

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

TIMOTHY MICHAEL WALDRON, Petitioner, v. STATE OF WEST VIRGINIA,
Respondent.

DOCKET NO: _____

Wood County Circuit Court
Case No: 09-F-206
The Honorable Judge Jeffrey B. Reed

PETITION FOR APPEAL

Courtney L. Ahlborn, WVSB#10274
3301 Dudley Avenue
Parkersburg, WV 26104
(304) 420-0975
Counsel for Timothy Michael Waldron

**PETITION FOR APPEAL FILED ON BEHALF OF PETITIONER
TIMOTHY MICHAEL WALDRON**

INTRODUCTION

NOW COMES the Defendant and Petitioner herein, TIMOTHY MICHAEL WALDRON, and hereby respectfully submits this brief to this honorable Court to argue why this Court should REVERSE the previous pre-trial rulings in this matter, REVERSE the judgment of guilty, and REVERSE the sentencing Order of the Wood County Circuit Court entered on August 17, 2010 which adjudged the Defendant and Petitioner herein as guilty and sentenced him to the custody of the West Virginia Division of Corrections for a term and period of not less than one (1) nor more than five (5) years, said sentence to begin as of August 9, 2010 with a credit of 75 days .

KIND OF PROCEEDING AND RULING IN THE LOWER TRIBUNAL

The Defendant, Timothy Michael Waldron, was arrested August 28, 2009 in Parkersburg, Wood County, West Virginia by members of the Parkersburg Narcotics Task Force. The criminal complaint filed by D.D. Sturm of the Parkersburg Narcotics Task Force stated that “On or about May 2009 the PNTF conducted a controlled purchase of marijuana from the defendant where the defendant exchanged approx. two (2) ounces of marijuana with a confidential informant (CI) and received U.S. Currency provided by the PNTF for the marijuana. This transaction took place in the South side of Parkersburg, WV.” The Defendant waived his preliminary hearing on September 8, 2009 with the advice of defense counsel at that time Jay Gerber.

On the 18th day of September, 2009 the September term of the Wood County Grand Jury returned an Indictment against the Defendant which charged him with one(1) count of Delivery of a Controlled Substance in violation of W.Va. Code § 60A-4-401(a)(ii). The Defendant

appeared in person and by counsel, Jay Gerber, on the 25th day of September, 2009 for his arraignment at which time he entered his plea of not guilty. Trial in this matter was then set for November 3, 2009. The Defendant did not go to trial in November 2009.

On December 4, 2009 undersigned counsel Courtney L. Ahlborn filed her notice of appearance in this matter. The Defendant trial in this matter was eventually set for May 5, 2010. On May 3, 2010 the Defendant appeared in person and by counsel pursuant to a Status Hearing. At this time the State of West Virginia informed the Court they may not be able to proceed to trial on May 5, 2010 in this matter as they had yet to locate the confidential informant and the expert witness from the West Virginia State Police Crime Lab may not be available to testify.

On the 5th day of May, 2010 the Defendant appeared in person and by counsel prepared for trial. The State of West Virginia also appeared. The State of West Virginia moved to admit the audio and video recordings of the alleged drug transaction as evidence against the Defendant. The Defendant objected as the confidential informant, disclosed as a Michael Forman, did not appear at trial. The Defendant stated to allow the State of West Virginia to admit the audio and video of the alleged transaction without the presence of the confidential informant violated the Defendant's Sixth Amendment to confront all witnesses against him. As the Defendant was unable to cross examine the confidential informant as to what occurred during the time of the alleged drug transaction. The Court ruled over the objection of the Defendant that the audio and video recordings of the alleged drug transaction were admissible at trial.

The Defendant also moved the Court to suppress the voice identification, pertaining to Detective Sturm of the Defendant on the recording. The Defendant argued Detective Sturm could not identify the other voice on the recording as the Defendant's other than through

speculation as he was neither a party to this conversation nor familiar with the voice of the Defendant prior to this criminal investigation. The Court denied the Defendant's motion.

