

APPENDIX A – RULES OF APPELLATE PROCEDURE

NOTICE OF APPEAL

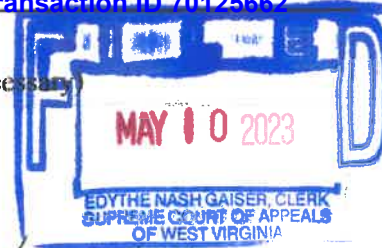
Intermediate Court of Appeals

Supreme Court of Appeals of West Virginia

ATTACH
COPIES OF ALL
ORDERS
SCA EFiled: Jun 04 2023
04:36PM EDT
Transaction ID 70125662

1. COMPLETE CASE TITLE AND CASE NUMBERS IN LOWER TRIBUNAL
(Include all party designations, such as plaintiff, intervenor, etc. Use an extra sheet if necessary.)

NO # 22-F-361-K



State of W.Va v Andrew W. Miller

2. COUNTY OR LOWER TRIBUNAL APPEALED FROM AND NAME OF JUDGE(S) WHO ISSUED DECISION(S) (If the presiding judge was appointed by special assignment, include an explanation of the circumstances on an extra sheet.)

Railcar County & H. I. Kirkpatrick III

3. PETITIONER(S) (list all parties who join in the appeal and provide the name, firm name, address, phone number, and e-mail address of counsel of record for each party. Self-represented parties must provide an address, phone number, and e-mail address.)

Andrew Miller
1200 Airport rd
Beaver, W.Va
25813

4. RESPONDENT(S) (list all parties against whom the appeal is taken and provide the name, firm name, address, phone number, and e-mail address of counsel of record for each party. For self-represented parties provide an address, phone number, and e-mail address.)

Brain Parsons (304)
255-0148 112 N.
Herber St Beckley
W.Va 25801 Email
raleiahparsons@out
mail.com

5. NON-PARTICIPANT(S) (list any parties to the lower tribunal action that will not be involved in the appeal and provide the name, firm name, address, telephone number and e-mail address of counsel of record for each non-participant. Provide the name, address, and telephone number of any self-represented litigant who was a party to the lower tribunal action but is not participating in the appeal.)

APPENDIX A – RULES OF APPELLATE PROCEDURE

CASE NAME: _____

6. DATE OF ENTRY OF JUDGMENT ON APPEAL

March 2, 23

DATE OF ENTRY OF JUDGMENT ON POST-
TRIAL MOTIONS, IF ANY

**7. CRIMINAL CASES: DEFENDANT'S
SENTENCE AND BAIL STATUS**

\$2,000⁺ Cash only

8. **ABUSE AND NEGLECT CASES:** On an extra sheet, provide a brief list of the names, ages, and parent's names of all minor children, a description of the current status of the parental rights of each parent as of the filing of the notice of appeal, a description of the proposed permanent placement of each child, and the name of each guardian ad litem appointed in the case.

9a. Is the order or judgment appealed a final decision on the merits as to all issues and all parties? ☒ YES / ☐ NO

If your answer is no, was the order or judgment entered pursuant to R. Civ. P. 54(b)? ☐ YES / ☐ NO

If your answer is no, you must attach a brief explanation as to why the order or judgment being appealed is proper for the court to consider.

9b. Is the family court order entered under W. Va. Code 48-9-203(f)? ☐ YES / ☐ NO

10. Has this case previously been appealed? ☐ YES / ☒ NO

If yes, provide the case name, docket number and disposition of each prior appeal.

11. Are there any related cases currently pending in the Intermediate Court or Supreme Court or in a lower tribunal?
☐ YES / ☒ NO If yes, cite the case, provide the status, and provide a description of how it is related.

12. Is any part of the case confidential? ☐ YES / ☒ NO

If yes, identify which part and provide specific authority for confidentiality.

13. If an appealing party is a corporation an extra sheet must list the names of parent corporations and the name of any public company that owns ten percent or more of the corporation's stock. If this section is not applicable, please so indicate below.

☐ The corporation who is a party to this appeal does not have a parent corporation and no publicly held company owns ten percent or more of the corporation's stock.

