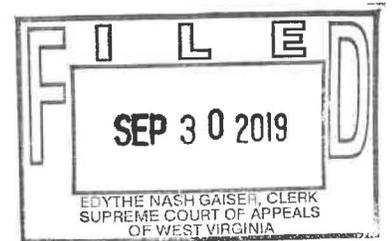


19-0875



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

STATE OF WEST VIRGINIA

v.

JUSTIN K. LEGG,

Defendant.

Indictment No. 19-F-134

Judge Thomas H. Ewing

**ORDER CERTIFYING QUESTIONS TO
THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

This case involves a single conspiracy charge against the Defendant under West Virginia Code Section 60A-4-414. Various defense motions, including a Motion to Dismiss and a Motion in Limine, have been filed in this case, which present the Court with several legal issues of first impression under West Virginia Code Section 60A-4-414 and a critical conflict of interest question.

There is a total of sixteen (16) indictments pending before the Court this term, which present the same or nearly identical issues for the Court to decide as raised in the pending Motion to Dismiss and Motion in Limine. The Fayette County Public Defender's office represents thirteen (13) of the defendants in those separate cases, including the Defendant in this case.¹

In this Indictment, as in the other similar indictments, the State has alleged that the Defendant conspired with a single named, unindicted co-conspirator to deliver or possess with intent to deliver one kilogram or more of heroin, and that the Defendant and/or the unindicted co-

¹ This does not include the similar and related indictments pending in the Circuit Court of Fayette County before Judge Paul M. Blake, Jr., the majority of which defendants are also represented by the Fayette County Public Defender's office. The Fayette County Public Defender's office has filed a motion asking the Court to determine whether a conflict of interest exists in several of the related cases. See Indictment Nos. 19-F-99, 19-F-100, and 19-F-124. Because the questions presented, including the potential conflict of interest, are pending before both divisions of the Court, there is a risk for conflicting decisions to be issued.

conspirator did act to effect the object of the conspiracy. No other co-conspirators are named or identified in the Indictment.

West Virginia Code Section 60A-4-414 was effective July 7, 2017, and there are no opinions or memorandum decisions from the Supreme Court of Appeals of West Virginia related to this statute.

Pursuant to West Virginia Code Section 58-5-2, “[a]ny question of law . . . may, in the discretion of the circuit court in which it arises, be certified by it to the Supreme Court of Appeals for its decision, and further proceedings in the case stayed until such questions shall have been decided and the decision thereof certified back.”

Section 58-5-2 applies to criminal cases. *See State v. Beck*, 242 W. Va. 2, 828 S.E.2d 821 (2019); *State v. Butler*, 239 W. Va. 168, 179 n.27, 799 S.E.2d 718, 729 n.27 (2017) (noting that West Virginia Code § 58-5-2 was amended to provide for “any question of law” without limitation to supersede *State v. Lewis*, 188 W.Va. 85, 422 S.E.2d 807 (1992)).

This Court may in its discretion certify any question of law, even sua sponte. *See Bossie v. Boone County Board of Education*, 211 W. Va. 694, 568 S.E.2d 1 (2002).

Due to the number of cases affected and the importance of the legal issues presented, the Court, in its discretion, finds that certification of questions to the Supreme Court of Appeals is the most judicious and economic manner in which to resolve the legal questions rather than this case and the other similarly situated cases proceeding to trials and piece-meal appeals to the Supreme Court of Appeals.

The purpose of certifying certain questions to the Supreme Court of Appeals of West Virginia is to aid the prompt and economical administration of justice by settling basic questions

of law in advance of preparation for final hearing (with the incident labor, expense, and consumption of time of the parties and the court). *See* 3B M.J., *Case Certified*, §3.

The parties in the case have extensively briefed and argued the questions presented. As a result, the record below is well developed and ripe for resolution by the Supreme Court of Appeals of West Virginia.

By separate order entered contemporaneously, the Court has consolidated each of the related cases for the limited purpose of certifying the questions presented to the Supreme Court of Appeals, designating the above-styled case as the lead case for the limited purpose of resolving the questions presented.

RELEVANT FACTS

Based on the stipulation of facts presented by the parties,³ the Court hereby determines that the facts set forth in *Exhibit A* and *Exhibit B* of this Order, which are incorporated herein by reference, are relevant to the issues presented in the certified questions below.

