

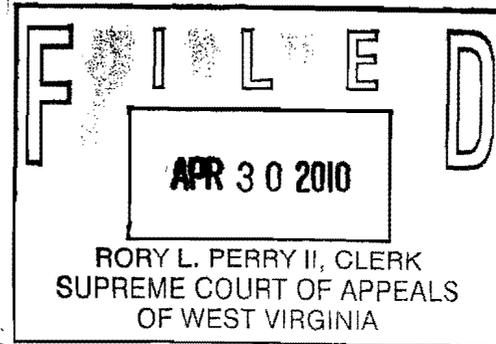
NO. 35474

**IN THE WEST VIRGINIA SUPREME COURT OF APPEALS**

**STATE OF WEST VIRGINIA**

**V.**

**TIMOTHY C. EDMONDS,  
APPELLANT.**



**APPELLANT'S BRIEF**

**FROM THE CIRCUIT COURT OF KANAWHA COUNTY  
CIRCUIT COURT CASE NO. 08-F-597**

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OTHER

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KIND OF PROCEEDING AND  
NATURE OF THE RULING IN THE LOWER TRIBUNAL

Appellant Timothy C. Edmonds (hereinafter Edmonds) was indicted in the Circuit Court of Kanawha County during the September 2008 term of court on seven counts of Sexual Abuse by a Parent, Guardian, Custodian, or Person in Position of Trust. A three-day jury trial was held beginning on January 26, 2009, and Edmonds was found not guilty by the jury of counts one through four, and guilty of counts five through seven. At disposition, Edmonds was sentenced to ten to twenty years in the penitentiary.

STATEMENT OF FACTS

Timothy Edmonds was accused of being a person in a position of trust to sixteen year old Angel Green and having sexual contact with her on two separate occasions at the Upper Kanawha Valley Christian School in Chesapeake, West Virginia during the 2005-2006 school year school. Transcript (T.) 201-205. The jury found Edmonds not guilty of these alleged crimes. However, the jury mistakenly convicted Edmonds of sexual contact by a person in a position of trust for two occurrences at Edmonds' home in Chesapeake because there is no evidence that Edmonds was given any responsibilities for supervising Green while she was at his home. See T. 312.

Timothy Edmonds is married to Karin Priddy Edmonds. T. 420. Karin Edmonds acted as office administrator at the Upper Kanawha Valley Christian School in Chesapeake, West Virginia during the 2005-2006 school years. T. 400. Edmonds is skilled in the construction trade and helped his father-in-law, Pastor Philip Priddy with remodeling and repairing water damage in the basement of the church-school building. T. 346, 367, 401, 422. Although the record shows that Edmonds is listed on two church bulletins during this period as an "associate youth minister," there is no evidence that

Edmonds was ever charged with any duty or responsibility in relation to Green, particularly while Green was at Edmonds' house.

Edmonds, a student at West Virginia State University, came to the school on Tuesdays to do his homework. T. 345, 422. Edmonds sometimes lead prayer at the Pentecostal Chesapeake Apostolic Church, which is in the same building as the school, but it was common for other members of the church to lead prayer during services. T. 356, 364, 421. Merely leading a prayer does not make a person an official of the church. T. 364. Green testified that "sometimes" Edmonds would help her with her work or watch her during school hours. T. 200-201, 222-223. The mass of evidence presented at trial, however, was that Edmonds never stood in the place of Green's parents, nor did he ever have any responsibility for Green's education, welfare or supervision. See T. 345-356, 364, 386, 401, 421-422. The jury's acquittal of Edmonds on Counts One through Four clearly does not lend credit to Green's testimony.

Further, the charges for which Edmonds stands convicted are alleged to have occurred at a home that Edmonds was remodeling, not in the church or school. T. 206-212. Even when viewed in the light most favorable to the State, the most that the evidence proves is that Green twice walked to Edmonds' home and sexual contact ensued. There is insufficient evidence that Edmonds ever held a position of trust in relation to Green, particularly when he is at his home.

#### STANDARDS OF REVIEW

A jury verdict shall be upheld, if "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential

elements of the crime proved beyond a reasonable doubt.” Syllabus Point 1, State v. Guthrie, 194 W.Va. 657, 461 S.E.2d 163 (1995).

“Where an issue on an appeal from the circuit court is clearly a question of law or involving interpretation of a statute,” a *de novo* standard of review is applied. Syllabus Point 1, Chrystal R.M. v. Charlie A.L., 194 W.Va. 138, 459 S.E.2d 415 (1995).

