced by the agreement for bond placed before her. During both interrogations, in Maryland in May 2012 and at the Eastern Regional Jail in June 2012, the Defendant provided information in the context of a custodial setting charged as a suspect in the death of Dontrell Curry and the shooting of Rachel Cooke. The lynchpin behind her release from incarceration was her debriefing to the State. The lower Court found on three separate occasions that the Defendant was not truthful or forthright with the

State about her interaction with this matter. As such, her purported confessions were not reliable evidence to be placed before the petit jury at trial.

3. **Assignment III: The Defendant/Appellant argues that reversible error occurred as the lower Court failed to conduct a proper 404(b) hearing outside of the purview of the petit Jury.**

The Court committed reversible error by permitting the inclusion of the Defendant's statements (see assignment II above) which triggered the Defense to have no choice but to adopt their trial strategy to embrace the improperly received admissions via characterization of the Defendant as a "drug dealer". By permitting the statements of the Defendant to be used against her at trial, the Defense had no choice but to explain the statements attributed via the "drug dealer" moniker. If the Court had properly ruled that the statements should not have been admitted against her, especially that of June 9th, 2012 at the ERJ, the Defense would have had an opportunity to have a proper 404(b) hearing with the appropriate limiting instruction in regards to this "drug dealer" evidence.

4. **Assignment IV: The Defendant/Appellant argues that reversible error occurred upon the finding of no mercy attaching to the petit Jury's verdict.**

The Defendant argues that the petit jury's finding of no mercy was contrary to the weight of the evidence presented. Defense counsel argues that no evidence was adduced at Trial that the Defendant ever pulled the trigger, provided the weapons, encouraged the result or benefited from the killing. The Defendant's criminal history, while felonious, contained only "paper" crimes like counterfeiting, credit card fraud and forgery. The majority of the Defendant's felony convictions were for financial transactions, roughly, 6 years prior to the petit jury's consideration. The very nature of the petit jury's question regarding the Defendant's choice not

to testify at the mercy phase of the trial speaks volumes that they punished her for standing upon her constitutional rights.

5. **Assignment V: The Defendant/Appellant argues that reversible error occurred upon the Court's preclusion of evidence pertaining to the decedent Dontrell Curry's status as a drug dealer.**

The Defendant argues that the Court impermissibly precluded the Defense from discussing the status of the Decedent Dontrell Curry as a drug dealer. From the onset of the Defendant's case, in its opening statement, the State protested even the slightest mention of the truth that Dontrell Curry was an unrepentant drug dealer. As evidenced by his criminal charges in multiple states, including pending charges in the state of Maryland for heroin, there is ample evidence that Dontrell Curry was actively engaged in the illegal drug trade. Although the Defense was permitted by the Court to comment upon the drug dealer status of Rachel Cooke, it was precluded from mentioning anything in regards to the decedent. This preclusion eliminated fertile ground for an alternative defense theory to present to the jury to explain the context of the murder.

6. **Assignment VI: The Defendant/Appellant argues that reversible error occurred based upon the improper instructions provided to the petit Jury.**

The Defendant argues that the Court improperly instructed the jury as to the elements of felony murder by listing the unknown co-defendants as "co-conspirators" prompting the petit jury to juxtapose the elements of conspiracy with those of being a principle in the second degree. Although the Defense would have been comfortable with the use of the word "accomplices", the Court chose to utilize the term "co-conspirators". This language discrepancy is more than simply inartful, it is inaccurate and confusing to the petit jury. As the Defendant was charged with both

felony murder (Count I) and conspiracy to commit burglary and conspiracy to commit first degree robbery (Counts IV and V), it should be noted that both robbery and burglary were relied upon the state, as alternative theories, to prove their first degree felony murder case. The standard for a conspirator versus that of a principle in the second degree to qualify as an aider and abetter to be a principle in the first degree is distinctly different. This distinction, a critical part of the Defendant's theory of the case and defense argument, was abrogated once the concept of conspirator was impermissibly listed under the felony murder count. This lowered the burden, placed upon the State, to convict the Defendant of felony murder by an enumerated qualifying offense of burglary or robbery, and, instead, convicted the Defendant of Conspiracy which was not a qualifying offense.

Further the Defendant/Appellant argues that during the bifurcated Mercy phase of the Trial, the Court overruled the Defendant's counsel's request to answer the petit jury's interrogatory regarding the impact of the Defendant/Appellant testifying at this stage. Defense counsel argued for the straightforward and correct answer of "yes" as opposed to the State's counsel's preference to advise further regarding the petit jury's use of the Defendant's choice not to testify at this stage of the proceedings.

STANDARD OF REVIEW

"Where the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a de novo standard of review." Syl. Pt. 1 Chrystal R. M. v. Charlie A. L., 194 W. Va. 138, 459 S. E. 2d 415, (1995) "In reviewing challenges to the findings and conclusions of the circuit court, we apply a two-prong deferential standard of review. We review the final order and the ultimate disposition under an abuse of discretion standard, and we review the circuit court's underlying factual findings under a clearly

erroneous standard. Questions of law are subject to a de novo review.” Syl. Pt. 2, Walker v. West Virginia Ethics Commn., 201 W. Va. 108, 492 S. E. 2d 167, (1997)

ARGUMENT

Assignment I: Sufficiency of the Evidence

The Petit Jury’s verdict of guilty to Counts I through V of the Indictment was contrary to the weight of the evidence. The State relied upon speculation and innuendo merely upon the purported establishment of the presence of the Defendant at the scene of the crime. No corroborating witnesses outside of identification of the Defendant were produced by the State and no independent evidence was presented to the Petit Jury.

Pursuant to Taylor v. Kentucky, 436 U. S. 478, (1978), a jury must convict only based upon the evidence presented. Due to the overwhelming lack of evidence and lack of credible evidence pertaining to identification of the Petitioner as having committed any acts that could be reliable for the trier of fact to deliberate upon, the Petitioner avers that the trial court committed reversible error by not granting his motion for judgment of acquittal due to insufficient evidence. Syl. Pt. 1, State v. Guthrie, 194 W. Va. 657, 461 S. E. 2d 163 (1995) states: “the function of an appellate court when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, is sufficient to convince a reasonable person of the defendant’s guilt beyond a reasonable doubt. Thus, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt.”

“[T]he elements which the State is required to prove to obtain a conviction of felony murder are: (1) the commission of, or attempt to commit, one or more of the enumerated felonies; (2) the defendant’s participation in such commission or attempt; and (3) the death of the victim as a result of injuries received during the course of such commission or attempt.’ State v. Williams, 172 W.Va. 295, 305 S.E.2d 251, 267 (1983).” Syl. Pt. 5, State v. Mayle, 178 W.Va. 26, 357 S.E.2d 219 (1987). “A person cannot be charged with felony-murder pursuant to W.Va. Code § 61-2-1 (1989) if the only death which occurred in the commission of the underlying felony was the suicide of a co-conspirator in the criminal enterprise.” Syl. Pt. 2, State ex rel. Painter v. Zakaib, 186 W.Va. 82, 411 S.E.2d 25 (1991).

Carletta Watson had access to the pin numbers, cash and credit cards purportedly at the heart of the robbery/burglary which formed the basis of the felony murder conviction at trial. She was still residing with the victims, Rachel Cook and Dontrell Curry, for a period exceeding a week (9) days after the back child support payment was issued. She was further entrusted with the money, itself, to ensure that Rachel Cook did not spend it all on illegal drugs. As such, there was no need to “mastermind” a felony murder as she could have taken the funds at anytime without firing a shot by simply walking out of the door of their shared living space. As testified by Rachel Cook, herself, at trial:

- Q. Okay. So you agree with me during that week there would be at least some time conceivable where Carletta could take the cards and money and walk out the door?
A. Yeah, she could have.
Q. Okay. But she didn't?
A. Exactly why I trusted her.¹

Carletta never pulled the trigger that injured Rachel Cook and killed Dontrell Curry. She did not have a weapon of any kind, never wore a mask and provided no means to enter the home

¹ Jury Trial Transcript day 1 pg. 146, lines 12-24, pg. 147 lines 1-21 and pg. 211 lines 11-17

illegally as there was no forcible entry.² Carletta-provided no instruction to the two masked men, no encouragement or direction and provided no means of escape-³ Carletta received no proceeds from the offense and no collaterals such as masks, equipment, DNA, forensics and fingerprints were ever collected or presented as evidence.⁴ At most, Carletta was a witness to a crime with no duty to interfere.⁵

- Q. When you came out of the bedroom you were in the hallway -- that is not the hallway, try that again -- the hallway, did you see anybody else at that point?
- A. I turned to the right to look towards the dining room, from the dining room walking into the kitchen, as I was looking in was Carletta.
- Q. The Defendant?
- A. Yes.
- Q. So she was back in this area?
- A. No, she was like next to my table and then walked into the kitchen.
- Q. Let me redo that then. This area right here?
- A. Yes.
- Q. Okay. Then when you looked over you saw her?
- A. I saw Carletta --
- Q. Yes.
- A. -- facing my kitchen. When I looked, she had walked into the kitchen, and there was no lights out there, just my hall light.
- Q. Did --
- A. She walked in the kitchen where it was darker.
- Q. -- it look like she was -- so you wouldn't see her?
- A. Yes, she was ducking, she moved quickly into the kitchen not running but --
- Q. As soon as you saw her?
- A. -- swiftly.
- Q. At the point that you saw her is the point she made that movement into the kitchen?
- A. Yes.

Rachel Cook-spent most of the money which was known to Carletta meaning there was no “big score” to be made. The amount and fact that Rachel had money was common knowledge.⁶

- Q. Did you provide money to anyone?
- A. Yes, I loaned money out.
- Q. Okay. This is from the cards or from the cash?

² Id. pg. 147 lines 22-24, pg. 148 lines 1-6

³ Id. pg. 148 lines 7-15

⁴ Id. Pg. 148 lines 16-23

⁵ Id. Pg. 149, lines 5-11, pg. 167, lines 12-24, pg. 168 lines 1-18

⁶ Id. Pg. 183 lines 19-24, pg. 184 lines 1-24, pg. 185 lines 1-8, See trial transcript day 2, page 78 lines 19-24, pg. 79 lines 1-18

- A. I don't remember if I got them from the cards or the cash. I know when I gave them to them it was cash.
- Q. Okay. During that week how much do you think you spent out of the \$5,800?
- A. A lot, at least -- at least all of the cash, \$1,500.
- Q. Uh-huh. That would leave around \$4,300 on the cards, give or take?
- A. No, \$4,300 wasn't all on the cards. Remember I had a \$1,000 money order and a \$500 money order and a \$300 money order.
- Q. Okay. So that leaves you with \$2,500 on the card?
- A. A thousand on each card. There is \$2,000 on the cards. Now, all of it was not there. I was using it to get food and grocery shopping, just random, a lot of different stuff.
- Q. Uh-huh.
- A. Clothes. I got a lot of clothes and shoes.
- Q. So is it fair to say that you used I won't say most but a lot of it?
- A. Yeah.
- Q. One half?
- A. I used a lot of the money, yeah.
- Q. Okay. Now, during that time Carletta is living with you during that week, right?
- A. Yes.
- Q. At least to some extent I assume she is eating some Chinese or pizza or whatever else too, right?
- A. Generally, we would eat as a family.
- Q. Because she is living there too and whatever you're buying she is partaking in?
- A. (Nodding in the affirmative.)
- Q. And to be fair to your knowledge was she aware that your money came from the checks and didn't come from any other source of money, fair to say?
- A. Yeah.

