

**STATE OF WEST VIRGINIA  
SUPREME COURT OF APPEALS**

**State of West Virginia,  
Plaintiff below, Respondent**

**vs) No. 101183** (Gilmer County 09-F-25)

**Hollie Morning McCraw,  
Defendant below, Petitioner**

**FILED**

February 25, 2011  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**MEMORANDUM DECISION**

Petitioner Hollie Morning McCraw appeals the circuit court’s order denying her motion for directed verdict or acquittal or, in the alternative, for a new trial, after a jury found her guilty of one count of Conspiracy to Deliver a Controlled Substance in violation of West Virginia Code § 61-10-31. The State, by the Prosecuting Attorney of Gilmer County, filed a timely summary response on December 17, 2010.<sup>1</sup>

This Court has considered the parties’ briefs and the record on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case is appropriate for consideration under the Revised Rules. The facts and legal arguments are adequately presented in the parties’ written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

At petitioner’s trial, the State presented evidence that on March 31, 2009, a confidential informant assisted police in an undercover drug purchase. The informant testified that while in the Lion’s Lair bar, petitioner handed a baggie of white powder to a co-defendant, and the co-defendant then sold the baggie to the informant. Testing established that the powder was cocaine.

Petitioner argues that the State failed to establish venue in Gilmer County. Article III, Section 14 of the West Virginia Constitution provides that “[t]rials of crimes . . . unless herein otherwise provided, shall be . . . in the county where the alleged offense was committed . . . .” The persons involved in this drug transaction

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<sup>1</sup> Thereafter, on January 20, 2011, the West Virginia Attorney General’s Office filed a separate response to this petition for appeal. Only one response brief is permitted. This Court considered the prosecutor’s response as it was filed first.

traveled between a residence on Sheridan Street and the Lion's Lair bar. Petitioner correctly points out that no witness specifically identified the town or county in which Sheridan Street is situate. However, the actual drug transaction, and petitioner's participation therein, took place inside the Lion's Lair. At trial, the confidential informant answered "yes" when the prosecutor asked "At the Lion's Lair, is that in Glenville here on the river?" Although the prosecutor failed to ask in what county the Lion's Lair is situate, the circuit court took judicial notice that Glenville is in Gilmer County, West Virginia. In *State v. Wright*, 200 W.Va. 549, 554, 490 S.E.2d 636, 641 (1997) (*per curiam*), this Court held that venue was established in Hampshire County when witnesses testified that the crime took place in Romney, which is the county seat of Hampshire County. Accordingly, although the State could have done a better job of establishing venue, we find no error in the circuit court's ruling on this issue.

Petitioner also argues that the State was permitted to improperly bolster the informant's credibility through testimony of the arresting officer. On direct examination, the prosecutor asked the officer, "[t]o your knowledge was [the informant] facing any criminal charges when he began his relationship with you?" The officer answered, "No. No, sir." The officer was the first witness to testify at trial, and the informant's character for truthfulness had not been attacked at this stage of the trial. West Virginia Rule of Evidence 608(a)(2) provides that "evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked . . . ." When denying petitioner's post-trial motions, the circuit court found that the State had not inquired of the officer regarding the believability or credibility of the informant. The officer's testimony was given during an explanation of how a confidential informant is used. We agree with the circuit court's ruling that, even if the testimony was improper, it was harmless error.

For the foregoing reasons, we affirm the conviction.

Affirmed.

**ISSUED:** February 25, 2011

**CONCURRED IN BY:**

Chief Justice Margaret L. Workman  
Justice Robin Jean Davis  
Justice Brent D. Benjamin  
Justice Menis E. Ketchum  
Justice Thomas E. McHugh