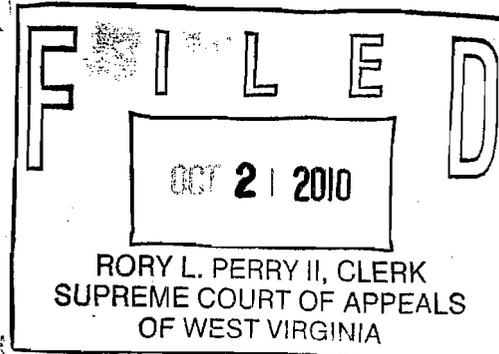


BEFORE THE SUPREME COURT OF APPEALS  
OF WEST VIRGINIA



**JOSH LEE HEDRICK,**  
**Appellant (Defendant below),**

**vs.**

**STATE OF WEST VIRGINIA,**  
**Appellee (Plaintiff below).**

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**Docket No. ~~33597~~ 35536**

**CIVIL ACTION NO. 09-MAP-1**  
**Circuit Court of Grant County**

**Judge Lynn A. Nelson**

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**BRIEF OF APPELLANT JOSH HEDRICK**

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October 21, 2010

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## I. INTRODUCTION

After a lifetime of husbanding wildlife and caring for one of the State's most treasured recreational areas, Josh Hedrick finds his livelihood as a licensed hunting and fishing guide on the verge of being extinguished because he tried to protect the brooder trout that he had tended for years when he believed they were being stolen and killed. Although the Circuit Court found "that it was reasonable for [him] to believe he was the victim of petit larceny of his fish," that he "conformed himself to appropriate behavior" and "never became physically aggressive," it nonetheless refused to overturn his conviction for willfully interfering with a lawful fisherman for his act of peacefully removing the fish from the stranger's stringer.

But what eluded the Magistrate Court, the jury and the Circuit Court was the element of willfulness. Mr. Hedrick could not willfully have interfered with a lawful fisherman if he believed the fisherman was a thief. The significance of this fact is entirely absent from the documents sealing his conviction, as the element of willfulness appears nowhere on the verdict form or the orders denying his appeal. Mr. Hedrick prays the significance of the absence of proof of an essential element of the crime will not be lost on this Honorable Court.

## II. KIND OF PROCEEDING AND NATURE OF RULING BELOW

This proceeding is an appeal by Josh Lee Hedrick ("Mr. Hedrick") of orders issued by the Circuit Court of Grant County on August 21 and September 17, 2009, denying his petition from appeal of his conviction in the Magistrate Court of Grant County of willfully interfering with a lawful fisherman in violation of West Virginia Code § 20-2-2a. For the reasons set forth herein, the Court's order was erroneous.

### III. STATEMENT OF FACTS

#### A. **Factual Background**

##### 1. The Events of October 4, 2008

Josh Hedrick was shocked to find himself dodging flying rocks and spit when he went to check on the security of his tubs full of six- and seven-pound brood trout, which he had placed in a spring on his own property. (R. 54, 58, 61, Tr. Vol I, pp.156-58, Tr. Vol. II, pp. 24-28, State's Exhibits 1-3). Only moments before, he had been astonished to see what he believed to be one of those trout – a 6 ½ pound golden brooder that he had raised and cared for four years in anticipation of breeding – splayed on its side, dying at the feet of a stranger across the narrow spring. (Tr. Vol. I, pp. 155-56, Tr. Vol. II, pp 24-28). He had just greeted the stranger, Josh Reid (“Mr. Reid”), in a friendly manner and complimented him on the handsome Labrador that was with him. (Tr. Vol. II, pp. 23-24). But when Mr. Hedrick saw the golden trout and came closer, Mr. Reid quickly retreated up the bank and dropped a stringer, revealing in the process a total of four fish that Mr. Hedrick believed he recognized as more of the trout he had been raising for years in anticipation of spawning that very day: a 7 ½ pound rainbow trout and two brook trout in addition to the 6 ½ pound golden trout. (Tr. Vol. I, pp. 61, 155-56, Tr. Vol. II, pp 24-28).