On direct with Vickie Breeden, it was elicited that virtually anyone and everyone knew about the proceeds that she had obtained from the back child support payment.

- Q. Okay. Was there a time back in April of 2012 were you aware at any point that Ms. Cooke had obtained some money in back child support, were you aware of that at that time?
- A. Yes.
- Q. Okay. Do you remember roughly how much money that was?
- A. I believe she said it was \$5,000.
- Q. Okay. Now, you described your relationship with Ms. Cooke as iffy, were you friends, acquaintances, good friends?
- A. Friends.
- Q. Okay. But she shared this information with you about having money?
- A. I think everybody knew she was getting the money. She made it be known clearly.
- Q. Okay. You said she made it be known, how is that?
- A. Just by talking. I think she posted it on-line.
- Q. Okay. Posted it on-line, do you mean e-mail or Facebook?
- A. Facebook.
- Q. Okay.
- A. Texting people, everyone knew.

In fact as adduced by the record below, Rachel Cook freely gave money to Carletta in furtherance of her own drug dealing and that of her partner Dontrell Curry, the decedent. Of course, defense counsel was not permitted to present evidence related to Dontrell Curry's drug

dealing and involvement in this matter which greatly and impermissibly crippled the Defendant's case. Further, it was obvious from the interplay between Rachel Cook and Carletta Watson that there was absolutely no reason to rob at gunpoint someone who is willing to give, that which you purportedly seek to-wit money, freely per their normal business arrangement.

Q. Okay. Now, as far as the money itself, you had given it to some other people, did you give Carletta any money?

A. Yes.

Q. Okay. Do you remember how much you gave her?

A. \$600.

Q. Okay. Do you remember when you gave her that money?

A. I don't remember what date it was, no. It was probably the day that I got the money and cashed it or got the check cashed.

Q. Do you remember -- well, let me ask you, why did you give her \$600?

A. Because I was trying to help her. She was going to pay it back and she was paying it back little by little each day. I was helping her out.

Q. You didn't give her \$600 to go buy drugs in Baltimore for you and her?

A. For me and her?

Q. Uh-huh.

A. No.

Q. You didn't give her that money to make a profit?

A. Yes, I gave her that money to make a profit.

Q. Okay. Let me back up, you gave Carletta you testified \$600?

A. Yes.

Q. Give or take. That is the only money you gave her?

A. Yes.

Q. And you think you gave it to her from the cash you got, I assume the \$1,500 or out of the \$1,500 you got, correct?

A. That or I got it off of the card, yes.

Q. Okay. And that was the purpose was for her to go to Baltimore to buy drugs and make money and to give you drugs and money too, correct?

A. No.

Q. Well, correct me if I am wrong, what was the money for?

A. I gave her \$600 to help her out to get her back on her feet. She was having a hard time and that was what was discussed. I gave her \$600 to help her out. She was going to pay me back.

Q. You did not give her \$600 as a business loan to make money off that --

A. It was a business --

Q. -- in Baltimore?

A. It was a business loan, yes.

Q. Okay.

A. I believe that she did buy -- like, I wasn't there when it happened, I didn't see none of this, like I didn't visually see what she bought.

Q. I will back up for a minute. Prior to this time, were you involved in selling drugs?

A. Was I involved in selling drugs?

Q. Yes.

A. I wasn't a drug dealer, but, you know, if I got something I could make a profit off of it, you know, yeah, penny pinch like, you know. I wasn't a drug dealer like nowhere close, but like if I got a double weed, I would sell a dime like, you know, a gram of weed I sell, you know, just little things to make a little. So I wasn't -- there is different levels. I guess you could say my specialty was not drug dealing by any means at all.

- Q. Okay. So more of a supplement your income as opposed to full-time job kind of thing?
A. Yes.
A. She was turning down money from me so you can see where I really thought she cared about me.
Q. Uh-huh. Now, during this point then when you gave her \$600, the purpose then was to make money not to get drugs?
A. Yes.⁷

The instability of the only true eyewitness, Rachel Cook, was fully presented before the petit jury via acknowledgement on her part that she had attempted to commit suicide during the time frame preceding the murder.

- Q. Okay. To be fair there is a period of time right around this time, I think it was just even a few weeks that you had gotten I guess for lack of a better word talking about April 9, 2012, that week prior -- well, tell me, you were upset and you had actually overdosed on pills; is that correct?
A. Ibuprofen, yes.
Q. You had to go to the hospital?
A. I tried to kill myself.
Q. After you were released from the hospital that week before, was that when you had decided you didn't want to be on drugs anymore?
A. Yes.
Q. And Carletta was supportive of that decision?
A. Yes.
Q. And Dontrell was too?
A. Yes.
Q. So at that point when you provided the money it was clear it was for profit and not for drugs?
A. Yes.
Q. My client knew that, correct?
A. Yes.⁸

It was further adduced at Trial that Carletta's motivation for leaving was not based upon any phantom argument but rather due to the place getting too "hot". Both Rachel and Dontrell knew that they were being investigated for their drug dealing and were well known quantities to the police. Given Carletta's interaction with them, they decided that it was best for her to lay low to deflect further investigation. Contrary to the entire theory of the State's case, Carletta Watson never left in anger and the same was never articulated before the petit Jury by direct evidence.

- Q. Okay. All right. Now, part of why, correct me if I am wrong, part of why she left as well is that with all the people running in and out and drugs being sold, the police were kind of getting wise to this perhaps and you were worried about them coming in and arresting people or trying to do a search warrant or things

⁷ Id. Pg. 185 lines 20-24, pg. 186, lines 1-24, pg. 187 lines 1-24, pg. 188 lines 1-16, pg. 189 lines 9-14

⁸ Id. Pg. 190 lines 21-24, pg. 191 lines 1-18

of that nature? I think you phrased it in your letter to her that things were getting too hot, something to that effect; is that fair to say?

A. Yeah, like, I mean, there was a lot of people at my house. I didn't want to lose my kids. I love my children and I wanted my family back.

Q. Uh-huh.

A. Regular school nights, dinner, bed times, with lots of people in the house it is hard to do. I didn't want to get in trouble. I didn't want my kids to get taken so things had to change.

Q. Uh-huh. That is when I think you testified earlier on direct that she was coming on the weekends and would be gone during the weekdays, that fixed both problems, fair?

A. It would fix -- I didn't want to be totally mean and kick her to the curb because she was my friend and I didn't want to be like you can never come back so that is why I offered weekends.

Q. Sure. And her reaction is that she understood that?

A. Yeah, when she left we gave each other a hug and she gave me a kiss on the cheek and I offered her some tacos because I was making tacos.

Q. Gotcha.

A. They weren't hungry and they left.

Q. So at that point tacos, the terrible pun aside, there was no beef between you?

A. Right.

Q. Okay. So it wouldn't surprise you if you testified several people would have known about the money being there besides just the people that were living there, fair to say?

A. People knew the money was there, maybe not how it was dispensed to cards and money orders, but people knew probably about the amount of money.⁹

As stated previously by defense counsel, Rachel saw no interaction between Carletta and the gunmen. She provided them with no direction, gave them no orders and took nothing from the residence. She was neither wearing a mask nor holding a gun. She was unarmed, afraid and just as surprised as Rachel Cook as to what transpired that night.

Q. To your knowledge from that point on at the kitchen, did Carletta or the person you thought was Carletta, ever come back into the bedroom?

A. No.

Q. Did that person ever interact with the two gunman?

A. Not that I saw.

Q. Didn't talk to them?

A. Not that I saw or heard.

Q. Okay. Well, I will get this out of your eyes. I know it's annoying. You never saw her with a weapon, fair to say?

A. Yes.

Q. Is that true? Never saw her with -- well, you recognized her, she was a distance away from you, did she have a mask on?

A. No, no, I saw her hair.

Q. Okay. You could identify her. She didn't have a mask on. Was she wearing black clothes? Did she match the other two people?

A. I don't remember what she was wearing.

Q. Okay. But nothing sticks out in your memory she was a matching set with the other two?

A. No.

⁹ Id. Pg. 192, lines 23-24, pg. 193 lines 1-24, pg. 194 lines 1-20

- Q. Okay. Did she ever provide any direction or anything of that nature to the two men that you know of?
- A. That I know of, no.
- Q. Okay. In the search from your testimony Carletta she never directed them or told them what to do or what to look for, nothing like that?
- A. No.
- Q. Never said, get the cards, get the prepaid, get the money or anything like that?
- A. Not in front of me, no.
- Q. Okay. Outside of what was reportedly taken, was anything else taken to your knowledge?
- A. Not to my knowledge.
- Q. Okay. So while they were taking those cards, Carletta was not somewhere else stealing something, right?
- A. Not that I know of¹⁰

The height of Rachel's hypocrisy regarding this matter arose from a letter that she sent to Carletta Watson while she was incarcerated at the Eastern Regional Jail awaiting Trial. This letter, sent directly to Carletta and provided in discovery by the Defense to the State showed clearly the lack of motive that Carletta purportedly had towards Rachel and Dontrell's property and persons.

