

15-0931

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

v.

CASE NO. 12-F-138
JUDGE YODER

LEONARD C. LEWIS,

Defendant.

ORDER RE-SENTENCING DEFENDANT FOR APPEAL PURPOSES

BERKELEY COUNTY
CLERK OF COURT
2015 AUG 25 PM 3:44
VIRGINIA M. SHAW, CLERK

This matter came before the Court on May 21, 2015 for a hearing on Defendant's motion for re-sentencing for appeal purposes. Defendant appeared by videoconference and was represented by counsel Ben Crawley Woods. The State was represented by Christopher Quasebarth. Upon agreement of the parties and finding good cause for the motion, the Court granted the same and enters the instant order re-sentencing Defendant for purposes of reviving Defendant's appellate rights and permitting pursuit of appeal.

This matter previously came on for a sentencing hearing on the 16th day of January, 2014, where the following occurred. The State of West Virginia appeared by Timothy D. Helman, Assistant Prosecuting Attorney for Berkeley County. The Defendant appeared in person and with counsel, Robert C. Stone, Jr.

The Court noted that the Defendant had been convicted by jury trial on or about November 15th, 2013. The Court has received the presentence investigation report (PSI) and is prepared to sentence the Defendant today. Both the State and Counsel for the Defendant stated that they have received and reviewed the PSI. The State had no objections to the PSI. Counsel for the Defendant reviewed the PSI with his client orally on the record. The Defendant himself made several objections to the criminal history portion of the PSI, as is more fully set fourth upon record.

PA
Crawley-Woods
Doc
8/26/15

The Court then heard brief statements from both parties regarding the post-trial Motion for Judgement of Acquittal and/or New Trial filed by the Defendant. The Court denied the motion as is more fully set forth in a separate written order.

The Court then heard argument as to sentencing. Both parties presented oral argument at sentencing. Further, the Defendant himself addressed the Court.

After both parties had a full fair opportunity to be heard, the Court inquired of the State, the Defendant, and the Defendant's counsel if there was any just or legal cause why sentence should not now be pronounced. With no just or legal cause to the contrary being shown, the Court proceeded to sentencing.

The Court **FINDS** that this crime is severe and heinous in nature. The very nature of this crime merits a severe sentence. The Court further **FINDS** that even today during his oral statement the Defendant shows neither remorse for his crime nor acceptance of responsibility.

The Court further **FINDS** that the Jury returned a guilty verdict of Kidnapping with no recommendation of mercy. West Virginia's kidnapping statute requires this Court to sentence the Defendant to life without the possibility of parole.

Therefore, it is the sentence of the law and the judgement of this Court that upon the Defendant's conviction of one (1) felony count of Kidnapping, in violation of W. Va. Code§ 61-2-14a, the Defendant is hereby **SENTENCED** to a life sentence, without the possibility of parole, in the penitentiary house of this state.

It is further **ORDERED** that upon his conviction of one (1) felony count of Attempted Murder in the First Degree, in violation of W. Va. Code§ 61-2-1, and W. Va. Code§ 61-11-8, the Defendant is hereby **SENTENCED** to serve three to fifteen (3-15) years in the penitentiary house of this state.

It is further **ORDERED** that upon his conviction of one (1) felony count of Malicious Assault, in violation of W. Va. Code § 61-2-9(a) the Defendant is sentenced to serve two to ten (2-10) years in the penitentiary house of this State.

It is further **ORDERED** that upon his conviction of one (1) misdemeanor count of Domestic Assault, First Offense, in violation of W. Va. Code § 61-2-28, the defendant is sentenced to serve six months in the regional jail.

It is further **ORDERED** that upon his conviction of one (1) misdemeanor count of Domestic Battery, First Offense, in violation W. Va. Code § 61-2-28, the Defendant is sentenced to serve one year in the regional jail.

It is **ORDERED** that all sentences shall be served **CONSECUTIVELY** to each other.

It is further **ORDERED** that the penitentiary sentences shall be served first before any regional jail sentence is served.