Desperate to revive the imperiled golden trout, Mr. Hedrick grabbed the stringer and immersed it in the stream, eventually placing the fish into the tub in which he had previously secured his brooders, and over which he had placed netting secured with bungee chords - which he now found displaced - to keep them safe from escape and predation. (Tr. Vol. I, pp. 146-150, 155-56, Tr. Vol. II, pp 12-13, 24-28). While trying to revive the fish, he had to dodge the hail of rocks flying at his head that Mr. Reid was hurling at him “like bullets” along with a string of

epithets. (Tr. Vol. I, pp.156-58; Tr. Vol. II, pp.124-130) Mr. Reid picked up more basketball-sized rocks and heaved them into Mr. Hedrick's tubs in an admitted effort to smash them, screaming "if I can't have them fish, you can't have them either!" (Tr. Vol. I, p. 56). During this assault, Mr. Hedrick called law enforcement and Mr. Reid called his mother. (Tr. Vol. I, p. 56, Tr. Vol. II, pp. 26-27). As Mr. Hedrick was calling for help, Mr. Reid spat in his face. (R. 54, Tr. Vol. I, pp. 58, 160-61). Two Grant County Sheriff's Deputies arrived, backed up with conservation officers from the West Virginia Division of Natural Resources. (R. 72-73). The officers took statements from Mr. Reid and Mr. Hedrick, as well as all others present: Mr. Reid's mother, Kim Mallow, her employer and owner of the side of the bank from which he had entered the river, Rose Phares, as well as John Harper and Jeremy Riggelman, who had both been with Mr. Hedrick when he came to check on the security of his tubs full of brooder trout. (R. 37-73).

Mr. Hedrick recounted to the officers the facts as outlined above, and Mr. Reid did not dispute them. (Tr. Vol. I, p. 268). He admitted that he had thrown rocks, that he had tried to kill the fish in Mr. Hedrick's tubs with rocks, and that he spat on Mr. Hedrick. (R. 68; Tr. Vol. I, pp. 56, 58) He even admitted that he had crossed onto the Hedrick property to remove the securing nets from Mr. Hedrick's tubs full of trout and tried to overturn them (R. 47), though he later claimed to have done so in anger after Mr. Hedrick had picked up the stringer. (Tr. Vol. I, p. 60). Yet, despite Mr. Reid's admitting to trespass, attempted assault and battery, and destruction of property, much to Mr. Hedrick's amazement, it was he who ended up being charged with a crime and Mr. Reid who walked free. The crime with which he was charged astonished him even further: willful interference with a lawful fisherman. How, he wondered, could he be charged with willfully interfering with someone lawfully fishing when all he was doing was

trying to save the prize brooders that he believed belonged to him. His final surprise came when the Circuit Court refused to overturn his conviction even though it found that “it was reasonable for [him] to believe he was the victim of petit larceny of his fish . . . and [he] conformed himself to appropriate behavior.” (R. 269).

## 2. Background

Mr. Hedrick is a life-long fisherman who helps out with his family’s business of running the resort area of Smoke Hole Caverns in Grant County, West Virginia, which they own. (Tr. Vol. II, pp. 13-14). Growing up around this family enterprise, Mr. Hedrick became interested in mastering the art of guiding hunting and fishing expeditions. (Tr. Vol. II, pp. 13-14). He traveled to Montana and Idaho to study the guiding profession and returned to West Virginia University and obtained a bachelor’s degree in Wildlife Management. (Tr. Vol. II, p. 14) He makes his living as a licensed hunting and fishing guide – a livelihood that will be brought to an abrupt halt if his conviction is not overturned, as it will result in the loss of his guide license. (R. 137). In an effort to improve the property and provide customers with enhanced recreational activities, Mr. Hedrick applied his studies to start up a commercial fee-fishing operation in a pond on the Smoke Hole property. (Tr. Vol. II, p. 14).

To that end, he went about the business of obtaining the necessary permits to run pipes, build structures, and operate a commercial fishing endeavor from the West Virginia Division of Highways, the Army Corps of Engineers, and the West Virginia Division of Natural Resources, respectively.<sup>1</sup> At the trial of this matter, it was disputed whether the permits he obtained fully

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<sup>1</sup> (R. 74-85, West Virginia Division of Highways Permit Nos. 5-08-0197U, 5-08-0292U, 5-08-0331U and 5-08-0375U for various operations in connection with running water line from Poor Farm Spring to pond on Hedrick property; R. 107-111 Division of Natural Resources Permits for Right of Entry “for the purpose of installing and maintaining a spring box to hold spring water and transport through a pipeline to a trout pond along an unnamed natural spring near Petersburg

covered the scope of the operations he was attempting to establish. But it was undisputed that he was fully engaged in the process of attempting to gain all permits he believed were necessary and that he was working closely with the Department of Natural Resources to do so. (Tr. Vol. II, pp. 17-22). Most importantly, it was undisputed that he believed he owned the fish in question. (R. 37, D.N.R. Criminal Investigation Report "Josh Hedrick believed the trout belonged to him"; Tr. Vol. I, p. 52, "Reid: Um, he stated that I took them fish out of his bucket, which I did not. Um, he said that they were his fish.")