- Q. To be fair could you read the letter out loud for us.
- A. "Carletta. Hey. Long time huh. How are you doing? I hope not too bad given the circumstances. So like I know it is super weird me writing you and all, however I am working on getting over certain things and forgiveness and resentment. So you play a huge part in my life, like I think about you every single day. And believe it or not, I feel bad for you. I feel like I ruined everyone's life from you, to Trell, to my kids. I wish I never got that stupid check. That was the worse thing that could --" Can you read it, please?
- Q. Sure, if you want me to. All right.
- "I think that was the worse thing that could have come to me. I am so sorry for what happened." I will have to use some colorful language, forgive me, Your Honor. "I really fucked with you like hard. The only reason I asked you to leave was because my house was getting a little hot and people were running their mouths. Plus, no offense at all, but the boys needed their bedroom on school nights. I would have done anything for you." Again, forgive my language. "And love the fuck out of you C. You know I was planning to leave Apple Tree. I was going to give you my apartment if you just waited til the end of the school year. I don't know, April 25th changed my whole life in an instant. I lost the man I loved, my home and children, my furniture, clothes, shoes, dishes, money and almost my life over money. Like, come on, C, you know me, you could have asked or hustled me out of the money without even thinking about touching a weapon. I need to know something because I defend you a lot about this subject, dot, dot, dot, did you mean for us to get shot or was it unplanned and not supposed to happen. I need to see you. May I come to visit you. If you are okay with me coming and if you need a few dollars for yourself I got you. I want you to know I forgive you for what happened and I pray for you. I am available Wednesday nights." There is a number. "Please call me at least if you aren't okay with me coming to see you." Then there is a poem or Psalms I should say."Have mercy upon me, oh God, according to your loving kindness, according to the multitude of your tender mercies, blot out my transgressions. Wash me thoroughly from my iniquity and cleanse me from my sins. For I acknowledge my transgressions, and my sin is always before you."

¹⁰ Id. Pg. 201 lines 20-24, pg. 202 lines 1-24, pg. 203 lines 1-13

PS. Please have faith with God. Nothing is impossible. It's during our darkest moments you must focus and see the light." It is Psalms 51:1-3. "PSS. Oh, this isn't my address or number. I am going through people to get my mail and borrowing a friend of theirs phone certain day and time. Sorry, just never can be too safe. Always and forever. Love Rachel." With a heart.¹¹

The investigation, or meaningful lack thereof, in this matter is startling. Given the fact that a woman was shot and another killed, one would hope that no stone would be left unturned. In fairness to the State, there were an extraordinary number of witnesses who were examined but few, if any other than Carletta, in a meaningful way. From the questioning of the lead investigating Officer Henderson, it was gleaned that there was no forced entry nor camera footage of the robbery/burglary at Apple Tree Gardens. There was no follow up investigation yielding any information regarding Carletta Watson's obtaining the proceeds nor evidence found on her person or residence. No search warrants were executed in Maryland whereby direct, demonstrative evidence could be found. There were no masks or guns recovered and no motive as to the nature of this crime identified. In contrast, the fact that Apple Tree Gardens was her biggest "moneymaker" via drug sales shows a very clear reason as to why she would never want to have a violent interaction such as this due to it shutting down her profitable business.

Q. A long time, you've done plenty of burglaries, you know what a forced entry is?

A. That is correct.

Q. You know what I'm talking about, all right. Did you see anything in terms of a forced entry in your experience as a police officer?

A. No, not at the time.

Q. Okay. So not at the time between now and between that time and afterwards did you notice anything that indicated a forced entry?

A. No.

Q. Okay. Do they have cameras out there?

A. Yes.

Q. Okay. When I say cameras, video surveillance system, security system, something of that nature?

A. They do have external cameras, yes.

Q. Okay. Were the external cameras functioning on April 25, 2012?

A. Not all of them.

Q. Okay. You say not all of them, do you have any reason in your investigation as to why they weren't functioning?

A. No, sir.

Q. When you questioned the manager, did he give you an explanation about why some cameras didn't work?

¹¹ Id. pg. 205 lines 17-24, pg. 206 lines 1-24, pg. 207 lines 1-24, pg. 208 lines 1-5

A. I don't recall if she gave an explanation or not, she just said they weren't working.

Q. So at this point as far as from Apple Tree Gardens, you have not obtained any workable audio or video to depict really anything of value for evidence, fair to say?

A. Yes, that's correct.

Q. When you had obtained the search warrants for these cards, I know cash obviously works differently, but in terms of the cards themselves, is there a way to track whether or not they are used?

A. Yes.

Q. Okay. In your investigation did you have an opportunity to examine whether or not these cards were used in this case?

A. Yes.

Q. What did the investigation lead you to find in regards to that?

A. They were used in Baltimore City, Maryland.

Q. Now, you say they were used, do you recall how many transactions were used in Baltimore?

A. The exact amount of the transactions, no, I do not recall.

Q. Okay. When you had discovered there were transactions, what steps did you take in your investigation?

A. I called one place to see if they had security available, security footage still available.

Q. Uh-huh. When you called them, did they have footage?

A. The person I spoke to on the phone said, yes, they did have footage.

Q. Okay. And did you obtain that footage?

A. I, myself and another officer and Officer Tharp traveled to Baltimore, and I believe it was some type of Dollar Store, Dollar General, Family Dollar, I don't recall. I went in there and spoke to the manager and he attempted to locate it and advised it was too old to obtain that information.

Q. And at what point did you arrive in your investigation in Baltimore with Officer Tharp to obtain that video?

A. I don't recall the exact date. I know there was a delay from the NetSpend company. They basically were in the process of moving and lost the search warrant.

Q. So you didn't obtain video, did you obtain any interviews of anyone who described any persons or parties who used the card?

A. By the time they responded there was no information to tell who was working. The manager there didn't seem bothered with it too much, couldn't find footage and said, sorry, he couldn't help me any further.

Q. As far as her living situation at that point, did you have any reason to know where she was residing at that point?

A. No, I did not know where she was residing.

Q. Did you ever obtain any information as to where she might be living?

A. No.

Q. Did you ever obtain any search warrants or do any kind of follow-up to see where these cards might be?

A. No.

Q. Did you ever try to find an address to serve the search warrant to see if there were any masks or weapons in an apartment or house she might be living?

A. No.

Q. Is it fair to say at this point in terms of this, of course, a year and a half later, that there is no evidence to present to the jury that Ms. Watson actually benefited from or used any of these cards, correct?

A. I am sorry, say that again.

Q. At this point 18 months later there is no evidence that you're aware that indicates that Ms. Watson had used these cards at all, correct?

A. That is correct, I have no knowledge if she gained anything from it.

Q. Same with any cash, minus of course the \$600 Ms. Cooke already testified giving her freely, minus that, you're not aware of any cash proceeds she received as a benefit from anything after the event, correct?

A. Yes, that is correct.

Q. All right. Now, when my client mentioned that, the prosecutor made a big to-do about it, seems so intimate or suggest getting money meant robbing people, but as far as your investigation, you know, you're aware that she was selling drugs, correct?

A. Yes.

- Q. You knew that was her occupation for Ms. Watson, correct?
 A. Yes.
 Q. When you're referring to the biggest moneymaker here in terms of Apple Tree, she is referring to that as the place where she sells drugs, correct?
 A. Yes.
 Q. She is not referring to the place where she robs people, to your knowledge?
 A. That is correct, to my knowledge.
 Q. Okay. But the implication there is when she talks about coming to get money she's talking about selling drugs and not robbing, correct?
 A. Yes.¹²

As there are numerous examples as to the wanton lack of evidence in this case matter, Carletta Watson, by counsel argues that there was insufficient evidence to warrant conviction such that she would state that reversible error has occurred.

Assignment II: Admission of Defendant's Statements

The Defendant's statement was not voluntary and coerced by the agreement for bond placed before her. During both interrogations, in Maryland in May 2012 and at the Eastern Regional Jail in June 2012, the Defendant provided information in the context of a custodial setting charged as a suspect in the death of Dontrell Curry and the shooting of Rachel Cooke. The lynchpin behind her release from incarceration was her debriefing to the State. The lower Court found on three separate occasions that the Defendant was not truthful or forthright with the State about her interaction with this matter. As such, her purported confessions were not reliable evidence to be placed before the petit jury at trial.

- Q. In terms of the first statement that occurred sometime around the 24th of May, is that your recollection?
 A. Around the 24th, that is correct.
 Q. Okay. Where did that statement take place? Where did you receive that from my client?
 A. At the Baltimore City Central booking processing facility.
 Q. Okay. Is that a nice way of saying jail or a custodial facility?
 A. Jail, I guess, I am not sure what to classify it as.
 Q. Was she free to go?
 A. No.
 Q. Okay. You had a warrant for her you already recited in terms of conspiracy, murder, et cetera, correct?
 A. That is correct.
 Q. All right. She was well aware of that when you interviewed her at that time?
 A. I read the charges on the list, yes.

¹² Id. pg. 22 lines 7-17, pg. 25 lines 21-24, pg. 26 lines 1-17, pg. 29, lines 12-24, pg. 30 lines 1-24, pg. 31 lines 1-8, lines 14-24, pg. 32 lines 1-18, pg. 33 lines 3-22

Q. Okay. You already testified previously she received a copy of State's Exhibit Number 1 for lack of a better term the Miranda rights form?

A. I am sorry copy of?

Q. She could look at this and see it prior to your examination of her at that time?

A. Yes, she looked at it, yes.

Q. Okay. Now, that was not the only occasion in which you had an opportunity to speak with Ms. Watson, correct?

A. Say again.

Q. That was not the only opportunity you had to speak with Ms. Watson, you spoke to her at another time, correct?

A. Yeah, after, yes, that is correct.

Q. Okay. And the prosecutor might have said June 12th, I think it was June 9th or thereabouts or sometime in that vicinity?

A. I believe he said June 9th, yes.

Q. It was a week, is that fair to say?

A. Something.

Q. Saturday?

A. It was Saturday.

Q. Okay. All right. I am not trying to trick you, putting it out there. You were familiar, and I am looking at State's Exhibit Number 2, I know the prosecutor just showed this to you, this was an agreed order and recites an agreed order reducing bond, placing the Defendant upon bond supervision, GPS monitoring, and you were at least aware of this as a condition for her release talking to you, correct?

A. That is correct.

Q. So is it fair to say at the time when it was set for preliminary hearing initially in magistrate court, yourself and I understand the other prosecutor, Ms. Crockett, which had arranged for another lawyer, Mr. Lambert, but you were aware of those discussions at that time?

A. Aware of what discussions, I'm sorry?

Q. Had agreed on terms of reduction of bail based upon a statement?

A. Yes.

Q. Okay. My client, you agree with me then that even though an order was presented or provided at the time of the -- after the actual interview was conducted, my client was well aware of that as a precondition when she talked with you on that Saturday?

A. That I am not sure what she discussed with her attorney at the time.

Q. But she was aware that meeting with you was based upon this arrangement in court, you talked about in court, in magistrate court, correct?

A. Actually, the only hearing I remember talking about was when you was appointed her attorney and you was in the judge's chambers back here, sir.

Q. So it is your testimony this afternoon that you don't believe that my client had any knowledge in terms of this agreement in speaking with you even though it was decided previously in magistrate court, you have no direct knowledge of that?

