

State v. Hundley
Appeal from 22-F-16

SECTION 16 - NATURE OF CASE, RELIEF SOUGHT, AND OUTCOME BELOW

This is a direct appeal from the conviction and sentence of Mr. Scott Hundley following a jury trial. On May 20, 2022, a Jefferson County petit jury returned a guilty verdict to the charge of Murder in the Second Degree.

A recidivist trial was held on October 25, 2022, after the State filed a recidivist information against Mr. Hundley, pursuant to W. Va. Code § 61-11-18(b), alleging that Mr. Hundley had previously been convicted of a violent felony offense and sought an additional five years to be added to his sentence. The recidivist jury found Mr. Hundley to be the same person convicted of the prior felony of unlawful assault on April 25, 2017.

On November 3, 2022, following a sentencing hearing, the Jefferson County Circuit Court sentenced Mr. Hundley to a determinate sentence of forty (40) years in prison for the conviction for Murder in the Second Degree and an additional five (5) years in prison on the recidivist action, with a total determinate sentence of forty-five (45) years in prison. The court denied Mr. Hundley's motion for a new trial.

Mr. Hundley is seeking appeal to have his conviction for Murder in the Second Degree vacated and for a new trial to be granted. Mr. Hundley is further seeking for this Court to overturn the recidivist finding, vacate his sentence, and order a new sentencing.

SECTION 17 - ASSIGNMENTS OF ERROR

Undersigned counsel was hired several days prior to this notice of appeal being filed.

Undersigned counsel reserves the right to seek review of additional issues following the complete review of the record below and will disclose any additional issues to Respondent in his Rule 7(e) disclosure.

1. The circuit court erred in failing to suppress Mr. Hundley's statement to law enforcement where he invoked his right to counsel and was not afforded an attorney.
2. The circuit court erred in failing to allow Mr. Hundley to present the affirmative defense of self defense, where Mr. Hundley established a prima facie case of self defense.
3. The circuit court erred by prohibiting Mr. Hundley from arguing and introducing into evidence at trial that he had given a statement to law enforcement claiming his actions were based on self defense.
4. The circuit court erred in allowing the State to sandbag its closing argument by bringing up argument in rebuttal that was not mentioned in State's initial closing or in Mr. Hundley's closing argument.
5. The circuit court erred in not allowing Mr. Hundley to have surrebuttal on the issue that the State first introduced in rebuttal-- the lack of blood on the firearm found in the decedent's pants pocket.
6. The circuit court erred in prohibiting Mr. Hundley from introducing evidence of the decedent's drug usage and selling and drug intoxication on the day of the incident, which was relevant to show the decedent's state of mind at the time of the incident.

7. The circuit court erred in prohibiting Mr. Hundley from introducing evidence from witness Alexandra Saylor who was on the scene of the incident and identified the decedent as a know drug dealer in her neighborhood.
8. The circuit court erred in admitting State's exhibits 20, 21, and 22 over Mr. Hundley's objection as being unduly prejudicial by depicting blood and the issue that decedent received his injury while inside his vehicle was not contested.
9. The circuit court erred in giving the jury the State's instruction on permissible inference over Mr. Hundley's objection.
10. The circuit court erred in denying Mr. Hundley's motion for a new trial.
11. The circuit court erred in failing to grant Mr. Hundley's motion for a directed verdict at the close of the State's case and of the defense presentation and erred in failing to find that the verdict of guilty of Murder in the Second Degree was insufficient as a matter of law.

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Upon conclusion of the evidence on May 19, 2022, the Court entertained any instructions offered by the parties and their objections to the final charge were preserved. The instructions, as a written Court's charge, were read to the jury the same day. Counsel then presented their closing arguments immediately thereafter. Upon conclusion of closing arguments, the two alternates were excused. The jury then began its deliberations and returned with the following

verdict the next day, signed and dated by the foreperson:

Count One: GUILTY of Murder of the Second Degree

No objections to the form of the verdict were made by either party. The jury was polled at the request of the Defendant and each juror answered that the verdict was their individual true verdict. The verdict is ORDERED entered herein.

It is hereby ORDERED and ADJUDGED that the Defendant, Scott Michael Andrew Hundley, by verdict of the jury now stands CONVICTED of Murder of the Second Degree, in violation of *W.Va. Code* §61-2-1, a felony, a lesser-included offense of the sole count of the Indictment.

Upon inquiry, the Defendant requested a pre-sentence investigation. It is ordered that the Probation Department conduct a pre-sentence investigation, prepare and report, and distribute that report as required.