The Defendant's trial was held in this matter on May 5, 2010 and May 6, 2010. In addition to the Court's previous pre-trial rulings, the Court also allowed the State of West Virginia to admit the marijuana without the confidential informant or any other witness testimony that the marijuana that was presented at trial ever came from the Defendant. After a two day trial, May 5, 2010 and May 6, 2010, the jury found the Defendant guilty of delivery of a controlled substance. The Defendant moved for a directed verdict/judgment of acquittal at the end of the State of West Virginia's case in chief which was denied by the lower court. The Defendant also moved for a Judgment of Acquittal after the verdict was returned which the lower Court also denied.

By Order entered August 17, 2010 the Defendant was sentenced to the custody of the West Virginia Division of Corrections for a term and period of not less than one (1) nor more than five (5) years, said sentence to begin as of August 9, 2010 with a credit of 75 days . The Defendant filed his notice of intent to appeal on August 17, 2010. It is from the August 17, 2010 sentencing order and the orders entered May 14, 2010 and May 19, 2010 dealing with pre-trial motions in this matter that the Defendant makes this appeal.

ARGUMENT

- 1. The Court erroneously relied on the reasoning and holding in *State v. Dillon* 191 W.Va. 648 , 447 S.E.2d 583 to allow the admission of the video and audio recordings of the alleged drug transaction without the testimony of the confidential information, the only witness to the alleged drug transaction, at trial. Although *State v. Dillon* has not been overturned by this Court the decision is pre-*Crawford v. Washington* 547 U.S. 813, 126 S.Ct 2266 (2006) and**

begs a further analysis to determine the present constitutionality of its application. In allowing the audio and video recordings to be admitted without testimony by the confidential informant violated the Defendant's Sixth Amendment Constitutional Right to confront and cross examine all witnesses against him at trial.

A defendant in a criminal trial has a constitutional right to confront and cross examine all witnesses against them at trial. This Court has held that:

“The Confrontation Clause contained in the Sixth Amendment to the United States Constitution provides: ‘In all criminal prosecutions, the accused shall...be confronted with the witnesses against him.’ This clause was made applicable to the states through the Fourteenth Amendment to the United States Constitution.” Syllabus point 1, *State v. James Edward S.*, 184 W.Va. 408, 400 S.E.2d 843 (1990). “The Sixth Amendment to the United States Constitution guarantees an accused the right to confront the witnesses against him. The Sixth Amendment right of confrontation includes the right of cross –examination.” Syllabus point 1, *State v. Mullens*, 179 W.Va. 567, 371 S.E. 2d 64(1988).” *State v. Jarrell*, 191 W.Va. 1, 16, 442 S.E.2d 223 (1994).

The Defendant was charged with delivery of a controlled substance to wit: marijuana. The only evidence of that delivery possessed by the State of West Virginia was the potential testimony of the confidential informant himself and the audio and video recordings made by Parkersburg Narcotic Task Force (“PNTF”) agents on the night of the alleged drug transaction. The confidential informant did not appear at any time during the trial in this matter. Thus the only evidence that State could offer at trial was the audio and video recording of the alleged drug transaction.

Prior to the start of trial the lower court held a hearing on the admissibility of the audio and video recordings. The defense argued the audio and video recordings were inadmissible at trial without the testimony of the confidential informant as the Defendant was unable to confront and cross examine the witness against him in violation of his Sixth Amendment constitutional right.

The State of West Virginia relied on this Court's prior ruling in *State of West Virginia vs. Ronald Dillon*, 191 W.Va. 648, 447 S.E.2d 583 (1994) to argue that although the witness himself, the confidential informant was not available to testify it did not preclude the use of the tapes at trial. The State of West Virginia argued under *Dillon* that as long as the State could show the trustworthiness and/or reliability of the statement and the unavailability of the witness for trial the tapes were admissible not for the truth of the matter asserted but to place the defendant's statements into context. In *Dillon* a female had contacted the Parkersburg Narcotics Task Force ("Task Force") concerning a taxi cab driver she knew was selling narcotics. She conducted a few controlled buys for the Task Force. Mr. Dillon was arrested and proceeding to trial. At trial the confidential informant was served a subpoena and appeared the first day of trial. After not being called as a witness the first day the confidential informant did not return for trial. In *Dillon*, the defendant had given a statement to officers in which he admitted to selling drugs to the confidential informant. This Court ruled that the audio recordings of the alleged transactions were admissible as the informant's "statements were not heresay since the statements were not introduced to prove the truth of the matter asserted but rather were offered solely to place the Appellant's statements in context and make them comprehensible to the jury." *Id.* at 659 The Court then went on to state "even if we had concluded that Ms. Godbey's (the