Mr. Hedrick had been raising a group of trout for four years, feeding them daily and caring for them, so that when they were ready to spawn he could re-stock his fishing facility. (Tr. Vol I, pp.145-149, 156-58, Tr. Vol. II, pp. 24-28). On Friday, October 3, 2008, he and his cousin, John Harper, an employee of the Spring Run Trout Hatchery who is practiced in the process of trout spawning, took some of Mr. Hedrick's brood trout for the purpose of spawning to some tubs that he had set on the side of Poor Farm Springs that his family owned. (Tr. Vol I, pp. 132-33, 145-149, 156-58, Tr. Vol. II, pp. 13, 24-28; R. 86-93, State's Exhibits 1-3). These tubs were placed on the riverbed immediately abutting the bank, but they extended up above the water level of the spring. (State's Ex. 1-4, 6). They plumbed a pipe from the spring into the tubs holding the trout and covered them with nets secured by bungee cords in order to protect the trout for the spawning process, which they planned to commence the next day. (Tr. Vol. I, pp. 145-49, 156-58, Tr. Vol. II, pp. 24-28, State's Ex. 4, 6-7).

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in Grant County"; "to construct a catch basin/spring ox with piping to push spring water into a trout pond during the fish spawning season"; "to perform work in Spring Creek near Petersburg in Grant County, West Virginia for the fish spawning season"; "Right of Entry to carry out the plan of action as set out in your request for assistance in the development of a Regional Landowner Stream Access Permit from May 16, 2008 through November 16, 2008"; R. 137, Outfitters License and Guiding License for Hunting and Fishing Expeditions; R. 138-140, Commercial Fishing Preserve License issued December 12, 2008, good through December 31, 2009).

On October 4, 2008, at approximately 10:30 a.m., Mr. Hedrick and Mr. Harper went to the spring to check to see that the trout were still secure, and found the tubs in tact and the fish ready to spawn. (Tr. Vol. I, pp. 145-49, 156-58, Tr. Vol. II, pp. 24-28). Later that afternoon, they returned to begin the process. (Tr. Vol. I, pp. 145-49, 156-58, Tr. Vol. II, pp. 24-28). That is when Mr. Hedrick noticed what he believed to be his golden trout at Mr. Reid's feet and saw that the netting on the tubs had been displaced. (Tr. Vol. I, pp. 145-49, 156-58, Tr. Vol. II, pp. 24-28).

Although Mr. Reid admitted in his statement to law enforcement authorities that he had displaced the netting and attempted to turn the tubs over and let the fish go, he nonetheless claimed that he had caught the four fish himself with a pole. (R. 146-47). He had left his mother and her employee, Rose Phares, unloading firewood while he excused himself to go fishing from Ms. Phares' property. (Tr. R. 34). Remarkably, he claimed at trial that he managed to catch and retrieve from his line the 6½ pound golden trout and the 7½ pound rainbow trout within 30 seconds each. (Tr. Vol. I, p. 66). Neither he nor any other witness disputed, however, that Mr. Hedrick apparently believed that the trout had come from his tubs and that Mr. Reid had trespassed on his property to procure them.

