

12-0254

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

VS.

CASE NO. 11-F-96
JUDGE GROH

RONALD WHETZEL JR.,
DEFENDANT.

ORDER

On this 21st day of December 2011, came John H. Lehman, of the Public Defender Corporation, and moved that the Public Defender Corporation be permitted to withdraw from representation of the Defendant in this case, and be removed as counsel of record for Ronald Whetzel Jr.

It is **ORDERED** that the Public Defender Corporation is hereby removed as counsel of record for and that, Steve Greenbaum, Esquire, an Attorney at Law practicing before the Bar of this Court, is appointed to represent him in this action.

The Clerk shall enter the foregoing Order as of, and for the day and date first hereinabove written, and shall transmit attested copies to all counsel of record, the Defendant at Salem Industrial Home for Youth 7 Industrial Boulevard Industrial WV 26426, and to the newly appointed counsel.

[Signature]
JUDGE OF THE CIRCUIT COURT
TWENTY-THIRD JUDICIAL CIRCUIT
BERKELEY COUNTY, WEST VIRGINIA

A TRUE COPY
ATTEST

[Signature]
Virginia M. Sine
Clerk Circuit Court

By: [Signature]
Deputy Clerk

PA
PD
Def.
Greenbaum
12-21-11

PU

JL
00465

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA
SITTING AS A JUVENILE COURT
DIVISION VIII: JUDGE YODER

5/3/11

STATE OF WEST VIRGINIA,

DELINQUENT

VS.

CASE NO. 11JD-3

RONALD DALE WHETZEL, JR., Juvenile, et al.,
Respondents.

PA
PD
PD
DHR

BERKELEY COUNTY
COURT CLERK
11 JULY 3 AM 8:00

WVIAH
WV@WVIAH
grandmother

ORDER OF TRANSFER TO ADULT CRIMINAL JURISDICTION

This matter came on for hearing on the 6th day of April, 2011, upon the papers and proceedings formerly read and had herein, upon the appearance of the Juvenile, in person and by Counsel, John H. Lehman, Esq.; and upon the appearance of the State of West Virginia by Cheryl K. Saville, Assistant Prosecuting Attorney.

Regarding the issue of transfer, on behalf of the State, the Court heard testimony from Deputy Huffman of the Berkeley County Sheriff's Department; Lieutenant Harmison of the Berkeley County Sheriff's Department; Deborah Beckman; Wendy Beckman; Amy Edwards; Ashley Whetzel; Ian Derr; and Elizabeth McClain. The State admitted the copy of a sketch of the Beckman residence and surrounding area obtained by Lt. Harmison from Elizabeth McClain who found the sketch in Mr. Whetzel's school book as well as a copy of a document signed by Mr. Whetzel agreeing to purchase a vehicle from Alex Salazar. The Juvenile presented no evidence.

After reviewing the case file, hearing the testimony of all the witnesses, and considering the items admitted into evidence, the Court makes the following FINDINGS OF FACT and

CONCLUSIONS OF LAW:

1. Deputy Huffman testified that on Thursday, December 9, 2010, he was the first responding officer on scene at 125 Becks Lane, Inwood, Berkeley County, West Virginia, for a report of a robbery in progress.
2. Deputy Huffman testified that, upon arriving on scene and securing the area, statements were taken from the three individuals in the residence who were present during the robbery: Deborah Beckman, Wendy Beckman, and Amy Edwards.
3. Deputy Huffman testified that no physical evidence was able to be collected from the scene.
4. Deputy Huffman testified that units had patrolled the area that evening but that no individuals had been apprehended or known as suspects and the report was then forwarded to the Criminal Investigations Division of the Berkeley County Sheriff's Department.
5. Deborah Beckman testified that two white males, dressed entirely in black, wearing ski masks and gloves entered her residence carrying hand guns while she was vacuuming in the hallway.
6. Deborah Beckman testified that the shorter, heavier gunman kicked down a baby gate in a doorway, pointed his gun at her, and ordered her to "back up."
7. Deborah Beckman further testified that she ran out of the nearest door of the residence and hid in an outbuilding on her property until her daughter and stepdaughter came looking for her.
8. Deborah Beckman testified that the only item missing from the residence was a small hand held safe from the master bedroom, which contained approximately \$8,000 in cash,

a check from Mountain Valley Bank (MVB) in the amount of \$5,000, her late husband's will, and numerous other personal and business-related papers.

