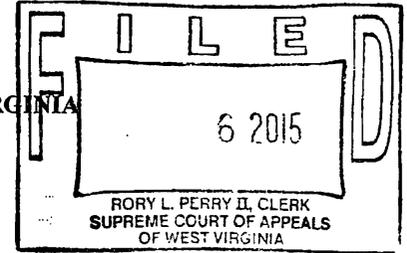


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET No. 14-1142



**STATE OF WEST VIRGINIA,**  
**PLAINTIFF BELOW,**  
Respondent

V.)

Appeal from an order of the  
Circuit Court of Berkeley  
County (No. 12-F-135)

**JAMES N. MAULDIN,**  
**DEFENDANT BELOW,**  
Petitioner

**PETITIONER'S BRIEF**

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## **ASSIGNMENTS OF ERROR**

1. WHETHER PETITIONER JAMES MAULDIN'S MOTION FOR JUDGMENT OF ACQUITTAL SHOULD HAVE BEEN GRANTED
2. WHETHER PETITIONER JAMES MAULDIN'S MOTION FOR NEW TRIAL SHOULD HAVE BEEN GRANTED
3. WHETHER PETITIONER JAMES MAULDIN'S CONVICTION SHOULD BE REVERSED AS THE COURT IMPROPERLY DENIED PETITIONER'S MOTION TO SUPPRESS STATEMENTS AND TEXT MESSAGES

## **SUMMARY OF ARGUMENT**

The Circuit Court wrongly denied James Mauldin's Motion for Judgment of Acquittal, Motion for New Trial, and Motions to Suppress Statements and Text Messages.

## **STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

Although counsel believes that this appeal is frivolous under Rev. R.A.P. 18(a)(2), oral argument under Rev. R.A.P. 20 may be necessary to decide James Mauldin's Motion to Suppress Text Messages if this Honorable Court views the issue as one of first impression.

## **ARGUMENT**

1. **WHETHER PETITIONER JAMES MAULDIN'S MOTION FOR JUDGMENT OF ACQUITTAL SHOULD HAVE BEEN GRANTED**

Under Rule 29(a) of the West Virginia Rules of Criminal Procedure,

[t]he court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment or information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses.

At trial, the following evidence was presented to the jury. Kaiwon Connelly was with James Mauldin for a month before Thanksgiving, and James brought Kaiwon to Shevecka Connelly on Thanksgiving Day. (A.R. 528-529). When Shevecka saw Kaiwon after a month with James, Shevecka thought Kaiwon “lost a lot of weight. He was just like looking drowsy like he was tired.” (A.R. 529). According to Shevecka, Kaiwon was “fully potty trained” at Thanksgiving. (A.R. 531). On the day after Thanksgiving Day, James picked Kaiwon up from Shevecka. (A.R. 533). James was supposed to bring Kaiwon back to Shevecka after a couple of days. (A.R. 535-536). Shevecka next saw her child deceased on New Year’s Day. (A.R. 544).

Jasmine Dawkins was responsible for the care of both children when Kaiwon Connelly was visiting and for James Mauldin, Jr., when Kaiwon was not there. DeVale McNickle was a neighbor of James Mauldin and Jasmine when they lived at 224 East Martin Street. (A.R. 769). McNickle heard Jasmine allege that Shevecka Connelly was abusing Kaiwon. (A.R. 774). McNickle testified that he saw Jasmine discipline Kaiwon, but that he never saw James discipline Kaiwon. (A.R. 776). James Melvin Mauldin, the father of James, testified that Kaiwon never showed any fear around James, and that Kaiwon never complained about being burned or abused by James. (A.R. 799).

Text messages retrieved from Jasmine Dawkins’s phone showed the following:

Outgoing from Jasmine’s phone: “I thought [Kaiwon] was asleep. He got playing on bed, so I said you just not going to listen are you and he said no.” (A.R. 478-479).

Incoming to Jasmine’s phone: “Well, tell him this. I am going to beat him until he does.” (A.R. 479).

Outgoing from Jasmine’s phone: “I’m real pissed off cuz I told him to get up and go . . . and go up he has to go and he just sat there and cried cuz he pee’d.” (A.R. 480).