It is further **ORDERED** that the Defendant's effective date of sentencing is November 29th, 2011.

It is further **ORDERED** and **ADJUDGED** that the Defendant shall pay Court costs from any monies he earns or obtains during his incarceration.

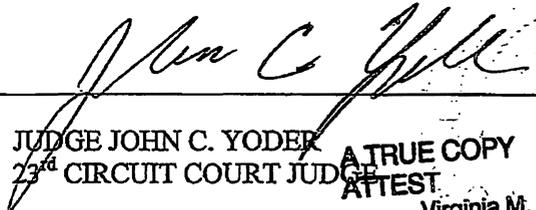
The Court then advised the Defendant of his appeal rights, as is more fully shown on the record.

The objections of the Defendant to any and all adverse rulings contained herein are noted.

The Defendant is hereby **REMANDED** to the custody of the West Virginia Division of Corrections.

This matter is now concluded and shall be retired from Court's active docket. The Clerk shall enter this order as of the day and date first above written and transmit attested copies to the Prosecuting Attorney, Ben Crawley-Woods, and to the West Virginia Division of Corrections.

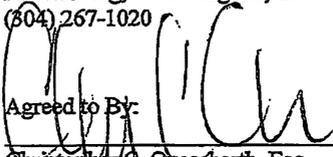
ENTERED: 8/24/15


JUDGE JOHN C. YODER
23rd CIRCUIT COURT JUDGE

A TRUE COPY
ATTEST
Virginia M. Sine
Clerk Circuit Court
By: 
Deputy Clerk

Form Prepared By:

Ben Crawley-Woods, Esq.
West Virginia State Bar No. 11122
1314 Edwin Miller Blvd, Suite 212A
Martinsburg, West Virginia, 25404
(604) 267-1020

Agreed to By:

Christopher G. Quasebarth, Esq.
Chief Deputy Prosecuting Attorney
State Bar N.: 4676

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

v.

LEONARD C. LEWIS

Defendant.

CASE NO. 12-F-138
JUDGE YODER

2014 FEB 10 AM 11:30
VIRGINIA SUPR. CLERK
BERKELEY COUNTY
CIRCUIT CLERK

**ORDER DENYING DEFENDANT'S MOTION FOR JUDGEMENT OF ACQUITTAL
AND/OR NEW TRIAL**

THIS MATTER came on for a sentencing hearing on the 16th day of January, 2014. The State of West Virginia appeared by Timothy D. Helman, Assistant Prosecuting Attorney for Berkeley County. The Defendant appeared in person and with counsel, Robert C. Stone, Jr.

WHEREUPON, the Court noted that it had received and reviewed the Defendant's written Motion for Judgment of Acquittal and/or New Trial. The Court had also received and reviewed the State's written Response thereto. The Court then heard oral argument from both parties.

After considering the written submissions of counsel and the oral arguments made by counsel together with all of the evidence presented at trial, the Defendant's Motion for Judgment of Acquittal and/or New Trial is **DENIED**.

In support of its ruling, the Court incorporates all of its prior findings of fact and conclusions of law made upon the record during the pretrial and trial proceedings in this matter on these specific issues when the same arguments were previously raised by defense counsel. The Court's previous rulings on these issues are incorporated fully herein as part of this order.

Further in support of its ruling, the Court incorporates fully as its own findings the facts as stated in the "State's Response to Defendant's Motion for Judgment of Acquittal and/or New Trial."

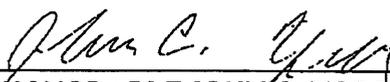
PA
Stone
2-10-14

Further, in addressing the issue of whether the kidnapping conviction was incidental to the other Counts of the indictment, the Court must examine the length of time the victim was held or moved, the distance the victim was forced to move, the location and environment of the place the victim was detained, and the exposure of the victim to an increased risk of harm. Syllabus point 14, *State v. Fortner*, 182 W.Va. 345, 387 S.E.2d 812 (1989).