informant) taped statements concerning the marijuana deal were hearsay those statements were still admissible under West Virginia Rules of Evidence 804(b)(5).” *Id.*

However, in the present case the Defendant did not give a statement to law enforcement officers prior to trial. There was no prior statement of the Defendant to put into context during trial by playing the audio and video tapes. The only witness to the alleged crime was the confidential informant. The Task Force officers who testified at trial all testified that they did not witness a drug transaction. The Task Force officers also testified that the audio was somewhat inaudible. In this case the confidential informant never even identified the Defendant as the person who sold him drugs during the alleged drug transaction. Task Force officers testified they never had the confidential informant identify the Defendant. The officer testified that the confidential informant told him it was a guy named Tim who he thought was on parole. The only other information the confidential informant was also able to give about the guy named Tim was information about who he thought was Tim’s girlfriend. The Task Force requested parole photos from the Wood County Parole Office of parolees who lived in the area of the alleged girlfriend. Eventually Task Force officers made an identification by looking at still photos from the video surveillance and matching up parole photos as to who they thought the seller was during the controlled purchase. The Defendant, Mr. Waldron, was eventually arrested.

Unlike in *Dillon*, The State of West Virginia did not exercise due diligence in securing the witness attendance at trial. The confidential informant in this matter was a man by the name of Michael Foreman. Task Force officer testified that he had spoken with Mr. Foreman approximately fifteen (15) minutes before he took the stand to testify the day trial began. The officer testified that he had been in contact with Mr. Foreman via text message earlier that week. The officer also testified he had even met with Mr. Foreman in Vienna, West Virginia which is

located in Wood County, West Virginia two weeks prior to trial but didn't have a subpoena for the C.I. at that time.

Also the reliability of the confidential informant is somewhat questionable as Mr. Foreman was just released from parole on a breaking and entering charge months prior to conducting the controlled buys. The confidential informant also had a battery charge dismissed due to his cooperation with the Task Force.

However, due to the confidential informant not appearing at trial the State was able to put on evidence that the confidential informants working for the Parkersburg Narcotics Task Force are never under the influence of alcohol or illegal substances while working for the Task Force. Officer Doug Sturm specifically testified "at no time would any confidential of the Parkersburg Narcotics Task Force be under the influence of narcotics or alcohol." (Trial transcript pg. 184) The Defendant attempted to impeach this evidence by requesting a transcript of the testimony of another confidential informant in another case involving Officer Sturm who testified to using cocaine while working for the Task Force. That request was denied by the lower court. Thus the Defendant had no way to impeach or defend against this erroneous testimony by Officer Sturm.

It should be noted by this Court that the confidential informant, Mr. Foreman, was arrested by the Parkersburg Narcotics Task Force on approximately June 4, 2010 on a felony possession of controlled substance with intent to deliver the substance being marijuana. Mr. Waldron's trial was May 5 -6, 2010. It appears the Task Force could have found Mr. Foreman for Mr. Waldron's trial if they would have looked a little harder as he was still in Wood County. Mr. Foreman has since been indicted by the January 2011 term of the Wood County Grand Jury and upon undersigned counsel's last check was currently incarcerated at North Central Regional Jail.

The lower Court in ruling on the admissibility of the audio and video tapes relied on this Court's ruling in Dillon. However, the lower court struggled with how the decision in Crawford v. Washington affected this Court's decision in Dillon. The lower court specifically recognized that Dillon cites to State v. James Edward S. 184 W.Va. 408, 400 S.E. 2d 843 (1990) to justify the admission of the confidential informants' statements in Dillon. However, James Edward S. was specifically overruled by State v. Meckling a case which talks about Crawford v. Washington.