A. All I said was I wasn't sure your client was directly aware of the circumstances.

Q. But you were, you were aware, of course?

A. Well, I assume her attorney was present that she was advised of what was happening.

Q. Okay, a fair assumption.

A. I hope he passed that information on.

Q. I hope so too. You would like to think that. As far as the meeting and interaction at that point, I know that Mr. Rasheed talked to you about some specifics in particular as far as identification of the shooters, that was part of what you were interested in, correct?

A. Identifying the shooter, yes.

Q. Is it not true that Ms. Watson provided a name of the shooter, the name was Midge if memory serves, is that your recollection?

A. Yes.

Q. Okay. I have a transcript for posterity if you do have any doubt about it, but you're pretty confident it was Midge she suggested to you?

A. Yes.

Q. Now, in terms of this, of course, you have been a law enforcement officer for a long time, quite a while, correct?

A. Yes.

Q. When did you first start as a police officer?

A. 1999.

Q. All right. So 14 years or so you have been a police officer?

A. Uh-huh.

Q. In your experience you have dealt with drug related offenses I believe, of course, in your training time as an officer, correct?

A. Yes.

Q. In your experience dealing with that, dealing with the drug subculture, shall we say, we are familiar with, wouldn't you agree with me that persons have street names, they have aliases, instead of real birth names, correct?

A. Yes.

Q. That is very common?

A. Yes.

Q. Is that fair to say? In terms of identification then would you agree with me that if my client identifies a person named Midge that might be their street name and not their real name, correct?

A. That is correct.

Q. Okay. Is that fair to say that in your experience that maybe the only name she has for this person, is that fair to say?

A. Well, she did say another contact in her phone was under M-y-y I believe or M-m-y so.

Q. M-y-y you're correct.

A. So --

Q. So she listed two people.

A. Well, they were the same person I believe she said.

Q. As being identified as Midge or the shooter?

A. That is correct.

Q. Okay. In your experience, of course, in law enforcement you have the benefit of technology, we heard about some cell towers, et cetera, you can discover real names or birth names, Social Security given names of people outside of street names over a period of time, correct?

A. We don't have any access to any kind of website or any Social Security to match names and Social Security up.

Q. But you agree generally that in investigations you may only have a street name but you can find a person's real name if you look into it, correct?

A. Not always.

Q. Okay. In this case you did, you had the name or as I recall, correct me if I am wrong, you had something to go on in terms of C and that led to your conclusion you believed Ms. Watson was involved, correct?

A. Well, real people knew her real name or a combination thereof.

Q. Okay. Well, would you agree with me that during the interview, I have a copy of it, it's been marked by the State as their Exhibit 3, that when she had provided the name Midge and corresponding M-y-y and presented that to you that information, she had at that time you had not doubted that, at least not during the interview, you didn't tell her, I don't believe you, or that is false, or anything like that, correct?

A. Well, no, sir, I am not going to bash someone who is trying to help us out.

Q. Okay. But you gave her no indication as far as recollection is concerned that, you know, you're lying, you're being dishonest, I don't believe you, who is the real shooter, something like that, that never happened, right?

A. That is correct because I didn't feel that was appropriate at the time.

Q. Okay. I believe you already testified to it, when you had that interview in June, of course, my client was in the Eastern Regional Jail at that time, correct?

A. Yes, sir.

Q. No doubt she was in custody at all?

A. Correct, she was in custody, that is correct.

Q. Wasn't going anywhere without any other agreement or release by the Court, correct?

A. Yes.

Q. Okay. Just give me one second. I guess as a follow-up to my last series of questions, as you testified today and previously, you had not stated during the interview that you had any disbelief or reason not to believe my client's statement or identification of the shooter, correct?

A. That is correct.

Q. Okay. At a subsequent hearing that was, I believe, you recalled correctly back in chambers December of 2012 you remember that, correct?

A. I don't remember being back there, that is correct, I remember.

Q. That is sometime around December, mid-December, of 2012?

A. I don't remember. I know it was sometime after May.

Q. Okay. At that time it was at least your assertion that my client had not been truthful in terms of her identification of the shooter, correct?

A. That is correct.

Q. Okay. Now, was that based upon independent investigation, what was that based upon, that assertion?

A. I am sorry say that again.

Q. What was that assertion based upon, she was lying about that?

A. Well, she at least spent an hour-and-a-half or close to three hours in a vehicle with two people, she couldn't identify the car, she had no other indicators of who they were or anything. I don't know what you are looking for here.

Q. Well, whatever your answer is your answer.

A. That is my answer.

Q. Okay. But you recall, again, I suggest to you on or about April 1, 2013 you testified again in court at which point you reiterated the same thing that Ms. Watson in your opinion had been untruthful, correct?

A. I am sorry say that again.

Q. You had previously testified you testified this afternoon that you believed that Ms. Watson was untruthful to you during that June 9th interview, correct?

A. Yes.

Q. Okay. So if my client suggested Midge's phone number M-y-y, female answers the phone, could be Midge's girlfriend, mother, sister, friend, who knows, right?

A. That is correct, but she didn't advise that.

Q. But your investigation independently of that when you found that phone number was a female, what steps did you take after that in your investigation?

A. Called the phone number and left a message.

Q. Is that it?

A. Yes.

Q. Didn't do anything else?

A. No.¹³

Defense counsel argued previously that the June 9th 2012 statement by the Defendant taken at the Eastern Regional Jail was both unreliable and not knowingly, voluntarily and intelligently made. This issue was tackled by the Court on multiple occasions with each time the Court denying the Defendant's request for reduction of her bond, consistent with the agreement with the State and further suppression of the statement at Trial.

¹³ Id, page 36 lines 21-24 page 37-45, page 46 lines 1-8

MR. COLVIN: This sprang up initially with an agreement forged by the State through Ms. Crockett and former counsel Mr. Lambert in June of 2012. It came before the Court in December of 2012 upon motion for reinstatement of bond by myself and I was counsel at that point.

THE COURT: You know, Mr. Colvin, I want to hear everything you have to say, it is not my intention to sort of break your stride here, but there is one question that I would have asked Mr. Rasheed, and I will before he is finished, I will ask you too just to have it for sure, but I have seen this order that we signed that had to do with essentially represented itself as an agreed order to reduce bond premised on certain conditions. So it was a bond reduction order essentially contingent bond reduction order. Now, at the time that the second statement was taken, that was after the entry of that contingent order on bond; is that right?

MR. COLVIN: Her statement I believe was given on June 9, 2012, Your Honor.

THE COURT: The second statement?

MR. COLVIN: Yes, Your Honor.

MR. RASHEED: It is in essence a reduction to writing of the agreement between Mr. Lambert and Ms. Crockett, Your Honor.

THE COURT: The second statement is the reduction in writing?

MR. RASHEED: The order is, Your Honor. The actual agreement was made at the preliminary hearing on June 5th. The order that was entered was a reduction of that agreement into writing. It was actually --

THE COURT: That order was made between Mr. Lambert and that agreement was made between Mr. Lambert and Ms. Crockett at the preliminary hearing?

MR. RASHEED: Mr. Lambert was present during when the statement was taken.

THE COURT: Mr. Lambert was present when the statement was taken?

MR. RASHEED: Yes.

THE COURT: Was Ms. Crockett present?

MR. RASHEED: She was not. Apparently, she had a family emergency or something that came up.

THE COURT: So no prosecuting attorney was present, but the only attorney present was Mr. Lambert?

MR. RASHEED: Yes.

THE COURT: Representing Ms. Watson?

MR. RASHEED: Yes.

THE COURT: Thank you, sorry.

MR. COLVIN: If I may take a quick look at Exhibit 2, Your Honor, which is the order we are discussing. I would note, Your Honor, looking through Exhibit 2, specifying for the Court that it was initialed via court appointment for the 14th of June, received the 15th day of June of 2012 by the clerk's office, looks to be sent out to the parties on June 18, 2012. I would note that essentially, Your Honor, that time acknowledging on June 5th preliminary hearing was not held, held in abeyance as part of this agreement. June 9th which was Saturday 2012 there was the discussion at the Eastern Regional Jail with Officer Henderson and my client and at that point her counsel, Mr. Lambert. The court order agreeing, ratifying these conditions was brought forward several days apparently after it was entered by the Court they had a discussion. I think as evidenced by my discussion with the officer who is present State's Exhibit 3 in the transcript the Court has reviewed it and listened to it previously, has it in front of it, there is no indication of any kind that my client was not forthright at that time during that debriefing. She had identified the person, she had identified the shooter as required by the agreement. We had this argument in terms of her bond previously before the Court when the State did not essentially live up to its end of the bargain by having her released for conditions back in June of 2012 that has already been December 2012 as the officer correctly remembers here the Court back in chambers. We had this argument again April 1, 2013 per the hearing there involving the indictment. Here we are today again September of 2013 addressing the same issue in essence. This is the fourth time. What I put forward at least in the motion, this is the backdrop, on three separate occasions the parties before you had an opportunity to review that interaction, that statement. In terms of what the Court has to review, as I listed out in my motion, as for what legal authorities are before us, I reviewed this response by the State, and their focus is more on the issue, more Miranda and whether rights were read to her, this is a little more specific and tailored to the totality of what happened. That is appropriate.

In support of its position, the Defendant cited several cases including: State v. Star 158 W. Va. 905 (1975) and State v. Farley, 452 S. E. 2d 50 (1994) and State v. Lopez 476 S. E. 2d 227 (1996) Defense counsel stands by his argument, as listed below in boldfaced type, as this was a travesty of Justice.

MR. COLVIN: Yes, sir. Those cases discuss the basic statement's voluntariness and in particular to the Court is the totality of circumstances.

