

13-0769

FILED

2013 JUN -4 AM 11:38

IN THE CIRCUIT COURT OF HAMPSHIRE COUNTY, ~~WEST VIRGINIA~~  
HAMPSHIRE COUNTY CIRCUIT COURT

STATE OF WEST VIRGINIA,

Plaintiff,

v.

CRIMINAL ACTION NO.: 12-F-54

DAVID M. COREY,

Defendant.

SENTENCING ORDER

This matter came on before the Court for purposes of sentencing the Defendant on the 20<sup>th</sup> day of May, 2013; upon the appearance of the Defendant, David M. Corey, in person, and by his counsel Jonathon G. Brill, Esq., and John G. Ours, Esq.; upon the appearance of the State of West Virginia by Daniel M. James, Prosecuting Attorney for Hampshire County; and upon this matter having been duly set down for sentencing this day.

Whereupon, the Court inquired whether the State or Defendant wished to address the Court prior to sentencing. Wherein counsel for the Defendant and State advised that they did not. Therein, the Court asked counsel for the Defendant if there were any individuals that would like to address the Court. Wherein, counsel advised that Cheryl Pennington and Dorothy Corey wished to address the Court prior to sentencing. After listening to Cheryl Pennington and Dorothy Corey, the Court inquired whether the Defendant, wished to exercise his right to address the Court. Wherein, the Defendant advised that he had prepared a letter to read to the Court, but after learning that the Court was bound by the sentence recommended by the jury, advised that there was no point in reading the letter. Hearing no further argument, the Court proceeded to sentencing.

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Accordingly, it is the sentence of the law and the judgment of the Court that the Defendant, upon his conviction of the felony of Murder in the 1<sup>st</sup> Degree, as charged in the sole count of the Indictment, along with the jury's recommendation that the Defendant not receive mercy, be confined in the penitentiary house of this State for life there to be dealt with according to law.

It is further ORDERED that the Defendant shall pay restitution through the Hampshire County Circuit Clerk's Office, in the amount of \$6,199.38, to the West Virginia Crime Victim's Compensation Fund (Claim # CV-12-87-X). The Department of Corrections may deduct monies from the Defendant's earnings or inmate account pursuant to W. Va. Code §25-1-3c for payment towards court costs and restitution.

It is further ORDERED that the State do recover of and from the Defendant all costs in this behalf. Any bond remaining shall be exonerated.

It is further ORDERED that the following dates shall be established:

Conviction Date ..... April 26, 2013

Sentencing Date ..... May 20, 2013

Effective Sentencing Date ..... February 14, 2012

Thereupon, the Court advised the Defendant of his appeal rights, wherein the Defendant acknowledged and executed the appeal rights form provided to him in open court. The Defendant then moved the Court to appoint new counsel to represent him in his appeal. Wherein, the Court granted Defendant's motion and relieved Jonathan Brill and John Ours, from any further representation.

There being nothing further to come before the Court, the Clerk is hereby directed to remove this matter from the Court's active docket and place among those disposed. The Clerk shall enter the foregoing Order as of the day and date first hereinabove appearing and shall send attested copies to all counsel of record.

*Entered June 4, 2013*

*TH Keadle*

THE HONORABLE THOMAS H. KEADLE  
SENIOR STATUS JUDGE  
SITTING BY TEMPORARY ASSIGNMENT

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IN THE CIRCUIT COURT OF HAMPSHIRE COUNTY, WEST VIRGINIA  
HAMPSHIRE COUNTY CIRCUIT COURT

STATE OF WEST VIRGINIA,

Plaintiff,

v.

CRIMINAL ACTION NO.: 12-F-54

DAVID M. COREY,

Defendant.

ORDER

This matter came on for post-trial motions before the Court this 3<sup>rd</sup> day of May, 2013, upon the appearance of the Defendant, David M. Corey, appearing in his own proper person, in the custody of the Sheriff of Hampshire County, West Virginia, and being represented and assisted by John G. Ours, Esq. and Jonathan G. Brill Esq., his counsel and upon the appearance of the State of West Virginia by Daniel M. James, Prosecuting Attorney for Hampshire County, West Virginia.

Whereupon, Defense counsel argued that the Court should grant the Defendant's Motion for Judgment of Acquittal Notwithstanding the Jury's Verdict or in the alternative grant a New Trial, pursuant to Rule 33 of the West Virginia Rules of Criminal Procedure

Whereupon, counsel for the Defendant made the following arguments:

1. That allowing the State to introduce the knives, seized from the Defendant's mother's residence, lead to confusion of the issues before the jury.
2. That Samantha Corey's statement, that the Defendant is a convicted felon, during cross-examination by the State, was highly prejudicial.