Incoming to Jasmine's phone: "[T]ell him I'm going to beat his body when I get home."  
(A.R. 480).

Outgoing from Jasmine's phone: "I asked him . . . I asked him does he think he can talk to adults any kind of way. He said yes." (A.R. 481).

Incoming to Jasmine's phone: "[Y]ou beat him?" (Id.).

Outgoing from Jasmine's phone: "I'm getting tired of telling Kaiwon the same thing over and over." (Id.).

Outgoing from Jasmine's phone: "I picked him so he could stand up so he swings to smack me in my face, so I said you think it's okay to hit an adult? And he said yes." (A.R. 482).

Incoming to Jasmine's phone: "Imma cave his little chest in. He ain't going to be bad no more, watch. I try to drink tonight." (Id.).

Outgoing from Jasmine's phone: "[S]ince Kaiwon can't . . . Kaiwon can't be quiet and he keeps talking he's getting body shots from me." (A.R. 483).

Incoming to Jasmine's phone: "[L]augh out loud. Do . . . you do your thing even though you're soft." (Id.).

Outgoing from Jasmine's phone: "[N]aw, he hurtin bad." (Id.).

Incoming to Jasmine's phone: "Shevecka called." (A.R. 485).

Outgoing from Jasmine's phone: "[A]nd said what?" (Id.).

Incoming to Jasmine's phone: "I ain't answer." (Id.).

Outgoing from Jasmine's phone: "[O]h." (Id.).

Incoming to Jasmine's phone: "[A]in't call all yesterday." (Id.).

Outgoing from Jasmine's phone: "[S]he doesn't care." (Id.).

Incoming to Jasmine's phone: "Me either so wait til he heals feels." (Id.).

Outgoing from Jasmine's phone: "[W]hy doesn't he want to use the bathroom?" (A.R. 486).

Incoming to Jasmine's phone: "I'll tell you." (Id.).

On the thirty-first (31) day of December, 2011, Berkeley County Central Dispatch received a call advising that Kaiwon Connelly had fallen and "busted his lip." (A.R. 330). In response to this call, Berkeley County Central Dispatch dispatched an ambulance to 124 Joshua Drive, Apartment 616. (A.R. 328-331). Deputy Chief Paramedic Mark Anthony Murphy responded. (A.R. 336). Murphy found Kaiwon lying on the bathroom floor; Kaiwon was not breathing and did not have a pulse. (A.R. 340-341). Murphy "started resuscitative efforts, inserted an airway, [and] started to assist [Kaiwon] with breathing and doing chest compressions." (A.R. 341). Murphy noticed bruising around the mouth of Kaiwon and over the arms and legs. (A.R. 341-342). Kaiwon was then transferred to the hospital. (A.R. 348).

Doctor Alan Meske was the emergency room doctor who was assigned the care of Kaiwon Connelly. (A.R. 357-359). Meske found trauma to the child's face, bruises across Kaiwon's back, bruises to the child's left inner thigh, circumferential bruises to Kaiwon's forearms and wrists, and burns to the child's buttocks. (A.R. 360). Meske determined that Kaiwon was "probably unconscious because of the blow to his head, and because of the injury to his brain." (A.R. 365). Liesel Caten, a forensic nurse examiner, felt multiple areas on Kaiwon's head that she described "felt like a squisy rotten tomato, which are implicated that there is bruising and blood." (A.R. 710). Meske arranged for Kaiwon to be transported by helicopter to Children's Hospital. (A.R. 366). Meske heard the next day that Kaiwon "had expired." (A.R. 369).

Doctor Carolyn Revercomb was a deputy medical examiner for the Office of the DC Medical Examiner, Office of the Chief Medical Examiner in Washington, DC. (A.R. 394). The Circuit Court certified Revercomb as an expert in the area of forensic pathology. (A.R. 396). Revercomb performed the autopsy on Kaiwon Connelly. (Id.). Revercomb testified that the cause of Kaiwon's death was "multiple, acute, and chronic injuries." (A.R. 401). Revercomb testified that the "manner of death of [Kaiwon] was homicide." (A.R. 402). Revercomb testified that the injuries to Kaiwon's buttocks are consistent with "the buttocks being in proximity to heat." (A.R. 417). Revercomb testified that it did not appear to be an accidental burn. (A.R. 418). Revercomb also testified that the majority of the serious injuries were not accidental. (A.R. 433).