MR. COLVIN: Thank you very much. To look at the totality of the circumstances, to deny it is not black and white as it appears at first glance. We have in this case complication beyond a typical statement in terms of Miranda and the officers, that interaction, whereby on the table was more than just giving a statement could be used against her later, it was her freedom was in question. Tell us what we want to know. We'll let you go free. **I can't imagine a more coercive environment in the jail itself looking at tiny walls of the jail sitting there and imagining what you would say or do in order to be released. The statements were given. The State's given no indication she had not complied in the actual statement. They have the entry of the agreed order releasing her several days later entered by the Court. Carletta thinks she's getting out of jail. She's complied with the agreement. Turns out I guess not. The proverbial rug gets pulled out from under her. No, we are not satisfied with what you said. We think that you're holding back, being dishonest, withholding information. No inkling of that at all in the actual recitation June 9, 2012 the actual interview. No inkling at all because the order was entered after the fact. How would she know? You would think June 5th, June 9th, the order is entered on the 18th, provided from the clerk, makes sense, completed agreement. But it wasn't. So the State backs out of that and says you're not being honest and truthful. Come back in December asked to be reinstated for bond saying, at this point I am her attorney, it was truthful, we gave you a shooter's name, we gave you a phone number. Nope, not truthful, we don't believe that. Come back in April. Still same story. Now we come back today. The really horrible irony to it reading the response from the State is now they have taken the exact opposite position propping up the statement and the veracity of Ms. Watson which they so repeatedly admonished, beaten down, abrogated, month after month, hearing after hearing, suddenly they say, no, no, she is being honest, just not this one small part, we don't know about that, but the rest of it is good, we should use that against her. To listen to the motion, I can't imagine at least in terms of the statement, in terms of the environment, the totality of these circumstances, as the Court is instructed to review something really more perverse than to say that, tell us what you know, tell us what you know, we don't believe you, we are going to let you go, your freedom is taken from you, now at trial you say, well, we didn't believe you enough to have you released, but we do believe you enough to use it to secure your conviction. If it's good enough to secure a conviction but not to secure her freedom. There is something grossly perverse about that, Your Honor, and wrong. It is as fundamental as that. I can't put it any other way. Perhaps I can I put in the motion the proverbial analogy of a salad bar statement. That is not this. The State can't pick and choose what it likes. It likes carrots. Doesn't like croutons. They like the fact it is so eloquent it matches up. They don't like the not exact identity. We prefer name, rank, serial number, birth date, social security, all that. Don't have that. So you can see from my client's position that she not only did not get the benefit of the bargain initially, despite the Court Order, despite the agreement to be debriefed at great personal risk and harm to herself, now the State wants to use this statement as direct evidence against her at trial. I can't imagine anything looking at the totality of circumstances in this case where the Court possibly could allow that to happen, Your Honor. I don't think my client would even sniff a full, fair and proper trial if that was to occur. It just can't happen with that. Now, I put in my motion if she testifies and the State wants to use that to impeach her or refresh recollection, something of that nature, that is different. That could be fair game. I understand that argument, that point. But if she doesn't testify or elects not to, she shouldn't be allowed to use that as direct evidence against her June 9th statement. That should not be used and should be suppressed by the Court.**

THE COURT: I am trying to understand exactly where you are coming from on this. Are you saying that the State having taken the position in the past that she is not being truthful with them, that the State would somehow be estopped from taking the position that it was a truthful statement now?

MR. COLVIN: I don't think that you can go before the Court and say, I have an order entered, agreement, say provide a statement, provide no information that you have any doubt of it, then later on retract that and say, well,

we're not going to release her per the agreement although she complied with it. That argument we haven't complied

with it saying you haven't been honest or truthful and later on in the statement say we want to use that as evidence against you we believe that it has sufficient veracity to place it before the Court. Clearly, they didn't believe it otherwise she would be at her liberty and she is not. So they're trying to get the best of both worlds and essentially say, well, we don't have to follow the agreement but we want be able to use this against you at the same time. We believe that is not fundamentally fair. We also believe the totality of the circumstances given these facts. It is not a voluntary act for her to do that. When you look at the fact that it was, speak or sit in jail, the horrible irony in this, speak and still sit in jail, that is where we are today, Your Honor. **(emphasis added)**

Defense counsel took the alternate position that the Court should also enter an Order and the State should be estopped from using the statements against the Defendant based upon the agreement being part and parcel with plea negotiations.

THE COURT: In his motion, not here today but in his written motion, Mr. Colvin raises a notion from a civil rule with regard to evidentiary settlement negotiations and objects to the introduction of the statement on the ground that it was a type of settlement. Now, the rule that he refers to is actually a rule I think applicable only in civil cases, and there may be a parallel rule or associated rule with regard to criminal cases but --

MR. COLVIN: No, I mention that the Court corrected that possible argument in terms of, I know traditionally in civil cases compromise is not being presented in a criminal case, we have plea colloquy, that information is not presented later to jurors, but I think given the nature of, again, this particular case, where my client's freedom was on the line as well as the reality she would be looking at far reduced charges, it was our argument part and parcel with plea negotiations at that point, she waived her preliminary hearing, she agreed to put herself at great risk to debrief and all those things were given to her without any benefit, Your Honor, as she sat in jail now for a year and a half.

THE COURT: So your argument was that it was analogous or part and parcel with plea negotiations?

MR. COLVIN: I say so, yes, sir.

THE COURT: Mr. Rasheed or Ms. Sims, if the Defendant were to have understood the proceeding that was going on between Mr. Lambert and Ms. Crockett as being tantamount to or part and parcel with an offered plea such as reduced to murder two, what impact do you think that would have upon the admissibility of the statement?

MR. RASHEED: Well, Your Honor, I mean, that is sort of theoretical. I haven't researched that particular issue because that is not a fact of the case. This was not part of a plea agreement. There were no plea negotiations being held at this point. There was no plea discussed with the family. There was no plea discussed with the investigating officer and no plea made to the Defendant.

THE COURT: So when the Defendant started giving the State great detail it didn't have before, not the thing you were seeking which you said was the name of the shooter, but of all of the activities which implicates her in the murder itself, that was not what you were seeking?

MR. RASHEED: Well, the agreement contemplated all three things, complete information about the incident, the identity of the shooter, the identity of the other accomplice, so all those three things were contained within the order. But I think that if you're looking at the rule of plea agreements I think significantly expanding that rule to consider that to possibly include bail agreements as well. I think that is a significant expansion of the rule not contemplated. It is Rule 40. I can't remember which number it is.

But that specific rule just applies to plea negotiations. The State would, frankly, object to the expansion of that to include bail negotiations about bail and that sort of thing.

THE COURT: So the State suggests that the Defendant has no reasonable expectation?

MR. RASHEED: Right.

THE COURT: No grounds for reasonable expectation of anything other than release on bond.

MR. RASHEED: Correct.

MR. COLVIN: I disagree with that, Your Honor. I think that my client would have a very reasonable expectation of reduction of sentence given the fact she at that point was offering full cooperation with the State and the fact she was being released from incarceration after having a \$100,000 cash only bond. They are not going to release someone they're going to prosecute for first degree murder. That is not going to happen. The State themselves today, their position, they still would like to offer that today. That is clear. I think that was part of the negotiations with them in terms of being released. Again, the Court duly pointed to her, what her perception is at that point, her perception is her reality of perception is, I say this, I get out, state wants to use it after months and months of keeping her in jail because of that statement and then reap the benefits of the statement. Despite that, I can't imagine a more coercive environment even more so than simply being in a custodial environment beyond that.

THE COURT: Is it that the scope of questioning of the Defendant on the second was enlarged beyond the agreement contemplated? In other words, was it contemplated she would, in essence, confess?

MR. RASHEED: The agreement was that she would give information, complete information, about the incident as well as naming a critical part of naming the two.

THE COURT: So the agreement was she would confess?

MR. RASHEED: Yes, she would give information.

THE COURT: She would confess. (emphasis added)

The Court was alerted to the fact that this was a brokered confession intended to provide for a reduction of bail and the entry of a future plea agreement to a reduced sentence. Instead, the Defendant was greeted with an enhanced set of charges and a murder in the first degree conviction. This is contrary to the agreement struck with the State and plainly error to permit introduction of the same in the trial against her. If Carletta had known that the statement would not have released her from jail, she never would have given it. Despite the Court's assertion, as listed below that she had retained counsel with her at the time of the statement being given and therefore was "protected", that simply is not true.

THE COURT: Part of the fact that she was aided by counsel in this case is something that the Court can't overlook. She did have Mr. Lambert to counsel her.¹⁴

¹⁴ See September 12th, 2013 hearing transcript pg. 56 lines 15-24, pg. 57-pg. 74

Based on the recorded interview, her counsel said nothing other than acknowledging his presence there at the jail at the beginning and end of the interview. There were no breaks for a chance to talk to his client and no hint by the State that what she was saying was not consistent with the bond/future plea agreement. Defense counsel cannot imagine a more bizarre set of circumstances upon which the State was permitted to entice a full confession from a Defendant for the illusory promise of release from jail and then balk on the agreement due to the lack of veracity of the Defendant's statement, yet be permitted to argue the reliability of that confession to ensure her conviction. No matter how terrible the crime, the State has a quasi-judicial responsibility even to Carletta Watson. This falsehood was a shameful act and led directly to Carletta's conviction. It should have been suppressed and direct, reversible error was committed by the Lower Court when it was permitted for use for the State's pleasure.

Assignment III: Lack of 404(b) Protection

The Court committed reversible error by permitting the inclusion of the Defendant's statements (see assignment II above) which triggered the Defense to have no choice but to adopt their trial strategy to embrace the improperly received admissions via characterization of the Defendant as a "drug dealer". By permitting the statements of the Defendant to be used against her at trial, the Defense had no choice but to explain the statements attributed via the "drug dealer" moniker. If the Court had properly ruled that the statements should not have been admitted against her, especially that of June 9th, 2012 at the ERJ, the Defense would have had an opportunity to have a proper 404(b) hearing with the appropriate limiting instruction in regards to this "drug dealer" evidence.

Pursuant to Syl. Pt. 2 of State v. McGinnis, 193 W. Va. 147, 455 S. E. 2d 516, (1994) the

Defendant notes:

“Where an offer of evidence is made under Rule 404(b) of the West Virginia Rules of Evidence, the trial court, pursuant to Rule 104(a) of the West Virginia Rules of Evidence, is to determine its admissibility. Before admitting the evidence, the trial court should conduct an in camera hearing as stated in State v. Dolin, 176 W.Va. 688, 347 S.E.2d 208 (1986). After hearing the evidence and arguments of counsel, the trial court must be satisfied by a preponderance of the evidence that the acts or conduct occurred and that the defendant committed the acts. If the trial court does not find by a preponderance of the evidence that the acts or conduct was committed or that the defendant was the actor, the evidence should be excluded under Rule 404(b). If a sufficient showing has been made, the trial court must then determine the relevancy of the evidence under Rules 401 and 402 of the West Virginia Rules of Evidence and conduct the balancing required under Rule 403 of the West Virginia Rules of Evidence. If the trial court is then satisfied that the Rule 404(b) evidence is admissible, it should instruct the jury on the limited purpose for which such evidence has been admitted. A limiting instruction should be given at the time the evidence is offered, and we recommend that it be repeated in the trial court's general charge to the jury at the conclusion of the evidence.”

As shown below, despite the requests by Defense counsel to have a full McGinnis hearing, the same was never scheduled by the Court who attempted to hold a hearing simply utilizing the unlawful statement given by the Defendant as the sole ground. Clearly, this is in error and not consistent with the requirements of McGinness. The Court can not permit extrinsic evidence to be adduced at Trial without allowing “vetting” as the Court put it, of the witnesses. Further, absent this hearing, the Defendant was precluded from obtaining a limiting instruction regarding this evidence which prejudiced her ability to defend her case. Lastly, based on the Court’s ruling which neither provides for 404(b) nor intrinsic evidence, the Defendant was forced to address the same in its case-in-chief diminishing the defense options for the Defendant impermissibly.