CERTIFIED QUESTIONS

Based on the foregoing, the Circuit Court of Fayette County does hereby **CERTIFY** the following questions to the Supreme Court of Appeals of West Virginia, pursuant to West Virginia Code Section 58-5-2 and Rule 17 of the West Virginia Rules of Appellate Procedure:

1. For purposes of a crime under West Virginia Code Section 60A-4-414(b), is an Indictment specifically alleging a conspiracy involving a single defendant and only one other co-

³ Pursuant to the *Order Relating to Proposed Questions to be Certified to the Supreme Court of Appeals of West Virginia*, entered on August 20, 2019, the Court offered counsel an opportunity to stipulate to facts or propose their own relevant facts. The Court received a set of stipulated facts from counsel James Adkins and the Fayette County Prosecutor's office in Indictment Nos. 19-F-118, -98, -148, -145, -152 and received a separate set of stipulated facts from counsel Scott Stanton and the Fayette County Prosecutor's office in Indictment Nos. 19-F-99, -100, -108, -124, -134, -135, -142. These stipulated facts are set forth in Exhibit A and Exhibit B.

conspirator sufficient, under constitutional principles, to put the defendant on notice that he/she may be held responsible under section 4-414(f) for the quantity of drugs delivered or possessed with intent to deliver solely by the co-conspirator to other persons, who have also been charged in separate indictments alleging a single conspiracy involving the same co-conspirator, when those other persons are not named in the Indictment?

Answer: Yes. First, the State is not required to identify all of the members of the conspiracy in the Indictment. See *United States v. Camara*, 908 F.3d 41, 46 (4th Cir. 2018) (“The existence of the conspiracy, rather than the particular identity of the conspirators, is the essential element of the crime.”Indeed, the government need not identify any co-conspirators. “While two persons are necessary to constitute a conspiracy, ‘one person can be convicted of conspiring with persons whose names are unknown.’ ”); *Rogers v. United States*, 340 U.S. 367, 375, 71 S.Ct. 438, 95 L.Ed. 344 (1951); *United States v. Rey*, 923 F.2d 1217, 1222 (6th Cir.1991) (“It is the grand jury’s statement of the existence of the conspiracy agreement rather than the identity of those who agree which places the defendant on notice of the charge he must be prepared to meet.”). Therefore, if sufficient circumstantial evidence of the existence of a conspiracy, and of the Defendant’s involvement in that conspiracy, is introduced, it is not necessary that other members of the conspiracy be named in the indictment or otherwise identified. The question of whether there is a single or multiple conspiracies is a factual question for the jury based on the totality of the circumstances. See *State v. Judy*, 179 W. Va. 734, 737, 372 S.E.2d 796, 799 (1988); see also *United States v. Urbanik*, 801 F.2d 692, 695 (4th Cir. 1986) (question for jury). If the evidence presented at trial related to the scope and nature of the conspiracy for purposes of W. Va. Code § 60A-4-414(f) varies from the allegations in the Indictment, the issue is a matter of variance to be addressed on a motion for

judgment of acquittal, not pre-trial dismissal. See *Kotteakos v. United States*, 328 U.S. 750, 66 S. Ct. 1239, 90 L.Ed. 1557 (1946); *United States v. Cannady*, 924 F.3d 94, 97 (4th Cir. 2019); Syl. Pts. 15 and 16, *State v. McIntosh*, 207 W. Va. 561, 566, 534 S.E.2d 757, 762 (2000). Whether the variance is serious enough to warrant dismissal depends on whether the variance has prejudicially affected the Defendant's substantial rights. See *Kotteakos*, 328 U.S. 750, 66 S. Ct. 1239, 90 L.Ed. 1557; *Cannady*, 924 F.3d 94; *McIntosh*, 207 W. Va. 561, 534 S.E.2d 757; see also, e.g., *United States v. Swafford*, 512 F.3d 833 (6th Cir. 2008); *United States v. Johnson*, 719 F.3d 660 (8th Cir. 2013); *United States v. Glenn*, 828 F.2d 855 (1st Cir. 1987); *United States v. Felder*, 214 F. Supp. 3d 220 (S.D.N.Y. 2016).

2. For purposes of a crime under West Virginia Code Section 60A-4-414(b), does section 4-414(f) incorporate the common law principle that overt acts have to be in furtherance of the conspiracy before the jury can attribute to the defendant "all of the controlled substances manufactured, delivered or possessed with intent to deliver or manufacture by other participants or members of the conspiracy"?