The lower court went onto state, "I think it would be good maybe to have the Supreme Court decide under what circumstances can a defendant, if at all, be convicted of a delivery of a controlled substance with use of a confidential informant when the confidential informant does not appear. It raises some interesting issues, and I think they've been raised in this case. So this would be an opportunity for the Supreme Court to rule on that issue---those issues." (sentencing transcript pg. 12)

Therefore the Defendant prays this Court address the issue of how the U.S. Supreme Court decision in Crawford v. Washington affects this Court's decision in State v. Dillon. The Defendant prays this Court find a defendant cannot be convicted of delivery of a controlled substance without the testimony of the confidential informant when the informant was the only witness to the alleged transaction. The Defendant prays this Court find the Defendant's Sixth Amendment right to confront and cross examine all witness was violated during his trial and reverse his conviction.

II. The lower court erred by denying the Defendant's Motion for Directed Verdict at the end of the State of West Virginia's case in chief as the evidence presented by the State of West Virginia clearly established overwhelming evidence of entrapment.

This Court has previously held “A trial court may find, as a matter of law, that a defendant was entrapped, if the evidence establishes, to such an extent that the minds of reasonable men could not differ, that the officer or agent conceived the plan and procured or directed its execution in such an unconscionable way that he could only be said to have created a crime for the purposes of making an arrest and obtaining a conviction.” Syllabus pt. 3 State v. Ralph Johnson, 161 W.Va. 763; 245 S.E. 2d 843 (1978).

In this case Task Force Officer Justin DeWeese testified as follows:

“Q. Okay. So at that time you did not know the name Timothy Michael Waldron?

A. No, I didn't

Q. And was it your understanding that the Task Force had arranged this --- do you refer to these as “controlled buys”?

A. Yes.

Q. And was it your understanding that the Task Force had arranged this?

A. Yes” (Trial transcript pg. 234)

Task Force Officer Doug Sturm also testified that the alleged controlled buy was set up by the confidential informant calling the Defendant. Officer Sturm testified the last call to set up the controlled purchase happened inside his vehicle. Doug Sturm also testified he did not know who the Defendant was at the time of the alleged controlled buy.

The State of West Virginia was not able to present any evidence that the Defendant was predisposed to commit the crime of delivery of a controlled substance to wit: marijuana without the instigation or the inducement of law enforcement officers or the confidential informant operating at the direction of law enforcement. The Task Force officers themselves testified they set up this controlled buy. The Task Force officers testified they didn't know who Mr. Waldron was at the time of the alleged buy. The Defendant was indicted on one count of delivery of a

controlled substance which further proves the Defendant was not predisposed to commit the crime as the only crime to which he was charged is the buy set up by the Task Force.

Therefore the Defendant prays his conviction be reversed as the lower court erred in denying the Defendant's Motion for Directed Verdict.

III. The lower court erred in refusing the Defendant's request for a jury instruction on entrapment when the Defendant offered some competent evidence of entrapment to require the prosecution to prove beyond a reasonable doubt that the Defendant was otherwise predisposed to commit the offense.

After the lower court denied the Defendant's Motion for Directed Verdict based on entrapment. The Defendant then requested the lower court allow the jury to make the determination as to an entrapment defense by requesting a jury instruction on entrapment. The lower Court denied the Defendant's request stating: "the Court would find that there is not any evidence of entrapment. My understanding of the law on entrapment comes from *State v. Houston*, which is 197 W.Va. 215, 475 S.E.2d 307, a 1996 case, and it --- in essence, it's sort of like the defense of insanity where the State -- the defendant has to come forward with some, as this case says, "Some competent evidence, " and the only evidence that's before the Court is that the confidential informant called the Defendant. And I am not aware of any case that simply says that one or two phone calls is entrapment." (trial transcript pg. 293)

However, the Defendant had presented competent evidence. The Defendant by cross examination of the State of West Virginia Task Force officers established that the two Task Force officers believe the alleged drug buy had been set up by the Task Force. The two Task Force officers who testified didn't even know who the Defendant was at the time of the alleged

buy. The State produced no evidence of the Defendant's pre-disposition to commit the alleged crime.