MS. SIMS: One other thing I think we can discuss more fully tomorrow, Your Honor, one of the rulings we were waiting on from you was regarding the State's request to admit evidence of Ms. Watson's occupation in the sale of drugs. We don't need to discuss that today but it is something I think we need to take up tomorrow.

THE COURT: Yeah, all right, we can take that up, that is fair, we can take that up tomorrow. That is new evidence that may be relevant to that as well.¹⁵

THE COURT: Mr. Colvin, I think with that, the only remaining issue was simply -- well, there were other pre-trial issues. One that wasn't run all the way to ground was the issue of whether or not the State could use as 404(b), extrinsic or intrinsic, that whole discussion of the Defendant's livelihood at Apple Tree Gardens and whether or not it was sufficiently, I guess, intrinsic to consider it not 404(b) or even if it were

¹⁵ See September 23rd, 2013 hearing transcript Pg. 48 lines 16-24

extrinsic, whether it was sufficiently relevant more than -- it was probative more than prejudicial, that it should be allowed.

MR. RASHEED: The State did have one motion, actually it was just notification of an intent to use certain evidence, that evidence was that statement by the Defendant and other evidence that the Defendant was basically dealing crack cocaine while at Apple Tree Gardens residing with Ms. Cooke. The State characterizes that as a motion to use evidence not 404(b) evidence because it is the State's contention that this drug activity was inextricably intertwined with the crime itself. Essentially, the Defendant was at the home of one of the victims, Ms. Cooke, and the other victim the deceased Dontrell Curry, she was kicked out of that home. Later when she was arrested she told the police officers that while she was at Apple Tree Gardens selling crack cocaine, that Apple Tree Gardens was her biggest moneymaker, and then later on in a subsequent statement she said that she went back to Apple Tree to get money. So essentially the State's motive for the Defendant to do the robbery in the case, which is part of the felony murder, is that she lost money as a result of being kicked out of that house and returned to get money to recoup the money she had lost.

THE COURT: In fact, Mr. Rasheed, isn't that one of the classic uses of 404(b) to prove motive?

MR. RASHEED: In my notice of intent to use evidence, that is in the court's file, I have another copy of it, I cite both reasons. The State does not believe this is 404(b) evidence. We believe that it is so closely intertwined, interconnected with the facts of this case that it can't really separate it out. If you look at the evidence, you are going to listen to the testimony, it is going to be really difficult for the witnesses to testify without bringing up the fact that the reason that the Defendant was staying at Apple Tree Gardens at the home of Rachel Cooke and Dontrell is because she was there to sell drugs. That was the premise of selling. But the State also noticed in its notice of intent to use evidence, if the Court does not find that, that is a sufficient ground, that it is also under Rule 404(b) could be used as evidence of motive as well. That is contained within the State's notice.

MR. COLVIN: ...as we sit here today at least at pre-trial, obviously the Court has to consider the testimony of the witnesses who would specify that, I don't believe they're here to do that. If they are we bring them forward to have traditionally a McGinnis hearing should be held in standard course.

THE COURT: I think the State has indicated they would rely upon your client's own statement.

MR. COLVIN: I believe that is what they refer to. That is if the Court was to reject that proposition and grant my motion to suppress her statement, they would be bereft of that and be left with the alternative theory of trying to use it as 404(b) but it is for the Court to do that McGinnis hearing.

THE COURT: Well, yeah, you're probably arguing 404(b) even if it arises only from your client's statement. I mean, I don't think that the source of it necessarily is what characterizes it as intrinsic or extrinsic or whatever.

MR. COLVIN: Yes, sir.

THE COURT: But, Mr. Rasheed, you don't have any other witnesses who are here for the McGinnis hearing other than the Defendant's own statement on that point; is that right?

MR. RASHEED: That is correct, Your Honor.¹⁶

THE COURT: Eugene just reminded me that in all this long-winded disposition that I tend to make that even though I used up a lot of verbiage, just now I completely failed to address the State's motion either 404(b) or to use the evidence. It appears in listening to the statement, having heard it before, that the purposes of the Defendant in being present at Apple Tree were nefarious and they were for the pursuit of the career of being a drug dealer, that it was a good and productive place for her, that there was money involved for her and hard feelings based on her having to leave and coming back.

THE COURT: I think I am going to reserve on the use of that. I think that as Mr. Colvin argues calling the person a drug dealer is a pejorative activity and it is prejudicial and can be prejudicial and whether the value or necessity or the actual appropriateness of the evidence proves something essential in the case or simply provides gratuitous prejudice against the Defendant, I am still considering. I thought I knew where I was on it, but I started to talk it out and I found that I think it needs more thought by me. But the State, if the State argues it two ways, one of them is 404(b), that is your drop-back position. Your first position is that it is not 404(b) your first position is that it somehow is intrinsic.

¹⁶ See September 24th, 2013 hearing transcript, Pg. 3 lines 22-24

MR. COLVIN:I argued this is 404(b) evidence and should be noticed properly for a McGinnis hearing and not intrinsic, Your Honor.

THE COURT: Well, I tell you what, I am taking the position we are more or less having a McGinnis hearing in a way right now. The State has told us that their McGinnis witness on this is your client.

MR. COLVIN: I don't believe that is correct, Your Honor. In terms of being intrinsic, I could be incorrect, the way I view it is once the Court overruled my motion to suppress as far as the statement, that is fair game the State can use. Their issue in terms of what she says going forth is the State going to use that in terms of any other witnesses coming forward that would be extrinsic to this matter. So when other witnesses come forward, I assume at least several of them are going to talk about this issue, that would be extrinsic evidence and that is 404(b) in terms of motive, my client says I sold or sold that is up to the State. THE COURT: Good point, Mr. Colvin. In other words, your position would be that if the State has two, three, four witnesses on this point who will say that she is a drug dealer and that's how they know of her presence and her activities, McGinnis would require that all be vetted.

MR. COLVIN: The problem is my client has no benefit in terms of knowledge who the people are and what they're saying and is outside of discovery which is very vague into this point. I mean, certainly it is talked about in all candor to the Court but there are no specifics for that. You have witnesses before the Court, not a proper McGinnis hearing, I argue in terms of where they are. There are no witnesses proffered from the parties not to mention the fact my client has no benefit in terms of a limiting instruction by the Court. It is used only for motive which is separate and apart from this event which the State acknowledges is not a drug based offense. She is charged with that too. She is charged with everything else but not charged with that. I don't think we can put that forward in front of a jury without doing what we are supposed to do which is a proper McGinnis hearing and have them call their witnesses.¹⁷

MR. COLVIN: Well, in this particular case not res gestae because this is not a drug dealer precipitated murder. It's never been alleged and never been asserted in any discovery. They say burglary or robbery or something else perhaps but not that. So it is a question of motive. If that is what he is presenting it for, that is really the only reason it is for saying this is why this murder occurred. That is not intrinsic.

MR. COLVIN: So I think what we have, the State wants to put that forward and have witnesses show up, those witnesses will have the right to have their Fifth Amendment rights read to them in the sense because they're admitting potentially crimes of themselves. So that needs to be reviewed fully with them as opposed to just an officer saying, things are coming up.

THE COURT: Well, if we are going to do a -- I mean, if that is what we see as being a proper McGinnis requirement then we probably need to do that as a unit rather than an ongoing witness-by-witness basis because it is one subject area.

THE COURT: Well, Mr. Colvin and Mr. Rasheed, let's just leave that where it is then reserving on that. I was interested in further argument that you made, if either of you want to give us just a little bit of sort of quick and dirty pleadings on that, that would maybe sound other parts of your argument to help the Court consider the issue until it is resolved one way or the other it is an open question.

MR. COLVIN: Note my objection to that.¹⁸

Following this series of hearings, a proper McGinnis hearing was never held. No 404(b) limiting instruction was given and no ruling by the Court into the intrinsic nature of the alleged drug dealing was issued. In essence, evidence pertaining to Carletta Watson's drug dealing past

¹⁷ Id. Pg. 91 lines 22-24, pg. 92, pg. 93

¹⁸ Id. Pg. 101 lines 2-11, 19-24, pg. 102 line 1, pg 102 lines 6-10, 11-24

became a free-for-all. One notable extension from this lack of ruling involved the State's ability to preclude discussion of Dontrell Curry's drug dealing from the petit jury which is further and more specifically objected to in Assignment of Error number V. Based upon the clear lack of interest in following the provisions of McGinness as previously decreed by this Honorable Court, the Law was not followed and reversible error has occurred.

Assignment IV: Finding of No Mercy

The Defendant argues that the petit jury's finding of no mercy was contrary to the weight of the evidence presented. Defense counsel argues that no evidence was adduced at Trial that the Defendant ever pulled the trigger, provided the weapons, encouraged the result or benefited from the killing. The Defendant's criminal history, while felonious, contained only "paper" crimes like counterfeiting, credit card fraud and forgery. The majority of the Defendant's felony convictions were for financial transactions, roughly, 6 years prior to the petit jury's consideration. The very nature of the petit jury's question regarding the Defendant's choice not to testify at the mercy phase of the trial speaks volumes that they punished her for standing upon her constitutional rights. As detailed below, defense counsel reiterates and stands upon his previously articulated argument that the denial of mercy, in this case, would be a tragedy.

