

13-0144

IN THE CIRCUIT COURT OF MASON COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

Case No. 12-F-20  
David W. Nibert, Judge

CURTIS JOSEPH KIMBLE,  
Defendant.

MASON COUNTY  
CLERK OF COURT

2012 JUN 13 AM 10:56

ORDER  
TRIAL

On the 12<sup>th</sup> day of June, 2012, appeared the defendant, Curtis Joseph Kimble, in person and with his counsel, W. Dan Roll, and the State of West Virginia by Damon B. Morgan, Jr., Prosecuting Attorney for Mason County, for trial in this cause.

Thereupon the Court proceeded to jury selection and, thereupon came a jury, to-wit: Mikayla Shamlin, Shelia Saxton, Chris Davis, Juanita Grimm, Cody Johnson, Stephen Elliott, Earl Mattox, George McCoy III, Amy Thompson, Earnest McCarty, Mary Runion, Brian Fetty and alternate juror, Kevin Asbury, who were empaneled and sworn in this cause.

Whereupon, the State and defendant presented their case and rested. After hearing instructions of the Court and the final arguments of counsel, the jurors, the alternate juror being excused, retired to their room to consider a verdict. The jury deliberated and, after a time returned with a verdict: "As to the charge of "wanton endangerment" as contained in the indictment, we, the jury, do agree and find the defendant, Curtis Joseph Kimble: guilty of 'wanton endangerment' So say we all. Dated this 12<sup>th</sup> day of June, 2012. Earl D. Mattox, Foreperson".

The Court ORDERED the verdict returned by the jury filed.

Thereupon, the Court ORDERED the matter referred to the Probation Officer for a pre-sentence investigation.

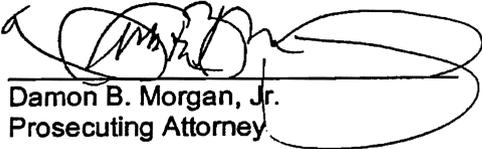
The Court ORDERED this matter continued for hearing on post-trial motions on July 3, 2012 at 9:30 a.m. and, if appropriate, sentencing and DIRECTED defendant's counsel to file any post-trial motions, and serve the State therewith, within ten days of the entry of this Order.

The Court DIRECTED the Clerk to provide a certified copy of this order to W. Dan Roll, counsel for defendant.

ENTERED this the 13 day of June, 2012.

  
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DAVID W. NIBERT, JUDGE

Presented by:

  
\_\_\_\_\_  
Damon B. Morgan, Jr.  
Prosecuting Attorney

2012 JUN 13 AM 10:56

MASS

IN THE CIRCUIT COURT OF MASON COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,  
Plaintiff,

vs.

Case No. 12-F-20  
David W. Nibert, Judge

CURTIS JOSEPH KIMBLE,  
Defendant.

ORDER  
POST-TRIAL

This the 5<sup>th</sup> day of September, 2012 came the State by its Prosecuting Attorney, Damon B. Morgan, Jr., and Defendant in person and with Counsel, W. Dan Roll, as set for hearing on Defendant's post-trial motions.

On Defendant's motion for judgment of acquittal, the Court ORDERED Defendant's motion for judgment of acquittal DENIED, to which the Defendant objects.

As to Defendant's motion for a new trial, the Court ORDERED Defendant's motion for new trial DENIED for reasons stated upon the record, to which ruling the Defendant objects.

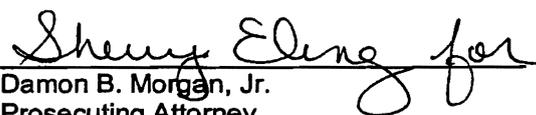
Thereupon, the Court ORDERED the Defendant guilty of the felony offense of "wanton endangerment" and ORDERED this case continued for sentencing until October 1, 2012 at 9:30 a.m.

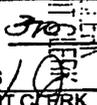
The Court DIRECTED the Clerk to provide a certified copy of this order to W. Dan Roll, counsel for defendant.

ENTERED this the 7 day of September, 2012.