9. Deborah Beckman further testified that because the men went directly to and took only the safe that she believed the suspects had to be either a former employee or someone who had accessed the residence the night of her husband's death.
10. Deborah Beckman testified that Mr. Whetzel worked at the Beckman's Kennel for approximately three months and had knowledge of both the whereabouts of the safe and the fact that the Beckmans kept cash therein.
11. Wendy Beckman testified that two white males, dressed entirely in black, wearing ski masks and gloves entered her residence carrying hand guns while she was sitting in the office of the home.
12. Wendy Beckman testified that gunmen pointed their guns at her asking where the money was before going farther into the home and reappearing in the office with only the small safe.
13. Amy Edwards testified that two white males, dressed entirely in black, wearing ski masks and gloves approached her in the grass outside of the office entrance to the home.
14. Amy Edwards further testified the gunmen pointed their guns at her and escorted her into the house telling her to give them the money.
15. Amy Edwards testified that the shorter, heavier gunman went farther into the home and reappeared in the office with only the small safe while the taller, slimmer gunman waited in the area between the office and kitchen, keeping his eyes and gun on she and Wendy Beckman who was also in the office.
16. Ashley Whetzel took the stand with her father and grandmother accompanying her.

After being Mirandized on the stand, Ms. Whetzel and her father, requested that she be allowed to speak with an attorney before answering any questions. Ms. Whetzel was excused from the stand and declared unavailable as a witness for the purposes of the transfer hearing with agreement from defense counsel.

17. Ian Michael Derr took the stand with his attorney, Nicholas F. Colvin, Esq., accompanying him. Mr. Derr testified that he has been charged with felonies as a co-defendant arising out of the same incident that was the subject of the transfer hearing and that the charges against him are still pending. Mr. Derr, upon advice of his counsel, exercised his Fifth Amendment rights and declined to answer any further questions. Mr. Derr was excused from the stand and declared unavailable as a witness for the purposes of the transfer hearing with agreement from defense counsel.
18. Lt. Harmison testified that on or about January 11, 2011, the Sheriff's Department had received an anonymous tip that Ronald "Georgie" Whetzel, Jr. may have been involved in the robbery at the Beckman residence.
19. Lt. Harmison testified that he and Deputy St. Clair spoke to Mr. Whetzel who denied involvement in the robbery but named some other individuals whom he had heard may have been involved, which included a man known as "Derrski."
20. Lt. Harmison testified that Ronald "Georgie" Whetzel, Jr. has a birthdate of .
21. Lt. Harmison then testified that he and Dep. St. Clair were able to track down Ian Michael Derr ("Derrski"), who gave an official statement to them. Without objection, Lt. Harmison stated that Mr. Derr indicated that Mr. Whetzel approached him asking him if he would like to make some quick money and spoke to him about robbing the Beckmans.

Mr. Derr further indicated to Lt. Harmison that he and Mr. Whetzel, leaving Ashley in the car, approached the Beckman's residence dressed all in black carrying weapons: Mr. Derr had a 9mm and Mr. Whetzel had a pellet gun. Mr. Derr then stated that he and Mr. Whetzel entered the Beckman residence demanding money. Mr. Derr then indicated that Mr. Whetzel went into the house and came out with the safe at which time they went back to the car. Mr. Derr said that they later pried open the safe with a screwdriver, eventually dumping the safe at "The Ruins" on River Run Road in Shepherdstown, WV. Mr. Derr indicated that he received approximately \$2,500, Ashley received approximately \$300, and that Mr. Whetzel kept the rest of the money.