14. Do you know of any reason why one or more of the Intermediate Court Judges or Supreme Court Justices should be disqualified from this case? ☐ YES / ☒ NO If yes, set forth the basis on an extra sheet. Providing the information required in this section does not relieve a party from the obligation to file a motion for disqualification in accordance with Rule 33.

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CASE NAME: _____

NOTICE OF APPEAL

15. Is a transcript of proceedings necessary for the Court to fairly consider the assignments of error in the case?

☒ YES / ☐ NO If yes, you must complete the appellate transcript request form on page 4 of this form.

16. **NATURE OF THE CASE, RELIEF SOUGHT, and OUTCOME BELOW** (Limit to two double-spaced pages; please attach.)

17. **ASSIGNMENTS OF ERROR** (Express the assignments in the terms and circumstances of the case but without unnecessary detail. Separately number each assignment of error and for each assignment: (1) state the issue; (2) provide a succinct statement as to why the court should review the issue. Limit to eight pages double-spaced; please attach.)

18. ATTACHMENTS

Attach to this notice of appeal the following documents in order: (1) extra sheets containing supplemental information in response to sections 1-14 of this form; (2) a double-spaced statement of the nature of the case, not to exceed two pages, as material required by section 16 of this form; (3) a double-spaced statement of the assignments of error not to exceed eight pages as required by section 17 of this form; (4) a copy of the lower tribunal's decision or order from which you are appealing; (5) a copy of any order deciding a timely post-trial motion; (6) a copy of any order extending the time period for appeal; and (7) the statutory docket fee of \$200 (made payable to the State of West Virginia if made by check or money order); or a copy of the lower court's granting of the application for fee waiver in this case. The statutory docket fee does not apply to criminal cases, appeals from the Workers' Compensation Board of Review or original jurisdiction actions. The statutory docket fee does not apply to appeals from family court to the Intermediate Court of Appeals; however, the statutory docket fee applies to appeals from family court to the Supreme Court of Appeals, whether taken directly or after an appeal to the Intermediate Court of Appeals.

NOTICE:

You must file a separate affidavit and application anytime your financial situation no longer meets the official guidelines or anytime the court orders you to do so.

CERTIFICATIONS

I hereby certify that I have performed a review of the case that is reasonable under the circumstances and that the contents of the Notice of Appeal are accurate and complete.

3.9.23
Date

Andrew Miller
Counsel of record or self-represented party

I hereby certify that on or before the date below, copies of this notice of appeal and attachments were served on all parties to the case, and copies were provided to the clerk of the circuit court from which the appeal is taken and to each court reporter from whom a transcript is requested.

3.9.23
Date

[Signature]
Counsel of record or self-represented party

APPENDIX A – RULES OF APPELLATE PROCEDURE

CASE NAME: _____

APPELLATE TRANSCRIPT REQUEST FORM

INSTRUCTIONS:

1. If a transcript is necessary for your appeal, you must complete this form and make appropriate financial arrangements with each court reporter from whom a transcript is requested.
2. Specify each portion of the proceedings that must be transcribed for purposes of appeal. See Rule of Appellate Procedure 9(a).
3. A separate request form must be completed for each court reporter from whom a transcript is requested. If you are unsure of the court reporter(s) involved, contact the circuit clerk's office for that information.
4. Failure to make timely and satisfactory arrangements for transcript production, including necessary financial arrangements, may result in denial of motions for extension of the appeal period, or may result in dismissal of the appeal for failure to prosecute.

Name of Court Report, ERO, or Typist: K. Meyers
 Address of Court Reporter: 272 main St Beckley, WV
 Case No.: 22-361-K County: Putnam Date of Final Order: _____

Date of Proceeding	Type of Proceeding	Length of Proceeding	Name of Judge(s)	Portions Previously Prepared
March	Pre-trial	1 hr	Kirk	
2	trial		patrick	
23			H. J.	
3-20-23	trial	40 min		
		hrs		

CERTIFICATIONS

I hereby certify that the transcripts requested herein are necessary for a fair consideration of the issues set forth in the Notice of Appeal.

I hereby further certify that I have contacted the court reporter and satisfactory financial arrangements for payment of the transcript have been made as follows:

- ☐ Private funds. (Deposit of \$ _____ enclosed with court reporter's copy. Attach documentation.)
- ☒ Criminal or habeas corpus appeal with fee waiver (Attach order appointing counsel or order stating defendant is eligible.)
- ☐ Abuse and neglect or delinquency appeal with fee waiver (Attach order appointing counsel.)
- ☐ Advance payment waived by court reporter (Attach documentation.)