## **B. Procedural History**

Mr. Hedrick was charged in the Magistrate Court of Grant County with the misdemeanor offense of willfully interfering with a lawful fisherman in violation of Code W. Va. Code § 20-2-2a. On a verdict form that completely omitted the element of willfulness, the Magistrate Court jury found him "guilty of Interference with a Lawful Fisherman" on July 24, 2008. (R. 141). The Magistrate Court sentenced Mr. Hedrick to 10 days in jail and to pay the costs of \$2,364.43 for the trial and \$475.30 for confinement in jail. (R. 2). Mr. Hedrick filed a Motion for

Alternative Sentencing and an Appeal to the Circuit Court of Grant County. (R. 2) On August 20, 2009, the Circuit Court of Grant County heard arguments of Mr. Hedrick and the State. (R. 246). On August 27, 2009, after hearing the arguments and reviewing the tapes of the proceedings in Magistrate Court, the Circuit Court of Grant County denied Mr. Hedrick's appeal. (R. 246-252). On that same day, it did, however, grant his Motion for Alternative Sentencing, finding

that it was reasonable for the Defendant to believe that he was the victim of a petit larceny of his fish. The Court finds that while agitated, he did not become physically aggressive to anyone during this incident and conformed himself to appropriate behavior.

(R. 268). On September 17, 2009, the Circuit Court of Grant County entered a Supplemental Opinion Order Denying Appeal. On October 1, 2009, Mr. Hedrick filed a Notice of Intent to Appeal and a Motion for Stay of Proceedings Pending Appeal in the Circuit Court of Grant County. (R. 263-25). The Court granted Mr. Hedrick's Motion for Stay Pending Appeal on October 5, 2009. On December 16, 2009, Mr. Hedrick filed his Petition for Appeal and Docketing Statement in the West Virginia Supreme Court of Appeals. (R. 1-18). On March 23, 2010, Mr. Hedrick filed a Notice of Substitution of Counsel with this Court. On April 13, 2010, this Court heard oral argument on Mr. Hedrick's Petition for Appeal and granted it that same day. The instant appeal follows.

#### IV. STANDARD OF REVIEW

"The Court applies a de novo standard of review to the denial of a motion for judgment of acquittal based upon the sufficiency of the evidence." *State v. Lively*, 697 S.E.2d 117, 134, \_\_\_ W.Va. \_\_\_ (2010).

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.

*State v. Guthrie*, 194 W. Va. 657, 663 461 S.E.2d 163, 169 (1996).

## V. ASSIGNMENTS OF ERROR

Mr. Hedrick assigns the following errors of law:

A. The Circuit Court of Grant County erred in holding that the State had met its burden of proof with respect to the status of Mr. Reid as a lawful fisherman. It repeated the Magistrate Court's error of requiring only proof that Mr. Reid was a lawful fisherman and ignored its burden to prove that *Mr. Hedrick* believed that he was.

B. The Circuit Court of Grant County erred by refusing to reverse Mr. Hedrick's conviction despite specifically finding that an element of the crime had not been met. The Court's refusal to overturn the conviction for willful interference with a lawful fisherman cannot be reconciled with its finding that Mr. Hedrick believed Mr. Reid to be a thief rather than a lawful fisherman. Nor can the Court's refusal to reverse the conviction be reconciled with its conclusion that Mr. Hedrick "conformed himself to appropriate behavior at all times."

## VI. POINTS AND DISCUSSION OF THE LAW

A. **Mr. Hedrick Could Not Have Willfully Interfered With A Lawful Fisherman Since the Uncontroverted Evidence Showed that He Did Not Believe Mr. Reid to Be One. Therefore, the Circuit Court Erred in Finding the State Had Provided Sufficient Evidence of His Guilt.**

When reviewing a case for insufficiency of evidence,

[T]he 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.

*State v. Guthrie*, 194 W. Va. at 663 (1996). Here, the essential element of willfulness was never addressed and the uncontroverted evidence failed to support it. Therefore, the Circuit Court erred in basing its finding of sufficient evidence merely on its conclusion that “the State met its burden of proof with respect to the status of Mr. Reid as a lawful fisherman.” But by including the element of “willfulness” in the crime, the Legislature required, not merely a showing that Mr. Reid was a lawful fisherman, but also, that Mr. Hedrick believed him to be one. W. Va. Code § 20-2-2a provides that “[a] person may not willfully obstruct or impede the participation of any individual in the lawful activity of hunting, fishing or trapping.” “To be ‘willful’, conduct must be knowing or intentional, rather than accidental, **and be done without justifiable excuse, without ground for believing the conduct is lawful**, or with a bad purpose.”