22. Lt. Harmison testified that Mr. Derr took him and Dep. St. Clair to the location where Mr. Derr indicated he had thrown out the safe, and they were able to recover an envelope from Beckman's Kennel at that location.
23. Lt. Harmison further testified that Mr. Derr gave him and Dep. St. Clair the handgun that he used in the commission of the robbery.
24. Lt. Harmison testified that he and Deputy St. Clair spoke to Ashley Whetzel in the presence of her custodian and grandmother, Elizabeth McClain, who provided them with a statement. Without objection, Lt. Harmison stated that Ashley indicated that Mr. Whetzel and Mr. Derr had robbed the residence while she remained in the car. Ashley also indicated that she had helped Mr. Whetzel make a drawing of the Beckman residence in advance of the robbery.
25. Lt. Harmison then testified that Ms. McClain gave him and Dep. St. Clair a drawing of the Beckman's residence that she had found in Mr. Whetzel's school book, which he had left in her home. The drawing indicates an area within the house marked as "TARGET"

where the safe that was taken from the Beckman residence would have been.

26. Lt. Harmison further testified that he and Dep. St. Clair were able to locate a document in searching Mr. Whetzel's room that appeared to be an agreement signed by Mr. Whetzel to purchase a car from Alex Salazar following the date of the robbery.
27. Elizabeth McClain testified Mr. Whetzel lived with her for a period of time around the time of the robbery.
28. Elizabeth McClain testified that Mr. Whetzel is sixteen (16) years old.
29. Elizabeth McClain further testified that, in December of 2010, Mr. Whetzel suddenly came into what appeared to be a fairly large amount of money for which there was no consistent explanation and that he had purchased a car and accessories for the car, along with Christmas presents and other items. Ms. McClain also stated that Mr. Whetzel gave her a necklace which he told her he purchased from Kay Jewelers but which she actually believed to be stolen.
30. Elizabeth McClain also testified that she found a drawing of the Beckman residence in Mr. Whetzel's book, which she provided to officers.
31. W.Va. Code §49-5-10(d)(1) provides in pertinent part that "the Court shall transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe that the juvenile is at least fourteen years of age and has committed...the crime of robbery involving the use or presenting of firearms or other deadly weapons under...[§61-2-12]..."
32. Probable cause for the purpose of transfer of a juvenile to adult jurisdiction is more than mere suspicion and less than clear and convincing proof. Probable cause exists when the facts and circumstances as established by probative evidence are sufficient to warrant

a prudent person in the belief that an offense has been committed and that the accused committed it. Syl. Pt. 1, *In Interest of Moss*, 170 W. Va. 543, 295 S.E.2d 33 (1982).

33. "When a court finds that there is probable cause to believe that a juvenile has committed one of the crimes specified in *W.Va. Code §49-5-10(d)(1)* (treason, murder, robbery involving the use or presenting of deadly weapons, kidnapping, first-degree arson, and first-degree sexual assault), the court may transfer the juvenile to the court's criminal jurisdiction without further inquiry." Syl. Pt. 1, *K.M. Comer v. Tom A.M., et al.*, 184 W.Va. 634, 403 S.E.2d 182 (1991).

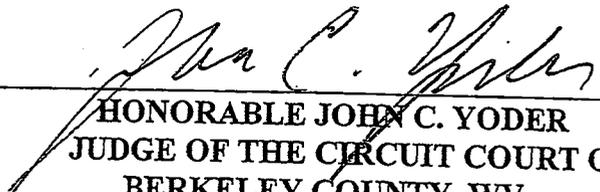
Based upon the FINDINGS OF FACT AND CONCLUSION OF LAW, the Court ADJUDGES and ORDERS as follows:

1. That there is probable cause to support that the Juvenile committed the offenses as charged in paragraphs 5, 6, and 7 of the Petition contained in 11-JD-3.
2. That the juvenile was over the age of fourteen at the time the crimes were committed, specifically, he was sixteen (16) years of age and has a birth date of .
3. Because the Court found probable cause that the Juvenile committed the felonious crimes alleged in paragraphs 5, 6, and 7 of the Petition, and because the juvenile was sixteen years of age at the time the crimes were committed, the Court under § 49-5-10(d)(1) of the West Virginia Code shall transfer the juvenile proceeding to criminal jurisdiction.
4. Based upon the evidence presented by both parties, and the findings of fact and conclusions of law incorporated herein, the Court **GRANTS** the State's Motion for Transfer and **ORDERS** paragraphs 5, 6, and 7 of the petition, alleging Robbery in the first degree (involving use or presenting of firearms or other deadly weapons), Burglary, and Conspiracy **TRANSFERRED** to the criminal jurisdiction of the Court.