3-11-23
 Date mailed to court reporter

[Signature]
 Counsel of record or self-represented party

Section 4th

Parties:

Clerk of Circuit Court
Court Reporter
J. H. Kirkpatrick
222 Main St
Worcester, Mass 01581
(304) 255-9135
K. McCosmion Court

APPENDIX A – RULES OF APPELLATE PROCEDURE

NOTICE OF APPEAL – EXTRA SHEET

CASE NAME: _____

Response to SECTION: 16 # _____

Motion:

malicious Wounding, Prohibited person in possession of a Firearm on Wanton Endangerment (2x).

Relief:

Motion Suppress Firearm due to a lack of Evidence and Connection to the Petitioner Miller... Therefore it is illegally obtain Firearm without D.N.O., eyewitness identification, G.I.R., nor Ballistics cannot stand in the face of the law.

Outcome:

Lower Court deny motion to Suppress Weapon.

* Section 17[#]

* Assignment of Error

* Issue 8

The lower Court denied the motion to suppress the weapon because the laboratory results claim the Petitioner's D.N.A. is located on the grip's of the weapon.

* The Court should review this issue 8

1. The weapon has no connection to the crime scene to prove malicious wounding.
2. No shell casing was recovered at the crime scene.
3. No bullet.
4. No ballistics test.
5. No open shot residue.
6. No one id the weapon nor claimed weapon was in Co

In the Petitioner's possession.
The d.w.d. on the trigger, on
buttons, and slide is to
low a percentage to determine
a primary.

Note: The lower Court has
not made a Court Order as
of right now.

Note: Lower Court appointed
Counsel in this case. SEE:
Docket Sheet.

This is a Criminal
Case.



West Virginia E-Filing Notice

CC-41-2022-F-361

Judge: Harry Kirkpatrick

To: Michael E. Froble
frobalelaw@aol.com

NOTICE OF FILING

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

State of West Virginia v. ANDREW WAYNE MILLER

CC-41-2022-F-361

The following order - case - final was FILED on 4/4/2023 1:59:56 PM

Notice Date: 4/4/2023 1:59:56 PM

Robert M. McComas
CLERK OF THE CIRCUIT COURT
Raleigh County
222 Main Street
BECKLEY, WV 25801

(304) 255-9135
Robert.McComas@courtsww.gov

In the Circuit Court of Raleigh County, West Virginia

State of West Virginia,
Plaintiff,

v.

Case No. CC-41-2022-F-361
Judge Harry Kirkpatrick

ANDREW WAYNE MILLER,
Defendant

CONVICTION AND SENTENCING ORDER

This matter came on to be heard on the Twentieth day of March 2023, the State of West Virginia appearing by Brian D. Parsons, Chief Assistant Prosecuting Attorney, and the defendant, Andrew Miller, appearing in person and by his counsel, Michael Froble, for the purpose of a trial by jury of the above-captioned criminal matter.

Whereupon, the defendant having been informed of the charges contained in the above-captioned felony indictment and having entered a plea of not guilty to the charges therein, there was duly chosen, impaneled and sworn a lawful jury,

The jury heard the opening statements of counsel for the State and counsel for the defendant. The jury then heard the evidence and testimony presented on behalf of the State of West Virginia.

Whereupon, at the close of the State's case in chief and out of the presence of the jury, counsel for the defendant moved the Court to grant a judgment of acquittal as to the charges contained in the Indictment, to which motion the State objected. The Court, after mature consideration, finds that viewing the evidence in a light most favorable to the State, the defendant's motion for judgment of acquittal is hereby **DENIED.**

Thereupon, the defendant was offered the opportunity to present evidence and

testimony on his own behalf. The defendant, after being advised by the Court, made a knowing, intelligent decision to testify in his own defense. The defense offered no additional evidence and thereafter rested. The State presented no evidence in rebuttal.

Thereupon, the jury heard the instructions of the Court and the closing arguments of counsel and retired to its jury room to consider of its verdicts. After a time, the jury returned to the courtroom with the following verdicts:

JURY VERDICT – COUNT ONE

We, the jury, find the defendant, Andrew Miller, guilty of Wanton Endangerment, a felony, as charged in Count One of the Indictment.