MR. COLVIN: In adjudging a felony murder, it should be remembered at all times that the thing which is imputed to a felon for a killing incidental to a felony is malice and not the act of killing. The mere coincidence of homicide and felony is not enough to satisfy the requirements of the felony murder doctrine. It is necessary to show that the conduct causing death was done in furtherance of the design to commit the felony. Death must be a consequence of the felony and not merely a coincidence.¹⁹

MR. COLVIN: The person who is the absolute perpetrator of the crime is a principal in the first degree. That is not Carletta Watson. We all know that. That is not the gunmen at the bank. That is not her. The person who is actually constructively present at the scene of the crime at the same time as the criminal act, an absolute perpetrator who acts with shared criminal intent contributing to the criminal act of the absolute perpetrator is an aider and abettor and a principal in the second degree who could be held criminally liable in a potentially criminal act as if she were the actual perpetrator. That is the analysis in which we have to

¹⁹ Jury trial transcript day three pg. 145 lines 23-24, pg. 146

look at this case because that actually is the legal requirement in order for the State to prove its case. But that is the first part of it. The second part being the shared criminal intent. The third part being contributing to the actions. As far as the State mentioned in their closing, this idea somehow she left and this means somehow she is guilty. Where else is she going to go at this point? She is a witness to murder. If she doesn't go with them, where else is she going to go? They are going to shoot her, if she doesn't go with them and make the phone calls, as they direct her to, as she said they directed her to, call, make sure the prepaid cards, on the car ride back to Baltimore, if she doesn't do that, she said, I will be on the side of the road, they'll kill her. She is a witness. She said she was afraid. She said that much to the officer. Listen to the tape that part sounds pretty believable. She never went back to the bedrooms. She never held a gun to anyone. She never directed anyone to do it. She never assisted anyone. She never provided a means of escape. She derived no benefit from the offense. Her statement she didn't get anything. The police in their investigation didn't find anything. Didn't find the weapons, masks, any contraband, any prepaid cards, anything that they can trace back to Carletta Watson. She received zero benefit. She has zero motive. So if you are a person that receives nothing, and actually loses something by having this happen, that sounds like a person who does not have a shared criminal intent. It also sounds like a person who didn't contribute anything towards the actions. If that is true, that person is not a principal in the second degree, that means that person is not guilty.²⁰

As provided via the transcripts below, defense counsel questioned the investigating officer regarding the criminal history of the Defendant, Carletta Watson. This history did contain felony convictions but for non-violent offenses like forgery and counterfeiting. It should be noted that most of the felony convictions occurred on the same date as is typical in such matters involving negotiable instruments. It cannot be overlooked that if Carletta Watson had been a recidivist candidate, she would not have passed muster due to her lack of violent offenses. Yet, although she could not receive her "third strike and be out", she did receive one strike and was given life with no mercy; the death penalty of West Virginia.

Q. Okay. My reading of that there are two counts, she has been convicted of two counts, one count of forgery and one count of counterfeiting, which both are felony offenses, and also five counts of the felony of credit card theft; is that correct?

A. Yes, that is correct.

Q. March 6th, excuse me, March 6, 2007.

A. There are several here with that date, yes, sir.

Q. You say several, actually if you look at the next page, is it true that all of those are the same date?

A. There are four that is marked March 6, 2007, one that is March 9, 2007.

Q. Okay. So within a couple days of each other the same day?

A. I am sorry say again.

Q. The other offense the prosecutor had listed counterfeiting and forgery, would you agree those are property offenses and non-violent in nature?

A. I am not sure what the other state code would be transferred to West Virginia, sir.

Q. Well, what's counterfeiting, what is your understanding of counterfeiting?

²⁰ Id. Pg. 147-151, pg. 157

A. Make a forged copy.
 Q. Would that be a document or could it be a bank note or dollar bill, paper document, anything like that, correct?
 A. Yeah, it could be anything. I am not sure I am familiar with other states criminal --
 Q. The act of counterfeiting is not a violent offense, correct?
 A. I guess depends on what goes along with it. That by itself I would say no.
 Q. Okay. This dollar bill, not a copy of it, pass off a dollar bill really a piece of paper I made, that is classic counterfeiting, correct, as people know?
 A. Good example, yes, sir.
 Q. That is not violent?
 A. Not that point, no.
 Q. Now, the same with forgery, you are saying forgery, I believe understanding of forgery you forge a check or instrument?
 A. You don't have somebody's permission to sign their name.
 Q. Okay. The act of signing a name of somebody else, is that a violent offense?
 A. The actual act, no.
 Q. Okay. So write a bad check, say Officer Henderson, \$20, give to somebody else, I am not you, that is forgery, right?
 A. Yes, that is correct.
 Q. Not violent. Same with credit card, if you have a credit card that way, I guess in terms of circumstances, of course, but if you take someone's credit card and use it and say, for example, at a gas station, use it at a gas station to pick it up, that wouldn't be violent in nature, correct?
 A. No.

Looking at the totality of the circumstances, the lack of violent criminal history and the clear evidence before the petit jury that the Defendant did not pull the trigger against either victim, it is incomprehensible as to how and why the petit jury would discard this young lady. Given their rush to judgment, it can only be assumed that this was a “runaway jury” bent on ignoring the rules of evidence and the rule of Law to exact their own peculiar vision of Justice.

MR. COLVIN: West Virginia does not have the death penalty. At the state level we don't have that punishment for more serious crimes. The most serious punishment West Virginia has is through the punishment you are considering right now to have no mercy attached to a verdict in this case. There is no more severe punishment. That punishment is reserved for the worst of our society, the most violent. Those persons who are unable to comply with the laws, are unable to facilitate a lawful life, but more than that non-violent life, a life where they can peaceably live with others. We heard throughout this trial testimony from various parties, be it Rachel Cook, her son Austin Miller, neighbors, Vickie Breeden, Annie Turner, that Ms. Watson is not a violent person. They trusted her with their children. She baby-sat the same children that the prosecutor is talking about. They trusted her with them. She treated them well. They treated her well in kind. She was trusted. She was a member of their family. Dontrell Curry, the decedent, was her friend. She never wanted these things to happen to anyone. She never fired a shot. She never pulled a trigger. She never killed a thing. Whatever the argument may be in terms of her facilitating or not, the reality is she killed no one. She is here convicted upon a very technical charge of felony murder not as a direct or absolute perpetrator but as found by you as a principal in the second degree. If looking at her history tells us anything, yes, it has some criminal past but each of those shows no violence. Counterfeiting is a non-violent act. Forgery is a non-violent act. Taking a credit card and using it when they're not supposed to four or five times the same date is not a violent act. She is not a violent person. There is no felony conviction in front of you for violence where she has done any of those things. When reviewing this from the State's prospective, they say the question is whether or not she deserves mercy. I

would submit that people receive mercy not because they deserve it, they receive it because they need it and she needs it today, so I would ask you to find mercy.²¹

Assignment V: Exclusion of Presentment of Evidence in re: Decedent Dontrell Curry's Status as a Drug Dealer

The Defendant argues that the Court impermissibly precluded the Defense from discussing the status of the Decedent Dontrell Curry as a drug dealer. From the onset of the Defendant's case, in its opening statement, the State protested even the slightest mention of the truth that Dontrell Curry was an unrepentant drug dealer. As evidenced by his criminal charges in multiple states, including pending charges in the state of Maryland for heroin, there is ample evidence that Dontrell Curry was actively engaged in the illegal drug trade. Although the Defense was permitted by the Court to comment upon the drug dealer status of Rachel Cooke, it was precluded from mentioning anything in regards to the decedent. This preclusion eliminated fertile ground for an alternative defense theory to present to the jury to explain the context of the murder.

MR. COLVIN: Dontrell Curry and Rachel Cooke are drug dealers. There is no nice way to say that. They were heroin dealers.

MS. SIMS: Objection. I think we need a sidebar.
(Counsel and Defendant present at sidebar.)

MS. SIMS: Your Honor, I think that the Court's ruling pre-trial was that Ms. Watson's occupation as a seller of controlled substance was admissible, but as to anything regarding Dontrell Curry, the victim, was not admissible.

MR. COLVIN: Well, I think that I am allowed to get into the fact that in opening the State talked about my client selling drugs, text messaging her, Rachel Cooke, in a partnership selling drugs together. It is in the evidence of the State. Officer Henderson's reported theory of the case in terms of selling drugs, an alternative theory for what happened, I am not dwelling upon it, but I have a right to talk about the fact that is part of this case.

THE COURT: I tell you what, I think that we had dealt with this as a pre-trial issue. I think that we had Mrs. Cooke and her occupation. I think something that would factor in, I think that Mr. Curry -- and I think the prosecutor is right, I think that -- let's leave it to that reference you made to Mr. Curry and move on from that. I will note the State's objection. Don't revisit it with Mr. Curry.²²

²¹ Id. pg. 18 lines 17-22, pg. 20 lines 18-24

²² Jury trial day one transcript pg. 142 lines 8-24

Inexplicably, defense counsel was not permitted to properly advance a pertinent line of defense questioning to-wit: the drug dealing of Dontrell Curry and Rachel Cooke. If counsel had been permitted to discuss the same, it could have been adduced at Trial that the reason for the shooting was not based on a few hundred dollars (all that was really left after the Rachel Cooke shopping spree detailed above) nor phantom revenge but a killing between Dontrell Curry and out-of-towners precipitated by drug dealing not on Carletta's part.

Assignment VI: Improper Jury Instructions

The Defendant argues that the Court improperly instructed the jury as to the elements of felony murder by listing the unknown co-defendants as "co-conspirators" prompting the petit jury to juxtapose the elements of conspiracy with those of being a principle in the second degree. Although the Defense would have been comfortable with the use of the word "accomplices", the Court chose to utilize the term "co-conspirators". This language discrepancy is more than simply inartful, it is inaccurate and confusing to the petit jury. As the Defendant was charged with both felony murder (Count I) and conspiracy to commit burglary and conspiracy to commit first degree robbery (Counts IV and V), it should be noted that both robbery and burglary were relied upon the state, as alternative theories, to prove their first degree felony murder case. The standard for a conspirator versus that of a principle in the second degree to qualify as an aider and abetter to be a principle in the first degree is distinctly different. This distinction, a critical part of the Defendant's theory of the case and defense argument, was abrogated once the concept of conspirator was impermissibly listed under the felony murder count. This lowered the burden, placed upon the State, to convict the Defendant of felony murder by an enumerated qualifying offense of burglary or robbery, and, instead, convicted the Defendant of Conspiracy which was not a qualifying offense.

MR. COLVIN: Makes it clear what the relationship is, that she is not an absolute perpetrator, she would be theoretically a principal in the second degree. It is essential to differentiate between the conspiracy charges.

THE COURT: While participating in a robbery, is there somebody who would suggest some actual language we could use better than that?

MS. SIMS: In furtherance of a robbery.

THE COURT: In furtherance of a robbery.

MS. SIMS: Yes, Your Honor.

THE COURT: Mr. Colvin, can you live with that?

MR. COLVIN: You'll probably get mad if I say no. I really do prefer it the other way because furtherance of a robbery is such an open-ended kind of --

THE COURT: You preferred it the way I had it?

MR. COLVIN: No, I didn't.

THE COURT: I am not understanding exactly what you --

MR. COLVIN: I prefer to insert the language instead of while participating in the furtherance of a conspiracy to commit robbery instead while acting as a principal in the second degree then you could have commit robbery after that. That way it makes it clear what it is for, but at least makes it clear what her relationship is to it.

MS. SIMS: I think that clouds the issue.

THE COURT: No, I think it does too. I think that I would either put participate in or in furtherance of. I note your objection. We can do in furtherance of a robbery.

MR. COLVIN: Please note my objection.

THE COURT: Yes, I will.

MR. COLVIN: Thank you, Your Honor.²³

MR. COLVIN: Just looking over at Page 5 the elements in nine and 10 listed out in terms of unnamed co-conspirator and co-conspirator, if we could change that perhaps to unknown co-defendant or something else of the nature instead of using the language of conspiracy for that. Since she is charged with other conspiracies, I don't want the jury confused thinking it is part and parcel with each other.

