

In the Circuit Court of Marion County, West Virginia

State of West Virginia,
Plaintiff,

SCA EFiled: Feb 15 2024
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Transaction ID 72051872

v.

Case No. CC-24-2022-F-245
Judge David Janes

JACQUAIN H CRAWFORD,
Defendant

**ORDER DENYING DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL
NOTWITHSTANDING THE VERDICT OR, IN THE ALTERNATIVE, MOTION FOR
NEW TRIAL**

The Court has concluded its review of the issues raised by the parties with regard to the Defendant's Motion for Judgment of Acquittal Notwithstanding the Verdict or, in the Alternative, Motion for New Trial filed herein on July 24, 2023. The State's response to the defendant's motion was filed on October 31, 2023 and the motion was heard by the Court on November 1, 2023. At that hearing, after hearing the arguments of counsel, Mr. Rollo was given ten (10) days to file his written reply to the State's response. No reply having been filed by Mr. Rollo, this matter is now ripe for the Court's decision of those issues.

A. Use or Presentation of a Firearm During the Commission of a Felony

The Court is of the opinion that the question of whether Mr. Crawford used or presented a firearm during the commission of a felony was a question of fact to be considered and resolved by the jury. The Court recalls that this issue was raised by the parties in their examination of witnesses and argued by counsel to the jury. Furthermore, the question of whether Mr. Crawford "used or presented a firearm" during the commission of a felony was properly identified as an element of the offense charged in Count III of the Indictment and the jury was so instructed. This issue having been addressed and resolved by the jury in its guilty verdict, the Court will not now substitute its judgment for the judgment of the jury. Rule 29 of the West Virginia Rules

of Criminal Procedure permits the Court to enter a Judgment of Acquittal Notwithstanding the Verdict if the evidence at trial is insufficient to sustain a conviction. The evidence presented to the jury in this case was sufficient to sustain Mr. Crawford's conviction and his motion on this ground is hereby denied.

B. Crime Lab Report and Testimony of Blake Kinder

The defendant argues that his Sixth Amendment Right of Confrontation was violated when the Court allowed Blake Kinder to testify when Mr. Kinder was not identified on its proposed witness list and was not the analyst who performed the analysis upon which the State relied.

As Mr. Murphy pointed out in the State's Response to the Defendant's Motion, the West Virginia State Police lab report dated May 17, 2022 was disclosed to the defendant well in advance of trial. Mr. Kinder initialled the report in addition to the signature of Ms. Neu, whom the State identified as its witness. The Court therefore rejects the defendant's contention that he was surprised and prejudiced by Mr. Kinder's testimony.

With respect to the Confrontation Clause issue, the Court is of the opinion that the defendant was not denied his right of confrontation because Mr. Kinder testified in the place of Ms. Neu. In Bullcoming v. New Mexico, 564 U.S. 647, Justice Ginsberg stated that "[t]he Confrontation Clause does not permit the prosecution to introduce a forensic laboratory report containing a testimonial certification, made in order to prove a fact at a criminal trial, through the in-court testimony of an analyst who did not sign the certification or personally perform or observe the performance of the test reported in the certification," adding "[t]he accused's right is to be confronted with the analyst who made the certification." In this case, Mr. Kinder, as Ms. Neu's supervisor, did indeed review and initial the certification to the lab report and the defendant's right to be confronted with the analyst who made the certification was satisfied by Mr. Kinder appearing and testifying at trial. Accordingly, the defendant's right of confrontation

was satisfied and, accordingly, the defendant's motion on this ground is also denied.

It is so ORDERED.

/s/ David R. Janes
Circuit Court Judge
16th 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.