3. That the State misled the jury during the direct examination of Magistrate Sue Roby, by suggesting that only the Defendant knew the victim was standing when he was shot, when the State had evidence to support that the medical examiner knew the victim was standing.
4. That the physical evidence or lack thereof, introduced by the State does not support the jury's verdict. Specifically, the Defendant argues that the gunshot residue results, as testified by the Defendant's expert show that the ammunition used to kill the Defendant, as argued by the State, does not contain tin, which was found on Defendant's hands. That the 30.06 rifle that was used to murder the victim, as argued by the State, has never been located. That the State didn't present any evidence to place the Defendant at the crime scene between 6:30 p.m. and 9:00 p.m. Finally that the State failed to produce evidence that premeditation was consider by the Defendant, prior to the murder.

Whereupon, the State responded as follows:

1. That on or about the 10<sup>th</sup> day of April, 2013, the Court denied the State's motion for reconsideration of the Court's October 29, 2012, Order suppressing the use of the knives in the State's case-in-chief. Immediately after the hearing, the State learned that the knives may be hidden at the Defendant's mother's residence. That the State obtained a search warrant and located the knives at the Defendant's mother's residence. That the State immediately filed its renewed Motion for Reconsideration Wherein the Court ruled that the evidence, while weak, was still relevant and probative. Accordingly, the Court reversed its previous ruling.

2. That the testimony of Samantha Corey, that the Defendant was a convicted felon, was not elicited by the State. The State argued that during the State's case-in-chief that the jury heard testimony from Dorothy Corey and Brenda Shoemaker that the Defendant attempted to be added to the lease agreement of the Defendant's girlfriend, Kathy Stonebraker, at Valley View Apartments. The witnesses testified that the Defendant was not added to the lease agreement, however he continued to sneak in and out of the apartment complex. As instructed by the Court, the State advised each of the State's witnesses that no one was allowed to testify about the Defendant's criminal history. That Samantha Corey was the Defendant's witness. Moreover, the State argued that the State immediately requested a side-bar, wherein the Court advised that it had difficulty hearing Mrs. Corey's response, however, the Court asked Defense counsel if they wished for the Court to provide a cautionary instruction to the jury. That Defense counsel requested a cautionary instruction, which was read to the jury.
  
3. That the State did not mislead the jury during the testimony of Magistrate Sue Roby. Magistrate Roby testified that the Defendant told her that the Defendant was standing up when he was shot and that he was not sitting down. That the report of the medical examiner states that the victim was standing up when shot. However, the report also indicates that the medical examiner never visited the crime scene. Moreover, the 9-1-1 phone call made by the Defendant's daughter, states that she heard a loud bang outside and went upstairs to check on the victim whom she found on the floor. Never, does the daughter's state that she heard a loud bang and then heard the victim fall

4. That the gunshot residue located on the Defendant's had contained lead, barium, antimony and tin. The State's gunshot residue expert, Koren Powers, testified that the presence of tin found on the Defendant's gunshot residue test could have come from a firearm that fired ammunition containing tin. That while the State did not produce the murder weapon, the State produced two witness whom testified that in the weeks before the murder, the Defendant attempted to sell them a 30.06-rifle. Each witness testified that the Defendant did not have the weapon with him, but that the weapon shot straight. The State concedes that it was unable to place the Defendant at the crime scene between 6:30 p.m. and 9:00 p.m. However, the State argues that nobody could produce testimony to his whereabouts during that time frame. Finally, in response to the issue of premeditation, the State argues that there were numerous witnesses whom testified that the Defendant was mad at his brother and wanted to kill him for one reason or another. Specifically, the stated elicited testimony that the Defendant was evicted from his mother's residence, while his brother and daughter were allowed to stay. Additionally, the State elicited testimony that the Defendant was mad that his brother smoked marijuana in the presence of his daughter. Finally, the State produced that testimony of Don McDaniels, whom testified that the day before the murder, the Defendant was going to kill the Defendant's girlfriend, her ex-boyfriend, and/or the victim