Answer: Yes. Reading section 60A-4-414(b) and section 60A-4-414(f) together and based on elements of conspiracy under the general conspiracy statute, W. Va. Code § 61-10-31, the jury can only attribute to the Defendant the quantity of the controlled substances the unindicted co-conspirator or other co-conspirators delivered or possessed with intent to deliver so long as that delivery and/or or possession with intent to deliver was an overt act in furtherance of the conspiratorial agreement between the Defendant and the unindicted co-conspirator or other co-conspirators. See *State v. Less*, 170 W. Va. 259, 265, 294 S.E.2d 62, 67 (1981) ("The purpose of the overt act requirement is merely to show 'that the conspiracy is at work.' It is not necessary that each conspirator involved in the conspiracy commit his or her own overt act.

The overt act triggering the conspiracy as to all the conspirators can be committed by any one of their number.”).

3. For purposes of the jury’s determination under West Virginia Code Section 60A-4-414(f), is evidence of an unindicted co-conspirator’s drug transactions with others not named or identified in the Indictment admissible for the jury’s consideration in determining the amount of controlled substance attributable to the Defendant for purposes of West Virginia Code Section 60A-4-414(b) subject to the knowing and foreseeable principles outlined in *Pinkerton v. United States*, 328 U.S. 640 (1946) and its progeny?

Answer: Yes. First, the State is not required to identify all of the members of the conspiracy in the Indictment. See *United States v. Camara*, 908 F.3d 41, 46 (4th Cir. 2018) (“The existence of the conspiracy, rather than the particular identity of the conspirators, is the essential element of the crime.” . . . Indeed, the government need not identify any co-conspirators. “While two persons are necessary to constitute a conspiracy, ‘one person can be convicted of conspiring with persons whose names are unknown.’ ”); *Rogers v. United States*, 340 U.S. 367, 375, 71 S.Ct. 438, 95 L.Ed. 344 (1951); *United States v. Rey*, 923 F.2d 1217, 1222 (6th Cir.1991) (“It is the grand jury’s statement of the existence of the conspiracy agreement rather than the identity of those who agree which places the defendant on notice of the charge he must be prepared to meet.”). Therefore, if sufficient circumstantial evidence of the existence of a conspiracy, and of the Defendant’s involvement in that conspiracy, is introduced, it is not necessary that other members of the conspiracy be named in the Indictment or otherwise identified. However, the scope of the conspiracy is critical to the application of W. Va. Code § 60A-4-414(f). For purposes of section 4-414(f), under the principles in *Pinkerton v. United States*, 328 U.S. 640 (1946), *United States v. Collins*, 415 F.3d 304 (4th

Cir. 2005), *United States v. Foxx*, 544 F.3d 943 (4th Cir. 2008) and similar cases, the Defendant may only be held responsible for reasonably foreseeable drug quantities that were delivered and/or possessed with intent to deliver by others within the scope of the conspiratorial agreement he jointly undertook. Therefore, for purposes of section 4-414(f), the Defendant may be held responsible for (i) the quantity of controlled substances he personally delivered or possessed with intent to deliver in furtherance of the conspiracy; and (ii) the quantity of controlled substances delivered or possessed with intent to deliver by co-conspirators if their activities were (a) in furtherance of the conspiracy with the Defendant and (b) were either known to the Defendant or were reasonably foreseeable to the Defendant.

4. For purposes of a crime under West Virginia Code Section 60A-4-414(b), can the jury consider the volume of controlled substances distributed by the named, unindicted co-conspirator as part of his separate conspiracies with others not named or identified in the Indictment for purposes of the jury's determination under West Virginia Code Section 60A-4-414(f), even when the State does not intend to introduce evidence to show that the defendant had any connection or dealings with any of the unindicted co-conspirator's other alleged, separately indicted co-conspirators?

Answer: Yes. See answer to Question No. 3.

5. Where the Indictment charges a conspiracy in violation of West Virginia Code Section 60A-4-414(b) involving the defendant and only one other named, but unindicted co-conspirator, may counsel for the defendant continue to represent similarly situated, but separately indicted defendants who were not named in the defendant's indictment but who are alleged to have had separate conspiracies with the same, named unindicted co-conspirator as identified in the defendant's Indictment, when the State seeks to offer

evidence in the defendant's trial of drug transactions between the named, unindicted co-conspirator and the other separately indicted individuals for the jury to consider in determining the quantity of controlled substance attributed to the defendant under West Virginia Code Section 60A-4-414(f)?