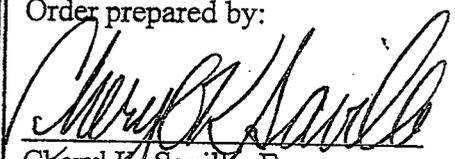
5. Any and all additional findings of fact and conclusions of law as spread upon the record are fully incorporated by reference herein.
6. Any and all objections and exceptions to adverse rulings made by either party on the record are duly noted and preserved.

Based upon his age (and his commitment to DJS custody through juvenile case number 11-JD-22), the Juvenile shall be remanded to DJS custody to await further proceedings in this matter.

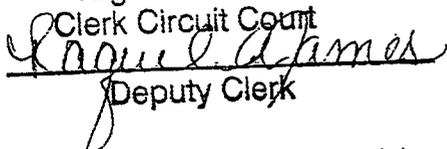
The Clerk shall transmit copies of this Order to the Prosecutor's Office, the Probation Office, the Defendant's counsel of record, and the Defendant at the West Virginia Industrial Home for Youth.


HONORABLE JOHN C. YODER
JUDGE OF THE CIRCUIT COURT OF
BERKELEY COUNTY, WV

Order prepared by:


Cheryl K. Saville, Esq.
Assistant Prosecuting Attorney
Berkeley County Judicial Center
380 W. South Street, Suite 1100
Martinsburg, WV 25401
W.Va. State Bar Number 9362

A TRUE COPY
ATTEST

Virginia M. Sine
Clerk Circuit Court
By: 
Deputy Clerk

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA
DIVISION IV

STATE OF WEST VIRGINIA

VS.

CRIMINAL ACTION NO. 11-F-96

Judge Groh

Ronald Whetzel Jr

AMENDED PLEA ORDER

This matter came on for hearing this 17th day of November, 2011, upon the papers and pleading had herein, upon the appearance of the defendant, in person, and by counsel John Lehman, Esquire, and upon the appearance of the State of West Virginia by Pamela Jean Games-Neely, Prosecuting Attorney for Berkeley County, West Virginia.

Whereupon the parties advised the Court that pursuant to Rule 11 of the West Virginia Rules of Criminal Procedure that they had reached a plea agreement which the parties then spread upon the record, to-wit:

1. The defendant will plead no contest to one count of Robbery in the first degree and one count of burglary. The State will dismiss the remaining charge.
2. The State and the defense will argue sentencing, except the State will bind to concurrent sentencing.
3. The defendant will be responsible for court costs and restitution which may be due.
4. The parties agree this agreement applies only to Berkeley County and does not bind any other governmental entity.
5. It is expressly understood if this plea be vacated, set aside, or overturned by any State or Federal Court; the parties will be returned to their original positions and the State will be free to proceed on the original charges. Further, that should either

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VIRGINIA M. HUBBARD

cc: PA
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the State or the Defendant violate or fail to fully comply with any provisions of this agreement, the plea, conviction and sentence shall be vacated and set aside by the Court upon the motion of the offended party, whether the State or the Defendant, and the parties will be returned to their original positions before the entry of this plea, and any charges dismissed or reduced as a result of this plea bargain will be reinstated;

6. It is further understood that should the Defendant commit or be arrested for committing any felony or misdemeanor up to and including the date of disposition then this Agreement may terminate as null and void at the discretion of the State;
7. This shall constitute a binding plea agreement under West Virginia Rules of Criminal Procedure Rule 11(e)(C); and
8. The foregoing paragraphs constitute the entire agreement between the State of West Virginia and Ronald D. Whetzel Jr., the Defendant.