March 23, 2023
DATE

/s/ Jason Lafferty
JURY FOREPERSON

JURY VERDICT – COUNT TWO

We, the jury, find the defendant, Andrew Miller, not guilty of Wanton Endangerment, a felony, as charged in Count Two of the Indictment.

March 23, 2023
DATE

/s/ Jason Lafferty
JURY FOREPERSON

JURY VERDICT – COUNT THREE

We, the jury, find the defendant, Andrew Miller, guilty of Malicious Wounding, a felony, as charged in Count Three of the Indictment.

March 23, 2023
DATE

/s/ Jason Lafferty
JURY FOREPERSON

JURY VERDICT – COUNT FOUR

We, the jury, find the defendant, Andrew Miller, guilty of Felon in Possession of a Firearm, a felony, as charged in Count Four of the Indictment.

March 23, 2023
DATE

/s/ Jason Lafferty
JURY FOREPERSON

Whereupon, the Court inquired of the jury if said verdicts were the verdicts of each and every one of the jurors to which all jurors responded affirmatively.

The Court and counsel inspected the verdict forms and found them to be in proper form.

The jury was informed they would remain empaneled and adjourn pending the commencement of recidivist proceedings herein. The Court set the recidivist information for trial on March 24, 2023 and adjourned.

On March, 24, 2023, a recidivist information was filed by the State of West Virginia alleging two prior violent felony convictions which qualify under *West Virginia Code 61-11-18*. Thereafter, the defendant was asked to answer the allegations set forth in Information No. 23-IF-81, to which the defendant responded in the negative. The defendant discharged trial counsel in the matter, preferring to proceed *pro se*, against the advice of the trial counsel. The Court accepted the knowing, intelligent and voluntary decision to proceed *pro se* with trial counsel acting in an advisory role.

THEREAFTER, the defendant, *pro se*, moved the Court to continue the matter, to which the Court, having heard arguments in support of and in opposition, to did DENY the motion and the matter proceeded to trial.

The State offered two witnesses and various exhibits. The defendant, declined to offer any evidence. The parties presented closing summations and the jury retired to consider of its verdict on the information. After a time, the jury returned to the courtroom with the following verdicts:

JURY VERDICT – QUESTION ONE

We, the jury, find the defendant, Andrew Miller, is the subject of the allegation set forth in Question One of the Information.

March 24, 2023
DATE

/s/ Jason Lafferty
JURY FOREPERSON

JURY VERDICT – QUESTION TWO

We, the jury, find the defendant, Andrew Miller, is the subject of the allegation set forth in Question Two of the Information.

March 24, 2023
DATE

/s/ Jason Lafferty
JURY FOREPERSON

Thereupon, the Court expressed its appreciation to the jury and excused the jury from further service in this matter.

The Court does hereby accept the jury's verdicts in this matter. The Court further **ADJUDGES** the defendant **GUILTY** of the felony offenses of WANTON ENDANGERMENT, MALICIOUS WOUNDING AND FELON IN POSSESSION OF A FIREARM as charged in the instant Indictment. Furthermore, the Court accepts the jury's verdict as to Count Two and **FINDS** the defendant **NOT GUILTY** as to the count aforesaid. The Court accepts the two (2) affirmative responses to the recidivist information.

Based on the nature of the recidivist information, the Court opted to proceed to sentencing because of the non-discretionary nature of the matter. The Court offered all parties the opportunity to address the Court prior to the pronouncement of sentencing, wherein the defendant and counsel for the State spoke. The Court, based on the qualifying convictions returned in the instant matter and the two prior predicate qualifying violent felonies, **ORDERS** the defendant sentenced to life in the West Virginia State Penitentiary with the possibility of parole. The Court declines to impose a fine in the matter.

Whereupon, the Court advised that any post-trial motions must comply with the West Virginia Rules of Criminal Procedure.

The Clerk of this Court shall forward attested copies of this order to Brian D. Parsons, Assistant Prosecuting Attorney, Michael Froble, counsel for defendant, the defendant and the WVDOC.

/s/ H. L. Kirkpatrick III
Circuit Court Judge
10th Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.