Answer: No. The Court must be satisfied that it is not setting up an appeal either on right to counsel grounds or ineffective assistance grounds based on an actual or potential conflict of interest in the Defendant's representation. Here, the State's case is positioned to use evidence of drug transactions involving persons both of whom are represented by the same attorney and whom are both alleged to have obtained controlled substances from the same supplier, the unindicted conspirator in this Indictment. There is a likelihood that counsel for the Defendant will be forced to choose between clients at trial if one or more of counsel's other clients are called to testify, especially since competing issues of remaining silent under the Fifth Amendment and confrontation under the Sixth Amendment would come into play. Additionally, each individual client may possess knowledge or information that could be helpful to one client at trial but harmful to another client and vice versa. These matters create a potential conflict of interest for counsel. *See United States v. Thomas*, 977 F. Supp. 771, 775 (N.D.W. Va. 1997).

ORDERS

Pursuant to Rule 17(a)(1) of the West Virginia Rules of Appellate Procedure, the parties to this case are **ORDERED** to prepare a joint appendix of the record sufficient to permit review of the certified questions.

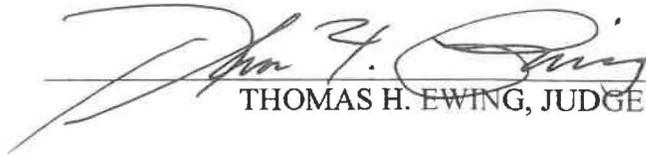
It is further **ORDERED** that the Clerk of this Court is directed to transmit attested copies of this order to counsel of record as follows: Elizabeth K. Campbell, Assistant Prosecuting

Attorney for Fayette County, 108 E. Maple Ave., Fayetteville, WV 25840; and E. Scott Stanton, Fayette County Public Defender, 102 Fayette Ave., Fayetteville, WV 25840.

It is further **ORDERED** that all further proceedings in the present case be, and are hereby, stayed until such time as the certified questions have been decided and the decision thereof certified back to this Court.

Pursuant to Rule 17(a)(2) of the West Virginia Rules of Appellate Procedure, the Clerk of this Court is **ORDERED** to **FORTHWITH** transmit this Certification Order and the list of the docket entries in this case to the Clerk of the West Virginia Supreme Court of Appeals as follows: Edythe Nash Gaiser, Clerk of Court, State Capitol, Rm E-317, 1900 Kanawha Blvd. East, Charleston, WV 25305.

ENTERED this 27th day of September, 2019.


THOMAS H. EWING, JUDGE

A TRUE COPY of an order entered
September 27, 2019
Teste: Cathy L. Garrett
Circuit Clerk Fayette County, WV

EXHIBIT A

IN THE CIRCUIT COURT OF FAYETTE COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

VS.

**RODGER D. HANCOCK, III
BRITTANEY FARRELL
PATRICIA RIVERS
JOSH PITTMAN
KEVIN WALTON**

**THOMAS H. EWING, JUDGE
INDICTMENT NO. 19-F-118
INDICTMENT NO 19-F-98
INCITMENT NO 19-F-148
INDICTMENT NO 19-F-145
INDICTMENT NO 19-F-152**

JOINT STIPULATION OF FACTS

1. This defendant was Indicted by the May, 2019 Grand Jury based on the testimony of Detective C.A. Young of the Central West Virginia Drug Task Force.
2. In October 2017 the Task Force began an investigation into individuals named Greg Coleman and Ryan Johnson after controlled purchases were made from Mr. Coleman's residence.
3. On May 23, 2018 the DEA, working in conjunction with the Task Force applied for and was granted a Wire Intercept Order allowing them to listen in and record conversations between Greg Coleman as well as Ryan Johnson and Bobby Mack.
4. During this wiretap investigation law enforcement from the DEA and the Task Force began heavy surveillance of subjects associated with Mr. Coleman and Mr. Johnson. The wiretap investigation revealed that Ryan Johnson would buy heroin and oxycodone from another subject of this investigation, James Terry and Mr. Terry's associates. Greg Coleman was found to buy heroin and oxycodone from Ryan Johnson and Bobby Mack. Coleman bought oxycodone and methamphetamine from Gary Harvey and Carla and Terry Remy.
5. Law enforcement was able to capture the conversations about the sale of heroin and other substances from the calls and activities of the separate defendants charged in these Indictments with Conspiracy under West Virginia Code §60A-4-14. All of these defendants were communicating with their supplier, Mr. Coleman about the purchase and sale of Heroin.