Senior Trooper Zubulun Conner responded to Apartment 616 in response to an ambulance request for assistance. (A.R. 717-718). When one of the EMS personnel informed Conner that there was suspicious bruising on Kaiwon Connelly, Conner questioned James Mauldin. (A.R. 719-720). James advised Conner that Kaiwon "fell on two separate occasions." (A.R. 720). Later, James went to the hospital.

While at the hospital, Senior Trooper Conner took a written statement from James Mauldin. (A.R. 736-738). According to a statement written by Conner, James told him the following:

[G]ot the child two days after Thanksgiving. A few days I had to go to the dentist and the baby's mother had the child. I saw the child had burn marks when I got the child a few days after Thanksgiving. Every time I pick up the child I saw marks. Even before Thanksgiving I saw marks. I saw marks on his back, arms and legs. There were plenty of times before Thanksgiving I saw marks.

(A.R. 739).

This evidence is insufficient to obtain a conviction.

**2. WHETHER PETITIONER JAMES MAULDIN'S MOTION FOR NEW TRIAL SHOULD HAVE BEEN GRANTED**

Under Rule 33 of the West Virginia Rules of Criminal Procedure, "[t]he court on motion of a defendant may grant a new trial to that defendant if required in the interests of justice." Clearly the interests of justice require that James Mauldin receive a new trial.

**3. WHETHER PETITIONER JAMES MAULDIN'S CONVICTION SHOULD BE REVERSED AS THE COURT IMPROPERLY DENIED PETITIONER'S MOTION TO SUPPRESS STATEMENTS AND TEXT MESSAGES**

**A. Standard of Review.**

When reviewing a ruling on a motion to suppress, an appellate court should construe all facts in the light most favorable to the State, as it was the prevailing party below. Because of the highly fact-specific nature of a motion to suppress, particular deference is given to the findings of the circuit court because it had the opportunity to observe the witnesses and to hear testimony on the issues. Therefore, the circuit court's factual findings are reviewed for clear error.

State v. Davis, 752 S.E.2d 429, 441 (W.Va. 2013) (quoting Syl. pt. 1, State v. Lacy, 468 S.E.2d 719 (W.Va. 1996)).

**B. Defendant James N. Mauldin's Motion to Suppress Statements should have been granted.**

James Mauldin's initial statement to Senior Trooper Zebulun Conner was a custodial statement and should be suppressed pursuant to Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966). James Mauldin's statement at the hospital was not freely and voluntarily made and should be suppressed pursuant to State v. Williams, 438 S.E.2d 881 (W.Va. 1983).

**C. James N. Mauldin's Objection and Motion in Limine Regarding Text Messages should have been granted.**

I. James Mauldin's text messages should have been suppressed because they were not properly authenticated.

"Authentication of electronic communications, like documents, requires more than mere confirmation that the number or address belonged to a particular person. Circumstantial evidence, which tends to corroborate the identity of the sender, is required." Commonwealth v. Koch, 39 A.3d 996, 1005 (Pa. Super. Ct. 2011). Here, insufficient circumstantial evidence was presented to identify the sender of the text messages as James Mauldin. Therefore, the messages were not properly authenticated.

II. James Mauldin's text messages should have been suppressed because they were hearsay.

Because James Mauldin's text messages could not be properly authenticated, they were not admissible as admissions by party-opponent under West Virginia Rules of Evidence Rule 801(d)(2).

**CONCLUSION**

James Mauldin's convictions should be reversed and James Mauldin should be acquitted of all charges.

Signed: Matthew T. Yanni

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Counsel of Record for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that on this first (1) day of July, 2015, true and accurate copies of the foregoing **Petitioner's Brief** were deposited in the U.S. Mail contained in postage-paid envelopes addressed to the following:

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