The Defendant is remanded to the custody of the West Virginia Division of Corrections and Rehabilitation to be held without bail. Pursuant to *W.Va. Code* §15A-3-16(i), the cost of the Defendant's incarceration in this case shall be borne by the West Virginia Division of Corrections and Rehabilitation beginning the calendar day following the date of the Defendant's felony conviction.

The parties shall appear again for **sentencing on July 14, 2022, at 11:00 a.m.**

The Clerk shall enter this Order and send copies of this Order to counsel of record, the Probation Department, and the Eastern Regional Jail, and the West Virginia Division of Corrections and Rehabilitation.

/s/ Debra McLaughlin
Circuit Court Judge
23rd Judicial Circuit

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In the Circuit Court of Jefferson County, West Virginia

State of West Virginia,
Plaintiff,

v.

Case No. CC-19-2022-F-16
Judge Debra McLaughlin

SCOTT MICHAEL HUNDLEY,
Defendant

RECIDIVIST JURY TRIAL ORDER

On October 25, 2022, this matter came on the Court's docket for a jury trial upon a Recidivist Information filed on May 24, 2022, pursuant to *W.Va. Code* §61-11-19. The State of West Virginia appeared by Adam J. Ward and Neil J. Zahradnik, Assistant Prosecuting Attorneys for Jefferson County. The Defendant, Scott Michael Andrew Hundley, appeared in person and by counsel, B. Craig Manford, Esq.

The Court impaneled a qualified petit jury from the panel summoned. During the trial, the State called several witnesses, admitted exhibits, and rested its case. The Court then engaged the Defendant in a Neuman dialog. The Defendant chose not to testify. The Defense did not call any witnesses. The Defendant moved for judgment of acquittal at the close of the State's case, that motion was denied for the reasons stated on the record.

Upon conclusion of the evidence, the Court entertained instructions offered by the parties. The Defendant's objections to the instructions are preserved. The instructions, as a written Court's charge, were read to the jury the same day. Counsel then presented their closing arguments.

The jury returned from deliberations the same day with a verdict finding that the Defendant, Scott Michael Andrew Hundley, is the same person who was convicted and sentenced on April 25, 2017, of Unlawful Assault, a crime punishable by confinement in the

penitentiary, in Jefferson County, West Virginia, Circuit Court Case No. CC-19-2017-F-67.

After the parties inspected the verdict, no objections to the form of the verdict were made. The jury was polled at Defendant's request. Each juror individually affirmed it was their verdict. The Clerk is ordered to enter the verdict of the jury.

It is hereby ORDERED and ADJUDGED that the Defendant, Scott Michael Andrew Hundley, by the verdict of the jury, has been found to be the same individual that was previously convicted in the United States of a crime punishable by confinement in a penitentiary as charged in the Information pursuant to *W.Va. Code* §61-11-18(b).

The Defendant is remanded to the custody of the Administrator of the Eastern Regional Jail without bail.

The parties shall appear again for sentencing on November 3, 2022, at 9:00 a.m.

The Clerk shall enter this order and send copies of this order to counsel of record, the Probation Department, and the Eastern Regional Jail.

/s/ Debra McLaughlin
Circuit Court Judge
23rd Judicial Circuit

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In the Circuit Court of Jefferson County, West Virginia

State of West Virginia,
Plaintiff,

v.

Case No. CC-19-2022-F-16
Judge Debra McLaughlin

SCOTT MICHAEL HUNDLEY,
Defendant

Sentencing Order

This matter came before the Court for a Sentencing Hearing on the 3rd day of November 2022, upon the appearance of the State of West Virginia by Adam J. Ward and Neil J. Zahradnik, Assistant Prosecuting Attorneys for Jefferson County, and Defendant, in person, and with counsel, B. Craig Manford, Esq.

Whereupon, the Court began by addressing the Defendant's motions for a new trial and motion for judgment of acquittal. The Defendant made a brief argument in support of his motions, and the State relied upon its arguments in its written response to the Defendant's motion. After considering the arguments and pleadings of the parties, it is hereby **ORDERED** the Defendant's motions are **DENIED**.

The Court then inquired if the parties had received a copy of the Probation Department's Presentence Investigation Report. The parties reported they received copies of the Report, and the State indicated that it had no corrections or exceptions to report. The Defendant noted some corrections as can be seen more fully from the record of these proceedings.