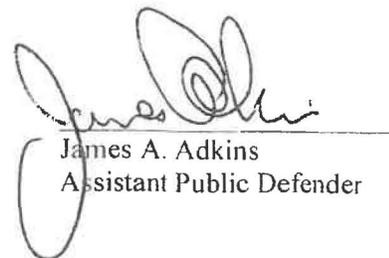
6. The wiretap investigation revealed Greg Coleman sold drugs to more than twenty individuals in Fayette County.
7. This defendant contacted Greg Coleman several times by phone to procure drugs.
8. Greg Coleman gave a recorded Statement to the DEA wherein he identified several of the defendants charged in these Indictments. Coleman admitted to distributing over 16 Kilograms of Heroin.
9. The State does not have any evidence that the individuals who were the subject of this investigation were in business with each other. While there may be evidence that the separate defendants run in the same social circle, and knew about each other's dealings with Mr. Coleman, there is no evidence to present at trial that the individual defendants conspired with each other.
10. Both parties acknowledge that the quantity of drugs the Defendant purchased from Coleman, whether the Defendants delivered drugs to others and whether any delivery by the Defendant to others was a product of the Defendant's agreement with Mr. Coleman are matters for the jury to determine.

Wherefore, the parties acknowledge that the facts as set out in the above ten (10) paragraphs are true and accurate to the best of their knowledge but are subject to change upon the introduction of testimony and evidence at the trial in this matter.

Respectfully Submitted,



Elizabeth K. Campbell
Assistant Prosecuting Attorney



James A. Adkins
Assistant Public Defender

EXHIBIT B

IN THE CIRCUIT COURT OF FAYETTE COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

VS.

**SAMANTHA FARRELL
LOUIS FIGUROA
BLADE GOODMAN
BRANDON JOHNSON
JUSTIN LEGG
ALISHIA LOOFFLER
STEVEN NOWLIN**

**THOMAS H. EWING, JUDGE
INDICTMENT NO. 19-F-99
INDICTMENT NO 19-F-100
INCITMENT NO 19-F-108
INDICTMENT NO. 19-F-124
INDICTMENT NO 19-F-134
INDICTMENT NO 19-F-135
INDICTMENT NO 19-F-142**

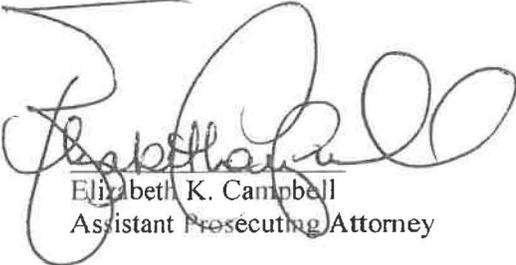
JOINT STIPULATION OF FACTS

1. This defendant was Indicted by the May, 2019 Grand Jury based on the testimony of Detective C.A. Young of the Central West Virginia Drug Task Force.
2. In October 2017 the Task Force began an investigation into individuals named Greg Coleman and Ryan Johnson after controlled purchases were made from Mr. Coleman's residence.
3. On May 23, 2018 the DEA, working in conjunction with the Task Force applied for and was granted a Wire Intercept Order allowing them to listen in and record conversations between Greg Coleman as well as Ryan Johnson and Bobby Mack.
4. During this wiretap investigation law enforcement from the DEA and the Task Force began heavy surveillance of subjects associated with Mr. Coleman and Mr. Johnson. The wiretap investigation revealed that Ryan Johnson would buy heroin and oxycodone from another subject of this investigation, James Terry and Mr. Terry's associates. Greg Coleman was found to buy heroin and oxycodone from Ryan Johnson and Bobby Mack. Coleman bought oxycodone and methamphetamine from Gary Harvey and Carla and Terry Remy.
5. Law enforcement was able to capture the conversations about the sale of heroin and other substances from the calls and activities of the separate defendants charged in these Indictments with Conspiracy under West Virginia Code §60A-4-14. All of these defendants were communicating with their supplier, Mr. Coleman about the purchase and sale of Heroin.