WHEREUPON, having listen to the listen to the arguments of counsel, the Court finds that most of the Defendant's arguments, are based not on legal arguments but on evidentiary arguments. evidence that goes directly to weight for which the jury has decided. The jury has

heard the evidence based in the arguments presented here today. The jury heard the testimony of Don McDaniels, the ex-marine, who testified that the Defendant spoke to him the day before the murder and that the Defendant took out a pistol and said that he was going to kill his girlfriend, his girlfriend's ex-boyfriend, or his brother, Danny. That the following night, Danny Corey was murdered. The Court finds that Don McDaniels testimony was evidence that the jury could consider for motive and intent. The Court also finds that there were other witness that testified to threats made by the Defendant against the victim. The Court finds that the statement made by Samantha Corey, was in response to a question asked during cross-examination by the Prosecuting Attorney. The Court had difficulty hearing the witness, and did not hear the entire question. That the State immediately requested a bench conference, and that the statement made by Samantha Corey that the Defendant is a convicted felon, was not in response to the State's line of questioning. The Court then asked counsel for the Defendant, if they wanted a cautionary instruction provided to the jury, wherein counsel requested a cautionary instruction which was read by the Court. The Court further finds that the statement made by Samantha Corey was not prejudicial and is not what led to the conviction of the Defendant.

In response to the issue of the victim standing when shot, the Court didn't hear anything that anybody else would have known to indicate that the victim was standing, except for the person who pulled that trigger. Additionally, the Court finds that when you consider the locality of the Defendant's mother's house, that the Defendant lived there at one time, that his daughter and the victim lived there, and how people knew where the victim lived and in what room, somebody knew that. That somebody knew that the window was open, that somebody knew that a fan was placed in the window to draw the smoke out of the room when the victim smoked marijuana.

ACCORDINGLY, the Court finds that the evidence in the case is sufficient to support the verdict in this matter. The arguments made by Defense counsel go to weight and credibility for the jury to decide. The Court further adopts the arguments of the Prosecuting Attorney as its own, and hereby DENIES Defendant's Motions. The Court notes the Defendant's objection to the Court's ruling.

It is further ADJUDGED and ORDERED that this matter shall come back before the Court for sentencing on the 20<sup>th</sup> day of May, 2013, at 3:00 p.m. The Defendant is remained to the custody of the Sheriff's Department.

The Clerk shall enter today's Order for the date first appearing above and shall transmit an attested copy to all counsel of record

ENTERED: This 17<sup>th</sup> day of June, 2013.



THE HONORABLE THOMAS H. KEADLE  
SENIOR STATUS JUDGE  
SITTING BY TEMPORARY ASSIGNMENT

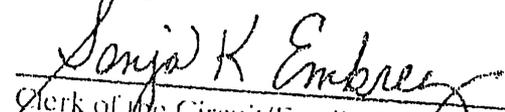
Prepared by:



Daniel M. James  
Prosecuting Attorney

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ATTEST:

  
Clerk of the Circuit/Family Courts  
of Hampshire County, West Virginia

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2013 MAY 22 PM 1:19

IN THE CIRCUIT COURT OF HAMPSHIRE COUNTY WEST VIRGINIA  
SARJA R. EMBREY, CLERK  
HAMPSHIRE COUNTY CIRCUIT COURT

STATE OF WEST VIRGINIA,  
PLAINTIFF

VS

CRIMINAL ACTION NO. 12-F-54

DAVID M. COREY,  
DEFENDANT

ORDER

This 22<sup>nd</sup> day of May, 2013, came on this matter before the Court for appointment of counsel to represent the Defendant in his appeal to the West Virginia Supreme Court of Appeals.

On May 20, 2013 the Defendant, in open court, informed the Court that he desired to appeal his conviction and sentencing to the West Virginia Supreme Court of Appeals. Defendant further informed the Court that he was also requesting that his attorneys, John G. Ours and Jonathan G. Brill, be relieved as his counsel of record and that other counsel be appointed to represent him in his appeal.

It is therefore **ORDERED** that Attorneys John G. Ours and Jonathan G. Brill are hereby relieved as counsel for the Defendant herein, and Lauren G. Wilson, Attorney at Law, is hereby appointed to represent the Defendant for the purpose of appeal and to do all necessary in the premises.

★ The Clerk is directed to forward an attested copy of this Order to the Prosecuting Attorney, and to Attorneys John G. Ours, Jonathan G. Bill, and Lauren M. Wilson, at her address of 112 North Main Street, Post Office Box 848, Keyser, West Virginia 26726. The Clerk is further directed to forward an attested copy of this Order to the Defendant at the Potomac Highlands Regional Jail.

Enter: May 22, 2013

[Signature]  
THOMAS H. KEADLE  
SENIOR STATUS JUDGE

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