Whereafter the Court inquired of the Defendant and his counsel if this was the complete plea agreement between the parties, and to which inquiry, the Defendant and his counsel answered in the affirmative.

The victim was present and agreed with the plea agreement

Thereafter the Court engaged the Defendant in a dialogue regarding those matters set forth in Call v McKenzie and State v. Cabell and Rule 11 of the West Virginia Rules of Criminal Procedure; and at the conclusion thereof the Prosecutor setting forth a factual foundation for the tendered plea of no contest.

Thereafter the Defendant, in open Court, did enter a plea of no contest to one count of robbery in the first degree and one count of burglary by

indictment being counts 1 and 2. The Defendant executed a written no contest plea form witnessed by the Deputy Clerk of this Court and by his counsel and the same, being in proper form, is ORDERED filed herein. In consideration of all of which the Court doth find that the Defendant understands the nature of the charges lodged against him; the Court further finds that the Defendant understands the nature and consequences of the tendered no contest plea; the Court further finds that there is a factual basis and foundation for the tendered plea of no contest; and the Court finds that the Defendant tendered his plea of no contest is freely, intelligently, knowingly and voluntarily and of his own free will and accord.

Accordingly it is ORDERED and ADJUDGED that the plea of no contest is tendered by the Defendant is accepted by the Court, and it is hereby ORDERED and ADJUDGED that the Defendant Ronald Whetzel Jr stands convicted of one count of robbery in the first degree and one count of burglary (count 1, and 2) by virtue of his pleas of no contest.

The defendant demanded a separate sentencing hearing.

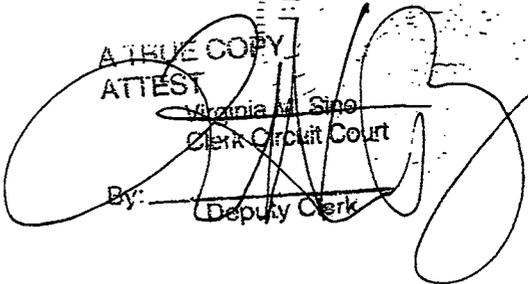
Accordingly, it is ORDERED that the sentencing hearing shall be scheduled for the 15th day of December, 2011 at 2:00 p.m.

The defendant is remanded to his current juvenile placement pending the sentencing hearing.

THE CLERK shall enter the foregoing as of the day and date first above written and shall transmit attested copies to all counsel of record.


Gina Groh, JUDGE
TWENTY-THIRD JUDICIAL CIRCUIT
BERKELEY COUNTY, WEST VIRGINIA

PREPARED BY:
Pamela Jean Games-Neely
Prosecuting Attorney
Bar no. 1332

AT THE TRUE COPY
ATTEST

Virginia M. Sino
Clerk Circuit Court
By: _____
Deputy Clerk

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA
DIVISION IV

STATE OF WEST VIRGINIA

VS. CRIMINAL ACTION NO. 11-F-96

Judge Groh

Ronald Whetzel Jr

SENTENCING ORDER

This matter came on for hearing this 15th day of December, 2011, upon the papers and pleading had herein, upon the appearance of the defendant, in person, and by counsel John Lehman, Esquire, and upon the appearance of the State of West Virginia by Pamela Jean Games-Neely, Prosecuting Attorney for Berkeley County, West Virginia.

Whereupon this matter comes on for sentencing upon the defendant's request for separate sentencing. The defendant previously entered his plea of guilty to robbery in the first degree and burglary on the 17th day of November, 2011.

The Court asked if there was any legal cause why sentencing could not occur. The parties advised that there was not. The Court further inquired if both parties had received the pre-sentence investigation report and if there were any factual inaccuracies. The parties advised that they had received the report.

Accordingly, the Court proceeded to sentencing. The Court heard the statement of the defendant, arguments of counsel, and the victim's impact statements from the victim, a probation officer, the defendant's grandmother.

The Court having fully considered the matter does incorporate by reference the findings of the Court and conclusions of law made upon the record.