MS. SIMS: I don't think we have a co-defendant, we have a co-conspirator. I think that the instructions indicate that she conspired with unknown individuals. I don't know how, if we look at Page 10 of the elements of conspiracy to commit the offense of burglary, she intentionally entered into an agreement, conspired with two other unknown persons, we have the street name for one individual and we have no name for the other. Accomplices, Mr. Rasheed suggests, would be the only other word. But I don't think that is prejudicial in light of the fact she is being charged with conspiracy. To conspire you have to have a co-conspirator. From that viewpoint, I think using the word co-conspirator is not prejudicial.

MR. COLVIN: Frankly, I am happy with accomplice. That sounds like a good compromise. I think it gets the point across, nobody loses anything in the translation, makes it clean since the conspiracy aspect has nothing to do with felony murder.

THE COURT: I am persuaded that the State is correct on that. I think I will note your objection, Mr. Colvin, but I will leave it as phrased as it is co-conspirators and unnamed co-conspirators.

MR. COLVIN: Page 3 the Court mentioned before, it's the third category involving murder where it lists in the last sentence, sufficient that the homicide occurs accidentally during the commission of or attempt to commit the enumerated felonies. I would ask that the word accidentally be omitted and have Defendant's Instruction Number 4 be put into the instruction. That is a new case Davis versus Fox citing Commonwealth versus Red Lion. I saw the instruction the State provided, I believe.²⁴

MR. COLVIN: I would just think that we take the law now in terms of can the death be a consequence and not a coincidence that accidentally would be a variance with the way the law is today. I want to get the word accidentally. I don't think that is how it is anymore.

²³ Jury trial day three transcript pg. 98

²⁴ Id. Pg. 100 lines 16-24

MS. SIMS: I think that it still is, Your Honor, I am trying to look that up here.

MR. COLVIN: That was a big fight with Davis versus Fox back in November of 2012 whether or not West Virginia would lead the minority to the majority, which we did, hence the Red Lion decision and the other decisions that came from that that makes it less powerful than it was in terms of felony murder.

MR. COLVIN: Yes, Your Honor. That is where the quotation comes from that case. It says if the homicide occurs during the commission or attempt to commit one of the enumerated felonies, that reads right from the statute. I don't think accidentally is in the statute.

THE COURT: So I think that is distinguishable. I think that the essence is whether it occurred as a result of, even if it is an accidental result of, I think that as far as I know that language is still good language.

MR. COLVIN: Note our objection, Judge.

THE COURT: Thank you.²⁵

The State was permitted to obfuscate the issues by allowing for conspiracy to be utilized in the aforementioned jury instructions in terms of felony murder. This confused the issue for the jury who were led to believe that being a conspirator could be sufficient for felony murder which is not true. The State was required to show that the Defendant was the principal in the first or principal in the second degree. The Defendant was also charged with conspiracy based offenses which were not dismissed prior to submission to the petit jury. This combined with the use of the terminology "accidentally" magnified the confusion and, as listed above with the implementation of Davis, is contrary to West Virginia Law.

THE COURT: We have a question. Every time I get a question from the jury, I always read it to both sides and try to answer it within boundaries of the law which usually means we don't give much of an answer at all. Here is the question. If the Defendant had taken the stand to plead for mercy, could that be used against her in future possible appeals?

MR. COLVIN: I think the simplest thing, I don't necessarily agree, I think the Defendant has the right to be silent not even at sentencing, they have a right at allocution, and the Court says at sentencing for all Defendants to speak and say whatever or nothing at all, they have the right to do that but at the same time perhaps the easiest cleanest answer to this question is simply yes.²⁶

THE COURT: Well, do you remember the formulation that you are not objecting to?

MS. SIMS: The Defendant always has a right to remain silent during any stage of the trial.

MR. COLVIN: That is true, Your Honor.

THE COURT: Okay. So that falls nicely within that category of inscrutable answer we generally give jurors.

²⁵ Id. Pg. 102 lines 23-24 and pg. 103

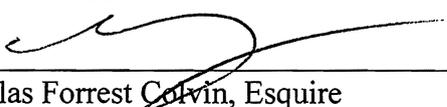
²⁶ Pg. 30 lines 22-24, pg. 31

As listed above, the Court, although not being dishonest with the Jury, did not adhere to the request of counsel to permit the simplest of answers; yes. This, less “inscrutable” answer, would have provided a fairer response for the Defendant. Based upon the Court’s improper jury instructions, the Jury was misinformed such that manifest injustice occurred whereby the Defendant was punished for not testifying at the mercy phase of this case matter.

Conclusion/Prayer for Relief

Based upon the foregoing, the Defendant/Appellant respectfully request that this Honorable Court grant him the relief sought in this Motion and accord any other relief that it deems appropriate. Ms. Carletta Watson demands a full, fair and proper Trial so she may exercise her Constitutionally protected rights. The Appellant does demand oral argument as the matter should be supplemented pursuant to Rule 19(a)(1), Rule 19(a)(2) and Rule 19(a)(3) of the Revised Rules of Appellate Procedure noting that assignments of error implicate both settled Law as well as unsustainable use of discretion. The Defendant/Appellant is opposed to a memorandum decision as this matter pertains to important areas of legal interpretation.

Respectfully Submitted,
Defendant/Appellant, by Counsel



Nicholas Forrest Colvin, Esquire
The Law Office of Nicholas Forrest Colvin, Esq., PLLC
WV Bar ID# 9746
P. O. Box 1720
Martinsburg, WV 25402
Phone: (304) 260-8823
Fax: (304) 205-0606
ColvinLaw@live.com

IN THE SUPREME COURT OF APPEALS FOR WEST VIRGINIA

STATE OF WEST VIRGINIA, Plaintiff Below,
Respondent

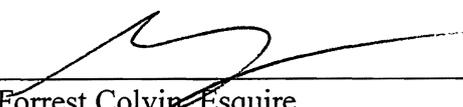
V.

CASE NO. 14-0400

CARLETTA WATSON, Defendant Below,
Petitioner

CERTIFICATE OF SERVICE

I, Nicholas Forrest Colvin, Esq., Attorney for the Appellant in the foregoing action, hereby certify that I have served a true copy of the attached Memorandum of Law in Support of Petitioner's Motion for Appeal upon, Assistant Prosecuting Attorneys Brandi Sims, Esq. and Hassan Rasheed, Esq. at the Office of the Prosecuting Attorney for Jefferson County, West Virginia at P. O. Box 729, Charles Town, West Virginia 25414 by United States Mail, first class, postage pre-paid and/or facsimile transmission on this 8th day of August _____ 2014.



Nicholas Forrest Colvin, Esquire
The Law Office of Nicholas Forrest Colvin, Esq., PLLC
WV Bar ID# 9746
P. O. Box 1720
Martinsburg, WV 25402
Phone: (304) 260-8823
Fax: (304) 205-0606
ColvinLaw@live.com

IN THE SUPREME COURT OF APPEALS FOR WEST VIRGINIA

**STATE OF WEST VIRGINIA, Plaintiff Below,
Respondent**

V.

CASE NO. 14-0400

**CARLETTA WATSON, Defendant Below,
Petitioner**

**APPENDIX FOR APPELLANT, CARLETTA WATSON'S BRIEF IN SUPPORT OF
APPELLATE RELIEF**

Nicholas Forrest Colvin, Esquire
Counsel for the Appellant, Carletta Watson
The Law Office of Nicholas Forrest Colvin, Esq., PLLC
WV Bar ID# 9746
P. O. Box 1720
Martinsburg, WV 25402
Phone: (304) 260-8823
Fax: (304) 205-0606
ColvinLaw@live.com

IN THE SUPREME COURT OF APPEALS FOR WEST VIRGINIA

STATE OF WEST VIRGINIA, Plaintiff Below,
Respondent

V.

CASE NO. 14-0400

CARLETTA WATSON, Defendant Below,
Petitioner

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IN THE SUPREME COURT OF APPEALS FOR WEST VIRGINIA

**STATE OF WEST VIRGINIA, Plaintiff Below,
Respondent**

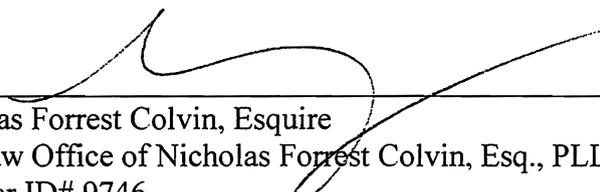
V.

CASE NO. 14-0400

**CARLETTA WATSON, Defendant Below,
Petitioner**

CERTIFICATION OF APPENDIX

I, Nicholas Forrest Colvin, Esq., Attorney for the Appellant in the foregoing action, hereby certify that the contents of the appendix are true and accurate copies of items contained in the record of the lower tribunal and I have conferred in good faith with all parties to the appeal in order to determine the contents of the appendix.



Nicholas Forrest Colvin, Esquire
The Law Office of Nicholas Forrest Colvin, Esq., PLLC
WV Bar ID# 9746
P. O. Box 1720
Martinsburg, WV 25402
Phone: (304) 260-8823
Fax: (304) 205-0606
ColvinLaw@live.com

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**STATE OF WEST VIRGINIA, Plaintiff Below,
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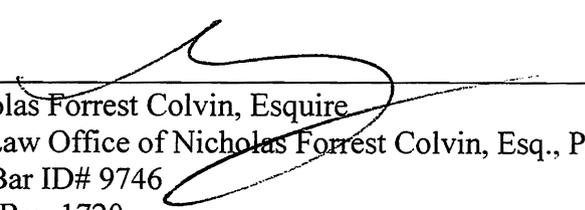
V.

CASE NO. 14-0400

**CARLETTA WATSON, Defendant Below,
Petitioner**

CERTIFICATE OF SERVICE

I, Nicholas Forrest Colvin, Esq., Attorney for the Appellant in the foregoing action, hereby certify that I have served a true copy of the attached Appendix for Appellant Carletta Watson's Brief in Support of Appellate Relief for Appeal upon, Assistant Prosecuting Attorneys Brandi Sims, Esq. and Hassan Rasheed, Esq. at the Office of the Prosecuting Attorney for Jefferson County, West Virginia at P. O. Box 729, Charles Town, West Virginia 25414 by United States Mail, first class, postage pre-paid and/or facsimile transmission and/or personal hand delivery on this 25th day of August 2014.



Nicholas Forrest Colvin, Esquire
The Law Office of Nicholas Forrest Colvin, Esq., PLLC
WV Bar ID# 9746
P. O. Box 1720
Martinsburg, WV 25402
Phone: (304) 260-8823
Fax: (304) 205-0606
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