*Jones v. Commonwealth*, 636 S.E.2d 403 (Va. 2006) (emphasis added); *Barrett v. Commonwealth*, 530 S.E.2d 437 (Va. 2000) (“‘Willful’ generally means an act done with a bad purpose, without justifiable excuse, or without ground for believing it is lawful.”).<sup>2</sup>

Here, the prosecution did not even contest the fact that Mr. Hedrick believed that the fish he saw on Mr. Reid’s stringer were the brooder trout he had raised and put in his tub on his property. Nor did it offer any evidence or even argument that he had no reasonable basis for believing this. Nor could it, since Mr. Reid claimed just by chance to have caught four large brooder trout, two of which were over 6 pounds, in approximately 30 seconds a piece in a small

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<sup>2</sup> See also *Van Antwerp v. State*, 358 So.2d 782 (Ala. 1978), overruled on other grounds, *Ex Parte Marek*, 556 So.2d 375 (Ala. 1989) (“A ‘willful’ act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from act done carelessly, thoughtlessly, heedlessly or inadvertently”); *Ewell v. State*, 114 A.2d 66 (Md. 1955) (“The term ‘willfully’ in a criminal statute characterizes an act done with deliberate intention for which there is no reasonable excuse”); *Padgett v. State*, 56 So.2d 116 (Ala. 1952) (“A ‘willful’ act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently”); *Miller v. State*, 130 P. 813 (Okla. 1913) (“The word ‘willfully’ is synonymous with ‘intentionally,’ ‘designedly,’ ‘without lawful excuse’-that is, not ‘accidentally.’”).

stream where, only a few feet away on Mr. Hedrick's property, there rested two tubs of the brooder trout that Mr. Hedrick had purchased and raised. Even assuming a rational trier of fact could believe Mr. Reid's story, the operative inquiry with regard to willfulness is not whether he was, in fact, a lawful fisherman, but whether Mr. Hedrick had reason to think he was *not*, and therefore lacked the requisite will to interfere with a lawful activity. For W. Va. Code § 20-2-2a does not address genuine disputes over ownership of wildlife. The Legislature specifically excluded such disputes from the statute's purview by including the element of willfulness in the prohibition on interference with lawful fishing. Certainly, you cannot willfully interfere with a person's lawful fishing if you do not believe he is fishing lawfully.

This principle is perfectly illustrated in the only case regarding hunter/fisherman harassment statutes that examines the elements of the offense rather than its constitutionality.<sup>3</sup> In *Commonwealth v. Haagensen*, 900 A.2d 468 (Pa. 2006), the court found there was insufficient evidence to sustain a conviction for intentionally interfering with a lawful taking of wildlife where the prosecution failed to establish that the defendant acted with intent to interfere with

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<sup>3</sup> West Virginia's adoption of W. Va. Code § 20-2-2a was part of a wave of similar statutes enacted across the country in the late nineteen eighties and early nineties "[i]n response to attempts by animal rights activists, environmentalists, and others to interfere with persons lawfully engaged in hunting, fishing, and similar activities" 17 American Law Reports Fifth 8 837. That is why the other cases regarding such statutes have involved constitutional challenges having to do with free speech and due process rights. *See id. and cases cited therein*. This context reveals that this prosecution was an exercise in fitting a round peg in a square hole from the beginning: Mr. Hedrick's conduct was simply not the type the law was intended to address. Indeed, by including willfulness as an element, the Legislature made sure that the statute would *not* reach genuine disputes over the right of one party or the other to engage in the conduct interfered with. "For a discussion of the motivations behind the passage of hunter harassment legislation, see 'Comment: The Right to Arm Bears: Activists Protest Against Hunting,' 45 Univ of Miami Law Rev 1109 (May 1991), and 'Comment: Wyoming's Hunt Interference Law—Anarchy In The Woods: How Far Afield Does The Right Of Free Speech Extend?' 27 Land and Water L Rev 505 (1992)." 17 American Law Reports Fifth 837, fn. 1. *See also* 38 C.J.S. *Game* § 59.

hunters, when she yelled at them for being on what she *believed* to be her property. *Id.* 900 A.2d at 474. The Pennsylvania statute provides that

it is unlawful for another person at the location where the activity is taking place to **intentionally** obstruct or interfere with the **lawful** taking of wildlife or other activities permitted by this title. . . A person violates this title when he **knowingly** blocks or impedes or **otherwise harasses** another person who is engaged in the process of **lawfully** taking wildlife or other permitted activities.