According to Syllabus 4, *State v. Houston*, "When the defendant invokes entrapment as a defense to the commission of a crime, the defendant has the burden of offering some competent evidence that the government induced the defendant into committing that crime. Once the defendant has met this burden of offering some competent evidence of inducement, the burden of proof shifts to the prosecution to prove beyond a reasonable doubt that the defendant was otherwise predisposed to commit the offense." The Defendant was entitled to a jury instruction on the entrapment defense. The Defendant had presented enough competent evidence to shift the burden of proof to the prosecution to allow the jury to make a determination.

IV. The lower court erred by allowing Task Force officers to make an in-court identification of the Defendant's voice on the audio recordings of the alleged controlled buy.

"The touchstone for admitting any out-of-court identifications is the reliability of the identification, considering the length of time since the crime, the level of certainty given by the victim, the opportunity during the crime to observe the trait in question, and the degree of attention to the trait during the crime." *State v. Woodall*, 182 W.Va. 15, 385, S.E.2d 253, 262 (1989)

In this matter the confidential informant did not testify at trial. Therefore, the only witnesses who could testify regarding the voices on the audio and video of the alleged buy were Task Force officers. Over the objection of defense counsel, Task Force officers were able to identify the Defendant's voice on the audio tapes even after testifying they had not heard the Defendant's voice prior to the alleged buy. Officer Sturm testified that he identified the

Defendant's voice by process of elimination as he knew the confidential informant's voice so the other voice had to be the Defendant. Officer Sturm specifically testified, "I knew it was not the voice of my confidential informant, so it was the voice of the defendant, Timothy Waldron."

(trial transcript pg. 138)

Officer DeWeese also testified as follows:

"Q. Agent DeWeese, were you sometime – at some point after May 4, 2009, were you then told by Off. Sturm that the white male known as time was somebody by the name of Timothy Waldron?

A. I remember reading it in the case file afterwards, but I don't think we spoke directly about it.

Q. And is that the only way that – and that's how you – what you based your identification on today?

A. Yes" (trial transcript pg. 239)

Although a voice identification can be the opinion of anyone who has heard the voice at any time it seems the person should have heard the voice. In the Defendant's case the State provided no evidence that Officer Sturm had ever heard the Defendant's voice prior to making the in-court identification. Officer Sturm himself testified that he made the voice identification of the Defendant on the tape by process of elimination which is insufficient and not provided for in the Rules of Evidence.

V. The lower court erred by admitting the drug evidence in this matter when the State of West Virginia did not establish a proper chain of custody as the confidential informant never testified that the marijunan admitted was the marijuana they received from the Defendant. The State offered no evidence that the marijuana admitted into evidence at trial ever came from the Defendant.

The chain of custody rule is a variation of the authentication requirement of the West Virginia Rules of Evidence and requires that a person seeking to introduce the evidence establish a chain of custody from the time the items were taken to show they are in substantially the same condition as when seized. *State v. Knuckles*, 196 W. Va. 416, 473 S.E.2d 131, 1996 W. Va. LEXIS 38 (1996).

This Court has also previously held; “It is reversible error for a trial judge to admit into evidence in a criminal trial of a defendant charged with a marihuana violation, drug paraphernalia, and marihuana belonging to a state witness when such drug paraphernalia and marihuana have not been associated with the defendant and have no probative value relating to the guilt of the defendant.” *State v. Rector*, 167 W.Va. 748, 280 S.E. 2d 597, headnote 5 (1981)

In the Defendant’s case, the only witness to the alleged drug transaction was the confidential informant. The Task Force officers that testified at trial testified they did not witness any actual drug transaction between the Defendant and the confidential informant. The State could not produce any witness other than a Task Force officer to testify they received the marijuana from the confidential informant. Therefore, the marijuana evidence in this case was admitted on the speculation of the Task Force officers. Basically the officer testified the confidential informant gave it to him so it had to come from the Defendant because he was the target of the controlled buy. However, in this case the confidential informant never identified the Defendant as the one who sold him marijuana. The Defendant was only arrested on the Task Force officers’ best guess by matching parole photos to still photos of the alleged buy.