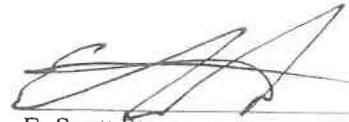
6. The wiretap investigation revealed Greg Coleman sold drugs to more than twenty individuals in Fayette County.
7. This defendant contacted Greg Coleman several times by phone to procure drugs.
8. Greg Coleman gave a recorded Statement to the DEA wherein he identified several of the defendants charged in these Indictments. Coleman admitted to distributing over 16 Kilograms of Heroin.
9. The State does not have any evidence that the individuals who were the subject of this investigation were in business with each other. While there may be evidence that the separate defendants run in the same social circle, and knew about each other's dealings with Mr. Coleman, there is no evidence to present at trial that the individual defendants conspired with each other.
10. Both parties acknowledge that the quantity of drugs the Defendant purchased from Coleman, whether the Defendants delivered drugs to others and whether any delivery by the Defendant to others was a product of the Defendant's agreement with Mr. Coleman are matters for the jury to determine.

Wherefore, the parties acknowledge that the facts as set out in the above ten (10) paragraphs are true and accurate to the best of their knowledge but are subject to change upon the introduction of testimony and evidence at the trial in this matter.

Respectfully Submitted,



Elizabeth K. Campbell
Assistant Prosecuting Attorney



E. Scott Stanton
Chief Deputy Public Defender

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

STATE OF WEST VIRGINIA

v.

**Indictment No. 19-F-74
Judge Thomas H. Ewing**

**PATRICK W. BRAGG,
Defendant.**

STATE OF WEST VIRGINIA

v.

**Indictment No. 19-F-84
Judge Thomas H. Ewing**

**LESLIE P. COPELAND,
Defendant.**

STATE OF WEST VIRGINIA

v.

**Indictment No. 19-F-98
Judge Thomas H. Ewing**

**BRITTANY N. FARRELL,
Defendant.**

STATE OF WEST VIRGINIA

v.

**Indictment No. 19-F-99
Judge Thomas H. Ewing**

**SAMANTHA D. FARRELL,
Defendant.**

STATE OF WEST VIRGINIA

v.

**Indictment No. 19-F-100
Judge Thomas H. Ewing**

**LOUIS A. FIGUEROA,
Defendant.**

STATE OF WEST VIRGINIA

v.

**Indictment No. 19-F-108
Judge Thomas H. Ewing**

**BLADE GOODMAN,
Defendant.**

STATE OF WEST VIRGINIA

v.

**Indictment No. 19-F-118
Judge Thomas H. Ewing**

**RODGER D. HANCOCK,
Defendant.**

STATE OF WEST VIRGINIA

v.

**Indictment No. 19-F-124
Judge Thomas H. Ewing**

**BRANDON C. JOHNSON,
Defendant.**

**ORDER CONSOLIDATING CASES FOR LIMITED PURPOSE OF CERTIFYING
QUESTIONS TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
AND STAYING CASES PENDING DECISION BY THE SUPREME COURT**

Each of the above-styled cases involves a single conspiracy charge against the named defendant, under West Virginia Code Section 60A-4-414. The underlying facts in each of the above-styled cases are substantially similar and involve the same, unindicted co-conspirator(s). Various defense motions, have been filed in each of these cases, which present the Court with the same or nearly identical legal issues of first impression under West Virginia Code Section 60A-4-414 and a critical conflict of interest question.¹ By separate order of even date herewith (**copy attached hereto**), entered in **Indictment No. 19-F-134**, (“Certification Order”) this Court is certifying these legal questions to the Supreme Court of Appeals of West Virginia, pursuant to West Virginia Code Section 58-5-2 and Rule 17 of the West Virginia Rules of Appellate Procedure. As stated in the Certification Order, this Court finds certification to be the most judicious and economic manner in which to resolve the legal questions rather than each of the cases proceeding to trials and piece-meal appeals.

In preparing the Certification Order, this Court had concerns about the burden on the State, Defense counsel and the West Virginia Supreme Court Clerk’s Office of handling sixteen (16) simultaneous and nearly identical certification orders and the filings and briefings required under Rule 17 of the West Virginia Rules of Appellate Procedure. After consultation with the Clerk’s

¹ The Fayette County Public Defender’s office represents thirteen (13) of the above-named defendants, and court-appointed counsel, Thomas A. Rist, represents two (2) of the above-named defendants. This does not include the similar and related indictments pending in the Circuit Court of Fayette County before Judge Paul M. Blake, Jr., the majority of which defendants are also represented by the Fayette County Public Defender’s office. Because the questions presented are pending before both divisions of the Court, there is a risk for conflicting decisions to be issued.