*Haagensen*, 900 A.2d at 470 (quoting 34 Pa. Cons. Stat. § 2302) (Emphasis original). Thus, intent is an element of the Pennsylvania harassment statute just as it is in West Virginia.<sup>4</sup>

Therefore, the Commonwealth had the burden to prove not only that *Haagensen* interfered with the victims' hunt by screaming at them or following them, but also that she did it **intentionally** for no reason other than to prevent the **lawful** taking of wildlife. The trial court, in each case, found that *Haagensen* had no legitimate purpose for her actions and/or intended to interfere with a lawful hunt. However, after a careful review of the record, we cannot identify any evidence presented by the Commonwealth to support such findings.

*Haagensen*, 900 A.2d at 475. (Emphasis original) In reaching this conclusion, the court noted that *Haagensen* had testified that she felt she had the right to yell at the victims because, in two of

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<sup>4</sup> In fact, the *mens rea* element in West Virginia's statute is even more stringent than Pennsylvania's. West Virginia requires that the interference with a lawful fisherman be willful, whereas Pennsylvania's requires it be merely intentional. As the cases cited in footnote 1 illustrate, an act may be criminally punishable as intentional regardless of whether the defendant had a reasonable excuse for believing he was acting legally. By contrast, when the statute requires willfulness, even an intentional act is not punishable if the defendant reasonably believed his act to be lawful. *See supra* footnote 1. *See also Korzun v. Shahan*, 151 W. Va. 243, 252, 151 S.E.2d 287, 293 (1966) (noting that the term willfulness "connotes purpose or design."); *Spence v. Browning Motor Freight Lines, Inc.*, 138 W. Va. 748, 755, 77 S.E.2d 806, 811 (1953) (same). Moreover, "[i]n the context of criminal statutes, the word 'willful' generally indicates a requirement of specific intent." *United States v. Mousavi*, 604 F.3d 1084 (9<sup>th</sup> Cir. 2010). *See also United States v. Kinsella*, 545 F. Supp.2d 148 (Me. 2008) (noting that "to act 'willfully' means to act voluntarily and intelligently and with the specific intent that underlying crime be committed, that is to say, with bad purpose, either to disobey or disregard the law, not to act by ignorance, accident, or mistake.").

the incidents “she believed that the hunters were **unlawfully** trespassing on her property” and in another “she believed that [the hunter] was **illegally** hunting too close to a public road.” *Id.* at 475. (Emphasis original). “The trial court completely disregarded this testimony and, in fact, did not mention it at all” in its opinion. “In so doing, the trial court impliedly believed the version of events offered by the Commonwealth’s witnesses. However, even accepting [their] testimony, there is nothing in that testimony to refute Haagensen’s position regarding the motivation for her actions.” *Id.* To the contrary, several of the Commonwealth’s witnesses testified that Haagensen’s actions were borne of her belief that the hunters were **not** hunting legally. *Id.*

In addition, the record establishes that it was Haagensen, not the ‘victims’ who called the authorities. This evidence supports the conclusion that Haagensen believed, either rightly or wrongly, that the ‘victims’ here were engaging in the **unlawful** taking of wildlife, and Haagensen merely sought to warn the hunters not to trespass on her property or hunt illegally near her farm.

*Id.* (Emphasis original). Consequently, the appellate court concluded that “[b]ecause the Commonwealth’s evidence fails to support a finding that Haagensen acted with the **intent** to interfere with the **lawful** taking of wildlife, the trial court erred in concluding that the Commonwealth sustained its burden of proof.” Accordingly, the appellate court reversed her conviction.

Given the remarkable similarities to the case at bar, *Haagensen* is highly instructive. Its few dissimilarities make it even more persuasive. Here, as in *Haagensen*, intent was an essential element of the crime. Indeed, as discussed above, West Virginia’s use of the term “willfully” makes the intent requirement even more stringent. *See supra* footnote 4. Here, as in *Haagensen*, the defendant offered uncontraverted evidence that he believed that the alleged victim was not engaged in a lawful taking of wildlife. Here, as in *Haagensen*, the trial court completely disregarded testimony regarding the defendant’s belief that the victims were not