V. The lower court erred in finding the State of West Virginia had no duty to disclose the photographs and/or information used by the Parkersburg Narcotics Task Force to identify the Defendant under W.Va. Rules of Criminal Procedure Rule 16 or *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963).

The U.S. Supreme Court has held “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, Hd. 2(1963)

Rule 16(c) of the West Virginia Rules of Criminal Procedure provides “Upon request of the defendant, the state shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody and control of the state, and which are material to the preparation of the defense or are intended for use by the state as evidence in chief at the trial, or were obtained from or belong to the defendant.”

The Defendant timely filed his request for discovery in accordance with Rule 16 of the West Virginia Rules of Criminal Procedure requesting a copy of all photographs and other tangible evidence in the custody or control of the State of West Virginia. The Defendant was prejudiced in the preparation of his defense by the State’s failure to turn over or preserve the photographs and other information used to identify the Defendant as the person who sold drugs to the confidential informant during the drug transaction contained within the Indictment. The Defendant was prejudiced in his ability to challenge the process of identification used by the Task Force and any potentially unconstitutional or suggestive means employed by the Task Force to make the identification of the Defendant.

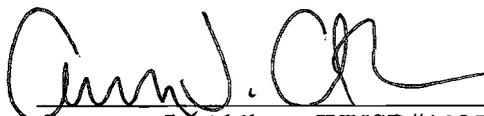
VII. Conclusion

The undersigned counsel, on behalf of the Defendant, implores the Supreme Court of Appeals to take this appeal. Counsel has attempted to identify the major areas of concern in this case and would like the opportunity to further brief the Court after oral arguments on these and any other issues that the Court, after its review of the record, deems important or necessary. This

case was a travesty of justice, and the Court should hear this matter and, thereafter, reverse the pre-trial rulings of Judge Jeffrey B. Reed and the jury verdict of guilty and order that the Defendant be released.

TIMOTHY MICHAEL WALDRON,

By Counsel.

A handwritten signature in black ink, appearing to read "Courtney L. Ahlborn", written over a horizontal line.

Courtney L. Ahlborn WWSB#10274
3301 Dudley Ave.
Parkersburg, WV 26104
(304)420-0975

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,
Plaintiff,

vs.

09-F-206-R

ENTERED
O.B. No. 154
PAGE 400

TIMOTHY MICHAEL WALDRON,
Defendant.

MAY 14 2010

CAROLE JONES
CLERK CIRCUIT COURT

ORDER

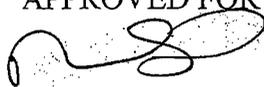
Timothy Michael Waldron, who stands charged on Indictment number 09-F-206, this 5th day of May 2010, appeared at the bar of this Court in custody and by his attorney, Courtney Ahlborn, and also appeared the State of West Virginia by Russell J. Skogstad, Jr. Assistant Prosecuting Attorney in and for Wood County pursuant to Pre-trial Motions.

Whereupon, the parties appear this day for trial in the above-styled matter, the State motions the Court to admit the audio recording for use at trial. The counsel for the Defendant objects. For reasons set forth more fully upon the record and for good cause shown the Court **GRANTS** the State's Motion.

Whereupon, the counsel for the Defendant motions the Court to suppress the voice identification, pertaining to Detective Sturm, on the recording. The State objects and for reasons set forth more fully upon the record the Court **DENIES** the Defendant's motion.

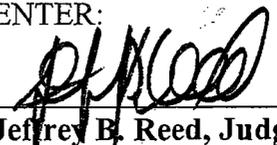
Furthermore, it is **ORDERED** that the clerk of this Court send a copy of this Order to all parties.