The Court then proceeded to hear sentencing arguments from the parties. The Defendant argued in favor of a sentence in the range of twenty (20) to thirty (30) years plus an additional five (5) years for the recidivist action. The Defendant did briefly exercise his right to allocution.

The Court then heard victim impact statements from Lisa Cekada and Brittany Cekada.

Written copies of their statements were filed with the Clerk of the Court. The State then argued that the Defendant should be sentenced to forty (40) years in prison for his conviction of Murder in the Second Degree plus an additional five (5) years pursuant to the recidivist action. Additionally, the State requested that the Defendant be ordered to pay four thousand nine hundred and five dollars and twenty-five cents (\$4,905.25) in restitution.

The Court then inquired of Defendant, his counsel, and the State if any party had any just or legal cause why sentence should not be pronounced. No party provided the Court with any cause to delay sentencing.

After the conclusion of all of the evidence submitted in this case and the arguments of counsel, it is the sentence of the law and judgment of the Court that Defendant, Scott Michael Andrew Hundley , is **sentenced to a determinate term forty years in the state penitentiary house** for his conviction of Murder in the Second Degree, in violation of W.Va. Code § 61-2-1, a felony, as charged in Count One of the Indictment. Furthermore, pursuant to the recidivist action filed against the Defendant and the jury decision finding him to be an habitual offender, an additional five (5) years is added to his penitentiary sentence for **a total aggregate determinate sentence of forty-five (45) years.**

The Court adopts and incorporates as part of this written order all findings of fact and conclusions of law made on the record in support of this sentence.

It is further ORDERED that the Defendant shall be given credit upon his sentence in this case, which would determine the following dates:

CONVICTION DATE:	May 20, 2022
SENTENCING DATE:	NOVEMBER 3, 2022
EFFECTIVE SENTENCING DATE:	AUGUST 7, 2021

Defendant shall be transported to and held in a facility under the control of the Commissioner of the Division of Corrections and Rehabilitation. The Court ORDERED that the

cost of incarceration in jail pending transfer shall be paid by the Commissioner consistent with the provisions of W.Va. Code § 15A-4-11.

Additionally, it is **ORDERED** that Defendant shall pay restitution totaling \$4,905.25 to the Circuit Clerk of Jefferson County located at the physical address of 119 North George Street, Charles Town, West Virginia and with a mailing address of P.O. Box 1234, Charles Town, West Virginia 25414. Payment shall be made in a form accepted by the Clerk such as a money order or cashier's check. It is further **ORDERED** that the West Virginia Division of Corrections and Rehabilitation deduct the statutorily allowed amount from the earnings and accounts of Defendant, as authorized pursuant to W.Va. Code § 15A-4-11, to assist Defendant in paying the owed restitution.

The Jefferson County Circuit Clerk shall transmit any money received from Defendant toward restitution to Thomas and Lisa Cekada.

It is **ORDERED** that Defendant pay the costs of this action as assessed by the Jefferson County Circuit Clerk after full restitution is made. It is further **ORDERED** that the warden of the correctional facility in which Defendant is housed shall deduct from the earnings of Defendant to pay said costs of this action as authorized in *W.Va. Code* § 15A-4-11

The Court further **ORDERS** pursuant to Chapter 62, Article 4, Section 17 of the Code of West Virginia, that the Defendant shall forthwith upon his/her release, sign a payment plan with the Circuit Clerk for the payment of court costs in an amount equal to \$10 per month unless his/her current income justified a higher amount per the code. The Clerk is permitted to assess late fees for any payment not paid within 30 days of its due date under the signed agreement unless the Defendant contacts the Clerk and makes arrangements for a new payment plan pursuant to this statute. If payment is not made within 90 days of the date due under the payment plan, the Clerk is directed to enter a judgment lien pursuant to the procedure set forth in Chapter 62, Article 4, Section 17 of the Code of West Virginia, or remit the matter to a collection

pursuant to the same code

The Court advised Defendant of his appellate rights and reappointed Mr. Manford to discuss and review appellate issues with Defendant. If counsel believes Defendant would be better served having new counsel for the appeal, he has leave to file a motion to withdraw and have new counsel appointed.

The Clerk shall enter this Order and send attested copies to all counsel of record, the Eastern Regional Jail, and the West Virginia Division of Corrections and Rehabilitation. The Clerk shall then remove this matter from the Court's active docket and report it as CLOSED.

/s/ Debra McLaughlin
Circuit Court Judge
23rd Judicial Circuit

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