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Greenbaum
BKpc
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It is ORDERED that the defendant, Ronald Whetzel Jr., is hereby sentenced to a determinate sentence of forty years in the penitentiary house of this State there to be dealt with according to law, that the State shall recover of and from the Defendant its costs on his behalf expended.

It is ORDERED that the defendant, Ronald Whetzel Jr., as having been previously convicted of burglary, is hereby sentenced to the penitentiary house of this state for a term of not less than one nor more than fifteen years, there to be dealt with according to law, that the State shall recover of and from the Defendant its costs on is behalf expended.

It is ORDERED that the sentences shall be served concurrently.

It is ORDERED that the defendant shall have credit for all time previously served on these charges.

CONVICTION DATE: November 17, 2011

SENTENCE DATE: December 15, 2011

EFFECTIVE SENTENCE DATE: January 17, 2011

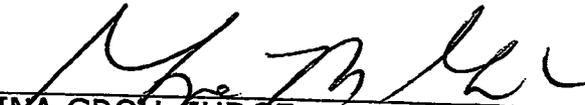
It is further ORDERED that the Defendant shall pay restitution through the Clerk of this Court in the amount of \$8,000.00, joint and several, to the victim, Deborah Beckman, and said restitution shall be paid from monies contained within any prison account or any assets of the defendant as allowed by law.

It is ORDERED that the defendant, not having reached his eighteenth birthday, is remanded to the West Virginia Industrial Home for Youth in Salem, West Virginia. Upon the defendant reaching his 18th birthday, he is to be remanded to the custody of the West Virginia Department of Corrections, to serve the sentence herein imposed..

It is further ORDERED that the Public Defender's Office is appointed for purposes of appeal.

THE CLERK shall enter the foregoing as of the day and date first above

written and shall transmit attested copies to all counsel of record, to the West Virginia Industrial Home for Youth, Salem, WV and to the Division of Corrections.


GINA GROH, JUDGE
TWENTY-THIRD JUDICIAL CIRCUIT
BERKELEY COUNTY, WEST VIRGINIA

PREPARED BY:
Pamela Jean Games-Neely
Prosecuting Attorney
Bar no. 1332
380 West South Street, Suite 1100
Martinsburg, West Virginia 25401

ATTEST COPY
ATTEST
By: 
Deputy Clerk

SHORT CASE NAME: State of WV v. Ronald D. Whetzel, Jr., BCCC Case No. 11-F-96

CERTIFICATE OF SERVICE

I, Steven A. Greenbaum, Esquire, Counsel for Ronald D. Whetzel, Jr., Petitioner, do hereby certify that I have served a true and accurate copy of the attached NOTICE OF APPEAL, together with all Attachments thereto, upon the following Counsel by either hand-delivery to their respective office or by mailing same via the U.S. Postal Service, First Class mail, postage prepaid, this 10 day of February, 2012.

Pamela Jean Games-Neely, Esq.
Prosecuting Attorney of Berkeley County
Berkeley County Courthouse
380 W. South St., Suite 1100
Martinsburg, WV 25401

Kate Slaydon
Court Reporter, Judge Gina M. Groh
Berkeley County Courthouse
380 W. South St.
Martinsburg, WV 25401

The Honorable Virginia Sine, Clerk
Circuit Court of Berkeley County
Berkeley County Courthouse
380 W. South St.
Martinsburg, WV 25401

Mary K. Cook
Court Reporter, Judge John C. Yoder
Berkeley County Courthouse
380 W. South St.
Martinsburg, WV 25401

Jackie Smith
Court Reporter for Juvenile Transfer Hearing
before Judge John C. Yoder
Berkeley County Courthouse
380 W. South St.
Martinsburg, WV 25401

RONALD D. WHETZEL, JR.
PETITIONER
By Counsel



Steven A. Greenbaum, Esquire
WV State Bar No. 6411
Counsel for Petitioner
123 W. Burke St., Ste. 101
Martinsburg, WV 25401
Tel: (304) 267-3068
Fax: (304) 267-3069