APPROVED FOR ENTRY:



Russell J. Skogstad, Jr.
Assistant Prosecuting Attorney
WVSB#9804

5-14-2010
ENTER:


Jeffrey B. Reed, Judge

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

vs.

09-F-206-R

TIMOTHY MICHAEL WALDRON,

Defendant.

ENTERED
O.B. No. 751
PAGE 582
MAY 19 2010

ORDER

CAROLE JONES
CLERK CIRCUIT COURT

Timothy Michael Waldron, who stands charged on Indictment number 09-F-206, this 6th day of May 2010, appeared at the bar of this Court in custody and by his attorney, Courtney Ahlborn, and also appeared the State of West Virginia by Russell J. Skogstad, Jr. Assistant Prosecuting Attorney in and for Wood County.

Whereupon, the jury again appeared pursuant to their adjournment of May 5, 2010.

Whereupon, the jury heard further testimony of witnesses, exhibits are marked and evidence heard and the State concluded the presentation of evidence in its case, and the State rests.

Whereupon, counsel for the Defendant motions the Court for a directed verdict. The Court, for reasons set forth more fully upon the record, **DENIES** the Defendant's motion.

Whereupon, pursuant to counsel resting, the jury proceeded to hear instructions and closing arguments of counsel.

The jury then retired to their room to consider of their verdict, and after a time returned into open Court and upon their oaths do say: "We, the Jury, find the Defendant, Timothy Michael Waldron, and "Guilty" of Delivery of a Controlled Substance".

Whereupon, the Defendant being found guilty, the counsel for the Defendant motions the Court to set aside the verdict. The Court **ORDERS** that the counsel for the Defendant file said

motion on or before June 9, 2010, with the State's response being due on or before July 12, 2010, with said motion being heard at sentencing.

Whereupon, the counsel for the Defendant motions the Court for alternative sentencing or probation. The Court will take the Defendant's motion under Advisement and **ORDERS** that a Pre-sentence Investigation report be performed.

It is **ORDERED** that this matter be scheduled for a Sentencing Hearing on the 9th day of August, 2010, at 11:00 o'clock a.m., before the Honorable Jeffrey B. Reed, Judge, at which time all parties and their counsel shall appear.

Whereupon, the Defendant is remanded to custody.

Furthermore, it is **ORDERED** that the clerk of this Court send a copy of this Order to all parties.

5-18-2010

ENTER:



Jeffrey B. Reed, Judge

APPROVED FOR ENTRY:



Russell J. Skogstad, Jr.
Assistant Prosecuting Attorney
WVSB#9804

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA
STATE OF WEST VIRGINIA,

Plaintiff,

VS:

CASE NO.: 09-F-206

TIMOTHY MICHAEL WALDRON,

Defendant.

ENTERED
O.B. No. 254
PAGE 088
AUG 17 2010
CAROLE JONES
CLERK CIRCUIT COURT

ORDER

On this 9th day of August, 2010, came the State of West Virginia by Russell J. Skogstad, Jr., Assistant Prosecuting Attorney in and for Wood County, Brenda F. Dougherty, Adult Probation Officer, and the Defendant, in custody accompanied by his attorney, Courtney L. Ahlborn.

Whereupon, the Court, before imposing sentence, determined that the Defendant and his counsel have had the opportunity to read and discuss the pre-sentence investigation report and the supplemental report / addendum dated June 28, 2010, submitted by the Probation Officer.

No objections were made pursuant to the Rules of Criminal Procedure.

Whereupon, the Court heard arguments of counsel upon Defendant's Motion for Judgment of Acquittal. The Court having maturely considered the various grounds set forth in said Motion and the arguments of counsel thereupon, it is ORDERED that said motion be and is hereby denied.

The Court further afforded the Defendant an opportunity to present evidence, afforded defense counsel the opportunity to speak on behalf of the Defendant and asked the Defendant personally if he wished to make a statement

Cl. COSTO MPC

8/24/10 Orig. Comm. med WVSC, copy med Nicky.

on his own behalf and to present any information in mitigation of punishment. The attorney for the State was also given an equivalent opportunity to present evidence or speak to the Court.