  
\_\_\_\_\_  
JUDGE

Presented by:

  
Damon B. Morgan, Jr.  
Prosecuting Attorney

ENTERED THIS 7 DAY OF Sept 2012  
ORDER BOOK 46 PAGE 370  
BILL WITHERS /   
MASON COUNTY CIRCUIT CLERK

FILED  
IN MY OFFICE  
2012 SEP - 7 PM 3:34  
BILL WITHERS  
MASON CO. CIRCUIT CLERK

**IN THE CIRCUIT COURT OF MASON COUNTY, WEST VIRGINIA**

**STATE OF WEST VIRGINIA,**

**PLAINTIFF,**

**VS.**

**CRIMINAL CASE NO. 12-F-20**

**CURTIS JOSEPH KIMBLE**

**DEFENDANT.**

**ORDER RESENTENCING**

2013 JAN 16 PM 1:28

Came the Defendant, Curtis Joseph Kimble, by and through counsel Rebecca Stollar Johnson and moved the Court to re-sentence the Defendant. After review of the file and assertions of Counsel, the Court finds as follows:

1. That on June 21, 2012, the Defendant was found guilty of Wanton Endangerment.
2. That on September 7, 2012, a Motion for New Trial was denied.
3. That on October 1, 2012, the Defendant was sentenced to the custody of the Division of Corrections for a period of five (5) years.
4. That on October 5, 2012, W. Dan Roll was relieved as counsel and Rebecca Stollar Johnson was appointed.
5. That new counsel, Rebecca Stollar Johnson, did not receive notice of the appointment until November 14, 2012. As of that date, the period to file a notice of intent to appeal had tolled.
6. That although not necessary, a hearing was set to re-sentence the Defendant on December 6, 2012. Counsel was ordered to submit an order.

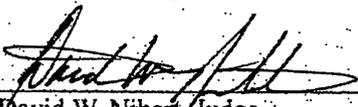
**THEREFORE,** the Court orders that upon his conviction of Wanton Endangerment, the

Defendant be sentenced to imprisonment in the state correctional facility for a period of five (5) years. As of **October 1, 2012**, the Defendant is given credit for 279 days, and assessed the cost of this proceeding in the amount of Two-hundred seventy-seven dollars (\$277.00).

The Circuit Clerk is directed to send a copy of this order to all counsel of record.

**IT IS SO ORDERED.**

ENTERED this the 16 day of January, 2013

  
\_\_\_\_\_  
David W. Nibert/Judge

Prepared by:

  
\_\_\_\_\_  
REBECCA STOLLAR JOHNSON  
WV STATE BAR #9484

2013-01-08 PM 1:28

**ATTACHMENT AS REQUIRED BY QUESTION 16 ON NATURE OF THE  
CASE, RELIEF SOUGHT AND OUTCOME BELOW.**

This is criminal action, stemming from a January 2012 Indictment in Mason County West Virginia. The Defendant was found guilty by a jury and sentenced to the Division of Corrections for a period of five (5) years for Wanton Endangerment.

The Petitioner prays that the West Virginia Supreme Court of Appeals REVERSE the jury's guilty verdict and remand this matter back to the Circuit Court for a new trial, and for such other and further relief as the Supreme Court of Appeals deems appropriate.

**ATTACHMENT AS REQUIRED BY QUESTION 17 ON NOTICE OF APPEAL  
ASSIGNMENTS OF ERROR**

1. THE TRIAL COURT ERRED IN FAILING TO SET ASIDE THE UNLAWFUL ARREST/DETENTION OF THE DEFENDANT AND ANY EVIDENCE FLOWING THEREFROM.

The Defendant was arrested on Saturday, November 11, 2011 for wanton endangerment, following a brief detention by the police. Prior to being detained, the police went to the residence of the defendant in reference to a complaint that a gun had shot at a car. At no time prior to arrival at the Defendant's home did the police have any information that the defendant was in any way involved in this crime. On arrival at the Defendant's home, the police ordered him out of the home and onto the ground where they then handcuffed him. Without informing him of his Miranda rights, the police then inquired of the Defendant where he kept his gun and the indicated it was inside the front door of the house. The police entered the residence and seized the gun.

2. THE TRIAL COURT ERRED WHEN IT PERMITTED THE JURY TO RECEIVE TESTIMONY OF A TAINTED AND SUGGESTIVE IDENTIFICATION OF THE DEFENDANT.

Following his arrest on November 11, 2011, the police placed the Defendant into the back of their cruiser and drove him to the home of the victim. At no time prior to taking the defendant to the victim's home did the police have any information that linked the

Defendant to this crime. The police had not been informed that the victim knew who had shot at him. The police had not met with the victim or ascertained any information from him. On arrival at the victim's home, the police asked the victim if the Defendant was the person who shot at him, and the victim acknowledged that he was. It was only after the identification of the Defendant by the victim, that the police took the victim's statement, after the identification had been tainted by the police.

3. THE TRIAL COURT ERRED IN FAILING TO SET ASIDE THE UNLAWFUL SEARCH OF THE DEFENDANT'S RESIDENCE.

After receiving information that a gun had been fired at a car, but prior to the police having any knowledge that the Defendant may be involved, the police went to the Defendant's house where they ordered the Defendant out of his home and handcuffed him in his yard. Without a warrant, and absent any exigent circumstances that would constitute an emergency, the police entered the Defendant's home and seized a shot gun which was later used at trial to help convict the Defendant.