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IN THE CIRCUIT COURT OF MARION COUNTY, WEST VIRGINIA  
DIVISION II

STATE OF WEST VIRGINIA,

Plaintiff,

v.

Case Number: 11-F-36

JASON LAMBERT,

Defendant.

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IN  
CIRCUIT CLERK  
2012 JUL 30 PM 9 08

ORDER DENYING DEFENDANT'S POST TRIAL MOTIONS

On the 30<sup>th</sup> day of January 2012 came the State of West Virginia by her Assistant Prosecuting Attorney, Lea Anne Hawkins, and came the Defendant in person and by his counsel, Neal Hamilton, to address the Defendant's Motion for Judgment of Acquittal or in the Alternative a New Trial.

Whereupon, counsel for the Defendant offered arguments to the Court regarding the Defendant's post trial motions contained within the previously filed "Motion for Judgment of Acquittal or in the Alternative, a New Trial". In essence, the Defendant argued the Court should have precluded the jury from hearing "testimonial hearsay statements" of the child victim and should have granted the Defendant's motion for a mistrial.

The State in response noted the child victim's videotaped forensic interview was not played for the jury and no witness testified to the contents of the interview. The investigating officer, who conducted the interview, and the Department of Health and Human Resources Child Protective Services worker, who observed the interview, were precluded from discussing the content of the victim's forensic interview.

Any reference to the child making a disclosure about the Defendant was strictly limited to two purposes. The first was to provide a background as to why the police were

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16th JUDICIAL CIRCUIT DIV. II

called and what general steps were taken during the course of the investigation leading to the charge and indictment against the Defendant. Second, references to the child's allegations against the Defendant were allowed to provide the context of the Defendant's confession. The jury was permitted to hear the Defendant's recorded confession in its entirety. During the interview, the investigator made reference to evidence in the case and to the child's allegations. It was only possible for the jury to understand the admissible recorded statement of the Defendant, if they were privy to the officer's side of the conversation.

The Court gave cautionary instructions to the jury, indicating any reference to the child making a disclosure about the Defendant was not offered for the purpose of proving the truth of the matter asserted nor were they to be considered for the truth of the matter asserted. The jury was further instructed the investigator may rely on a variety of techniques to encourage the Defendant to be forthcoming and confess, and that the investigator may or may not have misled the Defendant about what the victim said.

The State further argued the Defendant incorrectly relied on Crawford v. Washington, 541 U.S. 364 (2004), noting current case law supports the State's position. First citing State of West Virginia v. Timothy Michael Waldron, 732 S.E.2d 402 (2012), which held recorded statements made between a confidential informant and defendant generally are admissible against the defendant even when the informant does not testify as long as they are not offered for the truth of the matter asserted. The court reasoned Crawford did not preclude the statements because they were not hearsay offered for the truth of the matter asserted and further the statements provided context to the defendant's admissible statement.

Additionally, in State of West Virginia v. Richard Lewis Morris, 705 S.E.2d 583 (W. Va. 2010), the appellate court concluded the admission of a deputy's testimony regarding a

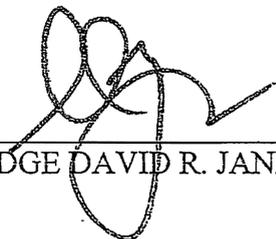
statement made by a treating nurse was not an abuse of discretion, as it was not admitted for the truth of the matter asserted, but rather as an explanation as to why the defendant was arrested and as to the background of the investigation.

Finally, the State noted new cases involving child sexual abuse charges affirmed the admissibility of some references to the child's disclosure. [State of West Virginia v. Jessica Jane M., 700 S.E.2d 302 (2010), State of West Virginia v. Tex B. Simmons, 2011 W.Va. Lexis 186 (2011); and State of West Virginia v. Daniel Lee Jordan, 2011 W.Va. Lexis 182 (2011).]

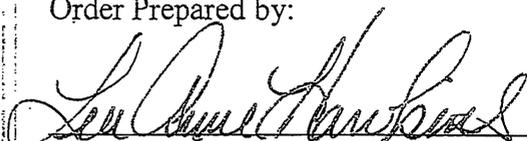
Whereupon, the Court based on the arguments made by the State and that which was previously set forth upon the record in this case, DENIED the Defendant's motions that his conviction be vacated and that he be afforded a new trial, preserving to the Defendant his objections.

The Circuit Clerk of Marion County is hereby directed to provide a certified copy of this order to Lea Anne Hawkins, 213 Jackson Street, Fairmont, WV 26554, and to Neal Hamilton, P. O. Box 509, Fairmont, WV 26554.

ENTER: 7/30/12

  
\_\_\_\_\_  
JUDGE DAVID R. JANES

Order Prepared by:

  
\_\_\_\_\_  
Lea Anne Hawkins, (WVSB # 9759)  
Assistant Prosecuting Attorney

Order Approved as to form by:

  
\_\_\_\_\_  
Neal Hamilton, Esq.  
Counsel for Defendant

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\_\_\_\_\_  
CLERK OF MARION COUNTY  
MARION COUNTY COURTHOUSE  
FAIRMONT, WEST VIRGINIA

12-10666

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IN THE CIRCUIT COURT OF MARION COUNTY, WEST VIRGINIA  
DIVISION II

STATE OF WEST VIRGINIA,

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v.

JASON LAMBERT,

Defendant.

Case Number: 11-F-36

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IN  
CIRCUIT COURT OF MARION COUNTY, WEST VIRGINIA  
2012 JUL 30 9 51 AM  
FINAL ORDER

FINAL SENTENCING ORDER

On the 11<sup>th</sup> day of May 2012, came the State of West Virginia, by Lea Anne Hawkins, her Assistant Prosecuting Attorney, came the Defendant, JASON LAMBERT, in person and by his counsel, Neal Hamilton, and came the Adult Probation Office by Tom Carpenter, all for the purpose of a sentencing hearing in this matter.