The Court is particularly persuaded that the Kidnapping was not incidental due to the length of time the victim was detained and the exposure of the victim to an increased risk of harm. The Court finds, based on the evidence presented at trial, that the victim was detained in her own apartment for possibly as long as seven hours. The Court finds that there was ample evidence presented at trial to show that the Defendant confined the victim in the apartment for the purposed of evading capture or arrest after he attacked her. Further, with each passing moment that she was detained without medical treatment her risk of bleeding to death increased substantially.

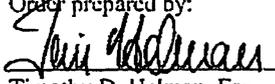
Accordingly, it is **ORDERED** and **ADJUDGED** that the Defendant's Motion for Judgment of Acquittal and/or New Trial is **DENIED**.

The Clerk **SHALL** enter this order as of the day and date first above written and shall transmit attested copies to all counsel of record.



THE HONORABLE JOHN C. YODER
BERKELEY COUNTY CIRCUIT JUDGE

Order prepared by:



Timothy D. Helman, Esq.
Assistant Prosecuting Attorney
Berkeley County, West Virginia

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

v.

CASE NO. 12-F-138

LEONARD C. LEWIS.

BERKELEY COUNTY
CIRCUIT CLERK
2014 APR 14 PM 2:05
VIRGINIA M. SINE, CLERK

ORDER ON DEFENDANT'S SUPPLEMENTAL MOTION FOR NEW TRIAL

On a previous day came the Defendant Leonard C. Lewis, by his counsel Robert C. Stone, pursuant to Rule 33 of the West Virginia Rules of Criminal Procedure, and moved this Court to award the Defendant a new trial. After reviewing the written submissions of the parties, considering the evidence presented at trial, and reviewing the Court's file in this matter, the Court makes the following findings of fact and conclusions of law.

1. The Defendant was convicted by jury of the Kidnapping, Attempted Murder in the First Degree, Malicious Assault, Domestic Battery, and Domestic Assault of his former wife, Sylvia Thomas.
2. Evidence presented at trial included graphic pictures of the victim's injuries, graphic pictures of the bloody apartment where the attack occurred, two butcher knives, DNA evidence establishing that the blood on the blade of the knife belonged to the victim, the victim's cell phone records, and the victim's bank account records. The victim and the Defendant both testified in addition to other witnesses.
3. Sufficient evidence was presented at trial to show that the Defendant attacked the victim with a butcher knife in her apartment in the early morning hours of November 16, 2011. Further, sufficient evidence was presented to demonstrate that the Defendant confined the victim in her apartment for several hours.

PA
Stone
4-14-14

4. The Court finds that the attack occurred approximately between the hours of 12:00 a.m. and 7:00 a.m. on November 16, 2011. The victim testified that she arrived home from work shortly after midnight, went to sleep, awoke a short time later to go to the bathroom and was attacked by the Defendant. In addition, cell phone records show that the victim made a final phone call at 11:38 p.m. on November 15, 2011. Bank records show that the victim's bank card was used to purchase gasoline at a gas station in Martinsburg at 7:35 a.m. on November 16, 2011. The victim testified that the Defendant used her bank card to purchase gasoline as he was driving her to Washington, DC, where he dropped her off at a VA hospital.
5. In *State v. William M.*, the West Virginia Supreme Court of Appeals held that:

[a] new trial will not be granted on the ground of newly-discovered evidence unless the case comes within the following rules:

- (1) The evidence must appear to have been discovered since the trial, and, from the affidavit of the new witness, what such evidence will be, or its absence satisfactorily explained.
 - (2) It must appear from the facts stated in his affidavit that plaintiff was diligent in ascertaining and securing his evidence, and that the new evidence is such that due diligence would not have secured it before the verdict.
 - (3) Such evidence must be new and material, and not merely cumulative, and cumulative evidence is additional evidence of the same kind to the same point.
 - (4) The evidence must be such as ought to produce an opposite result at a second trial on the merits.
 - (5) And the new trial will generally be refused when the sole object of the new evidence is to discredit or impeach a witness on the opposite side.
- Syl. Pt. 1, *State v. Frazier*, 162 W.Va. 935, 253 S.E.2d 534 (1979).