The Court additionally notes that the conflict of interest question does not affect Windy D. Pittman (19-F-146) or Leslie P. Copeland (19-F-84), who have separate counsel. However, the other legal issues remain the same.

Office, this Court finds that consolidation of the above-styled cases for the limited purpose of certifying the common legal issues would promote judicial economy and would benefit all parties involved.

In the absence of any rule or statute providing guidance on consolidation of criminal cases for the limited purpose of certifying questions, the Court evaluated consolidation under the standards set forth for consolidation of civil cases under Rule 42(a) of the West Virginia Rules of Civil Procedure. All of the above-styled cases involve common questions of law and fact, and consolidation will avoid unnecessary costs and delay. Specifically, parties will only need to prepare, copy, file and serve a joint appendix and brief in one (1) case rather than in multiple cases. Similarly, the Office of the Clerk of the Supreme Court of Appeals will only need to manage one (1) Certification Order and related filings, rather than sixteen (16). Furthermore, no defendant will be prejudiced by consolidation in that the relevant facts of each case are substantially similar, for purposes of the certified questions. Finally, consolidation of the cases for certification should provide for a more efficient resolution of the pending legal issues.

For all of the foregoing reasons, this Court concludes that each of the above-styled indictments should be consolidated for the limited purpose of certifying to the Supreme Court of Appeals of West Virginia the identical legal issues raised in each of these cases.

Accordingly, it is hereby **ORDERED** that the above-styled cases shall be consolidated for the limited purpose of certification of questions to the Supreme Court of Appeals of West Virginia; and

It is further **ORDERED** that, for purposes of certification only, **Indictment Number 19-F-134** shall be the lead case in that, for purposes of the certification of questions only, all filings related to such certification shall be filed only in **Indictment Number 19-F-134**²; and

It is further **ORDERED** that the final decision or opinion of the Supreme Court of Appeals of West Virginia regarding the certified questions shall be filed in each of the above-styled cases; and

It is further **ORDERED** that all further proceedings in the above-styled cases be, and are hereby, stayed, pursuant to West Virginia Code Section 58-5-2, until further order of this Court or until such time as the certified questions have been decided and the decision thereof certified back to this Court.

It is further **ORDERED** that the Clerk of this Court is directed to transmit attested copies of this order to the following:

Edythe Nash Gaiser, Clerk of Court
State Capitol, Rm E-317
1900 Kanawha Blvd. East
Charleston, WV

Elizabeth K. Campbell,
Assistant Prosecuting Attorney for Fayette County
108 E. Maple Ave.
25305 Fayetteville, WV 25840

James A. Adkins
Fayette County Public Defender
102 Fayette Ave.
Fayetteville, WV 25840

E. Scott Stanton
Fayette County Public Defender
102 Fayette Ave.
Fayetteville, WV 25840

Counsel for the following:

*Brittany N. Farrell
Rodger D. Hancock
Joshua L. Pittman
Patricia A. Rivers
Kevin M. Walton*

Counsel for the following:

*Samantha D. Farrell
Louis A. Figueroa
Blade Goodman
Brandon C. Johnson
Justin K. Legg*

² The Court deems Indictment Number 19-F-134 the appropriate lead case in that the relevant motions and responses have been filed therein, and oral arguments on each of those motions and responses were held on August 14, 2019. Although Defendant's Motion for Determination of Conflict was not filed in Indictment Number 19-F-134 (that motion was only filed in Indictment Numbers 19-F-99, 19-F-100 and 19-F-124, although it relates to all of these cases), the State's Response to the motion was filed in 19-F-134, and oral arguments on the motion were held during the hearing on Indictment Number 19-F-134 on August 14, 2019.

*Alicia A. Loeffler
Steven M. Nowlin*

Thomas A. Rist
103 Fayette Ave.
Fayetteville, WV 25840

*Counsel for the following:
Patrick W. Bragg
Tyler G. Randall*

Christopher S. Moorehead
219 North Court St.
Fayetteville, WV 25840

Counsel for Windy D. Pittman

Jeffrey A. Davis
P.O. Box 5
Clay, WV 25043

Counsel for Leslie P. Copeland

ENTERED this 27th day of September, 2019.


THOMAS H. EWING, JUDGE

A TRUE COPY of an order entered
September 27, 2019
Teste: Christy L. Garrett
Circuit Clerk Fayette County, WV