WHEREUPON, the presentence investigation report was reviewed and neither the State nor the Defendant offered any objections thereto. The Court then heard the testimony of witnesses and sentencing recommendations from both the counsel for the State and the Defendant. The Defendant did not exercised his right to speak on his own behalf.

WHEREUPON, the Court ORDERED that the Defendant having been convicted of the offense of DISTRIBUTION AND DISPLAY TO MINOR OF OBSCENE MATTER is sentenced to confinement in the penitentiary for not more than Five (5) years, and having been convicted of the offense of SEXUAL ABUSE BY PARENT, GUARDIAN, OR CUSTODIAN is sentenced to confinement in the penitentiary for not less than Ten (10) nor more than Twenty (20) years; said sentences to be concurrent; with credit for time served in the regional jail from the 17<sup>th</sup> day of November 2011 to the 10<sup>th</sup> day of May 2012 in the amount of One Hundred Seventy Six (176) days credit.

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CONVICTION DATE: November 17, 2011

SENTENCE DATE: May 10, 2012

EFFECTIVE SENTENCE DATE: November 17, 2011

WHEREUPON, the Court ORDERED the Defendant to pay the costs of these proceedings in the sum of One Thousand Two Hundred Sixty Five Dollars (\$1,265.00); and attorney fees in the sum of \$ 5,196.44; to be paid to and through the Marion County Circuit Clerk's Office, Marion County Courthouse, Fairmont, WV 26554, within three (3) years after his release from incarceration.

Further, the Court ORDERED the Defendant not to have any direct or indirect contact with the victim or her family.

The Defendant was thereupon advised of the following rights concerning his conviction and sentence:

Within sixty (60) days from the date of his sentence, he may petition the presiding Judge of the Circuit Court of Marion County, pursuant to West Virginia Code 62-12-3, for suspension of the execution of his sentence and release on probation.

Within one hundred and twenty (120) days from the date of his sentence, he may petition the Judge of the Circuit Court of Marion County, pursuant to Rule 35(b) of the West Virginia Rules of Criminal Procedure for correction or reduction of his sentence.

Pursuant to Rule 32 of the West Virginia Rules of Criminal Procedure, he has the right to appeal his conviction and/or the Court's ruling in regard to the sentence imposed today to the West Virginia Supreme Court of Appeals. To appeal, he must file his notice of intent to appeal, in writing, with the Clerk of the West Virginia Supreme Court of Appeals, in Charleston, West Virginia, within thirty (30) days from the date of the entry of this Court's final sentencing order,

and within four (4) months from the date of his sentence, file his petition for writ of error with the West Virginia Supreme Court of Appeals, in Charleston, West Virginia.

If he cannot afford to pay for transcripts of the proceedings in his case or employ a lawyer to prosecute his appeal, both will be provided to him, at no expense, upon proper, written request.

The Defendant must notify the Clerk of this Court, in writing, of his request to have an attorney appointed for him to exercise these rights.

He is notified, pursuant to Chapter 62, Article 4, Section 17 of the West Virginia Code, that if he does not pay, in full and within the time period prescribed, the court costs, fines, restitution, and/or attorney fees ordered today by the Court, his West Virginia driver's license shall be suspended by the West Virginia Division of Motor Vehicles. Any such suspension shall remain in effect until all Court ordered court costs, fines, and/or restitution are paid in full.

He is further notified that any such suspension of his driver's license could result in the cancellation of, the failure to renew, or the failure to issue an automobile insurance policy providing coverage for him or his family.

The Circuit Clerk shall provide his lawyer with a certified copy of the Court's sentencing order and, included therein, shall be the amounts for the court costs, fine, restitution, and/or attorney fees.

The foregoing notice was read, in open Court, and a copy of same was delivered to the above Defendant by the undersigned on the 10<sup>th</sup> day of May 2012.

Whereupon, the Court directed the representative of the Marion County Adult Probation Office and counsel for the Defendant to explain to the Defendant, the requirements delineated in the Order of Notification of Supervised Release, pursuant to West Virginia Code § 62-12-26, and

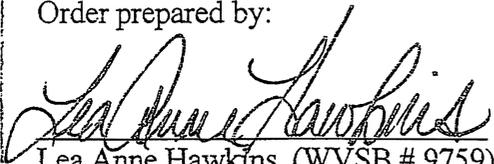
upon completion of said explanation ORDERED the Defendant be remanded into the custody of the Division of Corrections for imposition of sentence.

It is further ORDERED that the Clerk of the Court shall forward a certified copy of this Order to: Lea Anne Hawkins, Assistant Prosecuting Attorney, 213 Jackson Street, Fairmont, WV 26554; counsel for the Defendant, Neal Hamilton, Attorney At Law, P. O. Box 509, Fairmont, WV 26555; Adult Probation Office, 314 Monroe Street, 2<sup>nd</sup> Floor Jacobs Building, Fairmont, WV 26554; West Virginia Division of Corrections, 112 California Avenue, Building 4 Room 300, Charleston WV, 25305; and the North Central Regional Jail, 1 Lois Lane, Greenwood, WV 26415.

ENTER: 7 / 30 / 17

JUDGE

Order prepared by:

  
Lea Anne Hawkins, (WVSB # 9759)  
Assistant Prosecuting Attorney

Order approved by:

  
Neal Hamilton,  
Counsel for Defendant

A COPY      TESTE

  
CLERK OF THE CIRCUIT COURT  
MARION COUNTY, WEST VIRGINIA