Syl. Pt. 1, *State v. William M.*, 225 W.Va. 256, 692 S.E.2d 299 (2010).

6. On or about September 25, 2013, counsel for the Defendant subpoenaed from AT&T the cell phone records from a second cell phone allegedly belonging to the victim. These
-

records did not arrive in time for the November 12, 2013 trial date. The Court received the records on January 17, 2014.

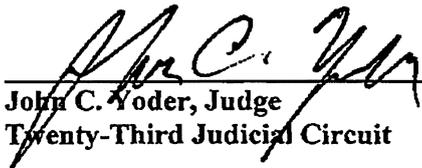
7. The Defendant now seeks a new trial, claiming that these cell phone records are newly discovered evidence that “warrant the Court granting the Defendant a new trial as the phone records rebut the trial testimony of Sylvia Thomas that she was unable to communicate with anyone during the time period of her alleged kidnapping by the Defendant. Defendant submits that the phone records indicate that Ms. Thomas’ second phone was utilized extensively during the time period of the alleged kidnapping which would be exculpatory to the Defendant.”
 8. The Defendant argues more specifically that “the cell phone records indicate that Sylvia Thomas’ second cell phone . . . was utilized for voice, text messaging, as well as for internet activity on November 16, 2011 during the time period that the Defendant was alleged to have attacked Ms. Thomas and also kidnapped her.” The Defendant argues that this new evidence when considered by a jury would likely produce an opposite result at a second trial on the merits.
 9. However, the Court finds that the new evidence is not material. The records do not show any telephone calls or text message activity during the 12:00 a.m. to 7:00 a.m. time period during which the attack occurred.
 10. Accordingly, the Court finds that these records have little, if any, evidentiary value and are thus not likely to produce an opposite result at a new trial.
 11. The Court finds that the Defendant’s purpose for these new phone records is solely to discredit and impeach the victim’s testimony. The Defendant has offered no other purpose for these cell phone records. The phone records do not implicate another person,
-

nor do they show that the Defendant may have been at another location when the crime was committed.

Accordingly, it is ORDERED and ADJUDGED that the Defendant's Supplemental Motion for New Trial is DENIED.

The Circuit Clerk is directed to enter this Order as of the day and date herein recorded below and to send attested copies of this Order to all counsel of record.

Entered the 17th day of April, 2014.



John C. Yoder, Judge
Twenty-Third Judicial Circuit

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

VS.

CASE NO. 12-F-138

JUDGE YODER

LEONARD C. LEWIS,

DEFENDANT.

ORDER FOR RE-APPOINTMENT OF COUNSEL FOR DEFENDANT

On this 17th day of July, 2015, the Court having reviewed the motion for reappointment of counsel and pertinent information and representations included in the Affidavit of Eligibility for Appointed Or Public Defender Counsel, filed by Defendant as Exhibit A to his motion, to determine the continued eligibility for appointed Counsel, does find that Defendant cannot afford service of counsel at this time and is eligible for appointed counsel per the requirements of W.Va. Code § 29-21-1, et seq.

THEREFORE, it is hereby ORDERED and ADJUGED that Ben Crawley-Woods, Esq. is appointed and shall represent Defendant for appellate purposes in this matter. The Clerk shall enter this Order and shall send attested copies to all counsel of record in these proceedings.

PA
Crawley-woods ✓
7/17/15

John C. Yoder
JUDGE YODER
23rd CIRCUIT COURT JUDGE

A TRUE COPY
ATTEST
Virginia M. Sine
Clerk Circuit Court
Dkt. J. Sine
Deputy Clerk

Prepared By: [Signature]
Ben Crawley-Woods, Esq.
West Virginia State Bar No. 11122
1314 Edwin Miller Blvd, Suite 212A
Martinsburg, West Virginia, 25404
(304) 267-1020

BERKELEY COUNTY CIRCUIT CLERK
2015 JUL 16 PM 4:00
VIRGINIA M. SINE, CLERK