The Court FINDS, ADJUDGES and ORDERS that the Defendant is guilty by a finding of guilty by the Jury to the offense of Delivery of a Controlled Substance, a felony, as contained in Indictment No.: 09-F-206. Pursuant to said finding of guilt, it is ORDERED that the Defendant be committed to the custody of the West Virginia Division of Corrections for a term and period of not less than one (1) year nor more than five (5) years, said sentence to begin as of August 9, 2010, with a credit of 75 days and in all things dealt with as the law directs.

This sentence is to be served consecutive to the sentence the Defendant is currently serving.

The Court having before him the report of the Probation Officer of this Court and having maturely considered said report and Defendant's motion for probation heretofore made, is of the opinion that the character and the circumstances of the case indicate that the Defendant is likely to again commit crime and that the public good does require that the Defendant be imprisoned. It is, therefore, ORDERED that said motion for probation be denied for these and other reasons appearing more fully upon the record.

Whereupon, the Court considered the Defendant's Motion for Other Alternative Sentences and for reasons that appear more fully upon the record, it is ORDERED that said Motion be Denied.

It is further ORDERED that the Defendant pay to the Clerk of this Court the following costs:

Clerk's Fee - \$105.00

Prosecuting Attorney Fee - \$35.00

Law Enforcement Training Fund - \$2.00
Community Corrections Fee - \$10.00
Community Corrections Fund - \$25.00
Crime Victim Compensation Fund - \$50.00
Magistrate Court Fee - \$10.00
Court Reporter's Fee - \$30.00
Jury Fee - \$2,047.50
Total - \$2,314.50

It further appearing to the Court that although the victim in this case was mailed a Victim's Impact Statement, the Court received no information from the victim and therefore the Court has no basis for making a determination as to restitution, it is, therefore, ORDERED that the Defendant shall not be required to make restitution in this case.

Said costs are to be paid within three (3) years of the Defendant's release from prison.

The following shall be the priority of payment:

1. Restitution, if any is ordered to be paid.
2. Court costs, if any are ordered to be paid.
3. Fines, if any are ordered to be paid.
4. Reimbursement to the State of West Virginia for court appointed counsel fees, if any are ordered to be paid.

You shall submit a sample of your blood for DNA analysis pursuant to *West Virginia Code § 15-2B-1*, such testing being mandated by State law for the offense which you have been convicted, said sample to be obtained by the West Virginia Division of Corrections.

The Defendant acknowledged in open court that he has received a copy of the document that advises him of the right to appeal, the right to file a Motion for Reconsideration and/or Reduction of Sentence and the right to court appointed counsel. A signed copy of this document is hereby ORDERED filed.

Whereupon, the Defendant is remanded to the custody of the Sheriff of Wood County who shall transfer custody to the Regional Jail Authority to await transportation to the West Virginia Division of Corrections.

ENTER: 8-16-2010



JEFFREY B. REED, JUDGE

FILED IN OFFICE

FEB - 7 2011

CAROLE JONES
CLERK CIRCUIT COURT

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

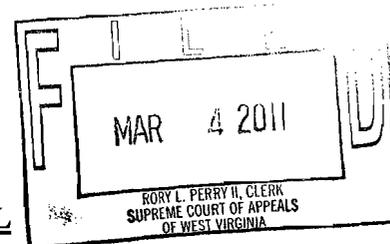
Plaintiff,

v.

TIMOTHY MICHAEL WALDRON,

Defendant.

PETITION NO. _____
CASE NO. 09-F-206



DESIGNATION OF RECORD FOR APPEAL

Now comes the Defendant/Petitioner, TIMOTHY MICHAEL WALDRON, by and through counsel, COURTNEY L. AHLBORN, and pursuant to Rule 4(c) of the West Virginia Rules of Appellate Procedure, does hereby designate the entire record to accompany the Petition for Appeal to the West Virginia Supreme Court of Appeals.

TIMOTHY MICHAEL WALDRON

By Counsel,

Courtney L. Ahlborn WV Bar 10274
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Parkersburg, WV 26104
(304) 420-0975