behaving lawfully, and it was not mentioned at all in the lower court's written opinion. Here, as in *Haagensen*, the lower court credited the prosecution's version of events. Here, as in *Haagensen*, even the prosecution's own witnesses supported the defendant's assertion that s/he believed the alleged victim[s] were not engaged in lawful taking of wildlife. Here, as in *Haagensen*, it was the defendant rather than the alleged victim who called law enforcement authorities. Here, as in *Haagensen*, "this evidence supports the conclusion that [the defendant] believed, **either rightly or wrongly**,<sup>5</sup> that the 'victims' were engaged in the unlawful taking of wildlife, and [the defendant] merely sought" to assert his legal rights. *Id.* (Emphasis added). Thus, here, as in *Haagensen*, "because the prosecution's evidence fails to support a finding that [the defendant] acted with **intent** to interfere with the lawful taking of wildlife, the trial court erred in concluding that the [State] sustained its burden of proof," and the conviction should be reversed. *Id.* (Emphasis original).

**B. Mr. Hedrick's Conviction Should Be Reversed Because the Circuit Court's Findings Regarding His Intent Are Antithetical to Sustaining His Conviction.**

The case for Mr. Hedrick's innocence is even stronger here than in *Haagensen* because of one remarkable difference between them: Here, not only did the lower court incorrectly conclude that the prosecution had sustained its burden of proof, it went on in its sentencing order

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<sup>5</sup> Just as in the case at bar, the issue of whether the defendant was correct in believing the "victim's" acts to be illegal was hotly contested. In *Haagensen* the issue was whether the defendant correctly believed that the hunters were on her property or hunting too close to the road. In the instant case the issue was whether Mr. Hedrick correctly believed that he owned the fish on Mr. Reid's stringer. However, as the *Haagensen* court made clear, as long as the defendant believes the "victim's" actions were illegal then he lacks the requisite intent to interfere with a lawful taking of wildlife, and it is completely immaterial whether the defendant was correct in this belief or not. Thus, none of the State's evidence concerning whether Mr. Hedrick had all of the permits necessary to run his commercial fishing operation or spawn trout is relevant. No one contested the fact that Mr. Hedrick believed that he owned the fish. Just as in *Haagensen*, it is immaterial whether or not he was correct about his legal rights.

to make a specific finding about the defendant's intent that was completely antithetical to sustaining his conviction. In reducing Mr. Hedrick's sentence from ten days in jail to one day of community service, the Circuit Court found that

it was reasonable for the Defendant to believe that he was the victim of a petit larceny of his fish. The Court finds that while agitated, he did not become physically aggressive to anyone during this incident and conformed himself to appropriate behavior.

(R. 268) Thus, the Circuit Court's **own findings** in its Order for Alternative Sentencing completely negate its sustaining Mr. Hedrick's conviction in its August 27, and September 23, 2009 Orders Denying Appeal. There could be no clearer determination that Mr. Hedrick did not break the law than the Circuit Court's own finding that "he confined himself to appropriate behavior." Accordingly, this Honorable Court should reverse his conviction and prevent Mr. Hedrick from being stripped of his livelihood for peacefully protecting what he believed to be his own property while caught in a storm of stones and sputum.

#### **VII. RELIEF PRAYED FOR**

On the basis of the foregoing, Josh Hedrick respectfully requests this Honorable Court to reverse the order issued by the Circuit Court of Grant County, denying the appeal of his conviction in the Magistrate Court of Grant County.

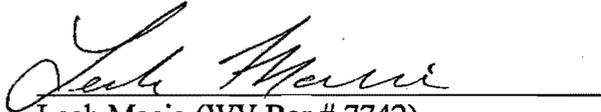
**VIII. REQUEST FOR ORAL ARGUMENT**

Josh Hedrick also respectfully requests oral argument on this brief and the issues identified herein.

**Respectfully Submitted,**

**JOSH LEE HEDRICK**

**By SPILMAN THOMAS & BATTLE, PLLC**

A handwritten signature in cursive script, appearing to read "Leah Macia", is written over a horizontal line.

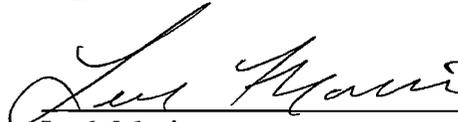
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**CERTIFICATE OF SERVICE**

I, Leah Macia, counsel for Josh Lee Hedrick, hereby certify that on this 21<sup>st</sup> day of October, 2010, I served a true copy of the attached "Brief of Appellant Josh Hedrick" upon the parties via United States First Class Mail, postage prepaid, and addressed as follows:

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Leah Macia