#### ASSIGNMENT OF ERROR

There is insufficient evidence in the record to allow the jury to find beyond a reasonable doubt that Edmonds was a person in a “position of trust in relation to” Green, and that Green was under his “care, custody or control” at the time of the alleged offenses. Edmonds was not a “person in a position of trust in relation to” Green, nor was Green “under his care, custody, or control” at the time of the crimes of conviction, therefore no rational trier of fact could find Edmonds guilty of sexual abuse by a person in a position of trust. W.Va. Code § 61-8D-1(12)<sup>1</sup>; see W.Va. Code § 61-8D-5.

#### POINTS, AUTHORITIES, AND DISCUSSION OF LAW

- I. Edmonds was not a person in a position of trust in relation to Green when she was visiting in Edmonds’ home.

The statute defining “a person in a position of trust in relation to a child” requires some grammatical unraveling to determine its meaning in this case. W.Va. Code § 61-8D-1(12). On its face, the statute appears to be a compound sentence comprised of two independent clauses joined by a comma and the coordinating conjunction “or.”

Following this premise, the statute can be subdivided as follows:

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<sup>1</sup> West Virginia Code § 61-8D-1(12) reads as follows: A “person in a position of trust in relation to a child” refers to any person who is acting in the place of a parent and charged with any of a parent’s rights, duties, or responsibilities concerning a child or someone responsible for the general supervision of a child’s welfare, or any person who by virtue of their occupation or position is charged with any duty or responsibility for the health, education, welfare, or supervision of the child.

A “person in a position of trust in relation to a child” refers to any person who is (a) acting in the place of a parent and charged with any of parent’s rights, duties or responsibilities concerning a child or someone responsible for the general supervision of a child’s welfare, or (b) any person who by virtue of their occupation or position is charged with any duty or responsibility for the health, education, welfare, or supervision of the child. See W.Va. Code § 61-8D-1(12).

Subsection (a) appears to create a class of people (hereinafter “Group A”) that are “charged” to stand *in loco parentis*, which is defined as “acting as a temporary guardian of a child.” Black’s Law Dictionary 791 (7<sup>th</sup> ed. 1999); but cf. State of Connecticut v. Burney, 455 A.2d 1335 (Conn. 1983) (responsibility for the “general supervision” of a person’s welfare requires more than evidence of temporary guardianship; “general supervision” is a rough equivalent to legal guardianship). Group A appears to overlap this Court’s prior decisions relating to the scope of the “custodian” class of potential defendants. See State v. Stephens, 206 W.Va. 420, 422, 525 S.E.2d 301, 303 (1999) (accepting a broad definition of “custodian” including persons in a ‘position of trust’), citing People v. Madril, 746 P.2d 1329, 1333-34 (Colo. 1987); see State v. Collins, 221 W.Va. 229, 654 S.E.2d 115 (2007) (an existing routine of four-wheeler rides with implicit parental permission is sufficient evidence of a custodial relationship).

However, the Stephens and Collins cases interpret the statute in effect before the 2005 amendment. See generally W.Va. Code § 61-8D-1(12). The revised statute does appear to expand the class of potential defendants in subsection (b) of the statute (hereinafter “Group B”). See W.Va. Code § 61-8D-1(12). Members of Group B are “by virtue of their occupation or position . . . charged with a duty or responsibility for the health, education, welfare, or supervision of the child.” W.Va. Code § 61-8D-1(12). It is possible that the Legislature had in mind the statute mandating persons to report

suspected abuse and neglect as a guide to define the membership of Group B.<sup>2</sup> See W.Va. Code § 49-6A-2.

With regard to Group A, there was virtually no evidence presented at trial that Edmonds was “charged,” meaning “instructed or commanded,” to act *in loco parentis* to Green nor was he in any way responsible for the general supervision of Green. Black’s Law Dictionary 227. Green did testify that “sometimes” Edmonds would watch her at school, but the State did not elicit evidence of the frequency of supervision or whether there were other people present in the room when Edmonds was there. T. 223. However, all of the witnesses that were in a position to know what role Edmonds had at the school and church denied even this small fragment of evidence of his responsibility for Green’s general supervision. In addition, Debora Wittington, a member of the Chesapeake Apostolic Church for twenty-eight years and a volunteer at the Upper Kanawha Valley Christian School cast Green’s reputation for truthfulness into doubt. T. 338.

Patricia Priddy testified that Edmonds came to the school “some Tuesdays to do his homework, and he would sit there at a desk.” T. 345. However, despite the fact that Edmonds had counted pages in a different student’s workbook, Edmonds was “never” left in charge of the students in the classroom and he “never taught at the school or church.” T. 350, 354-55. Mrs. Priddy further stated that Edmonds would be in the church/school building to help Pastor Priddy put up “new Sheetrock and things down in the basement occasionally.” Moreover, Mrs. Priddy testified that there is a list of people

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<sup>2</sup> West Virginia Code § 49-6A-2 reads in pertinent part: “When any medical, dental, or mental health professional, Christian Science practitioner, religious healer, school teacher, or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, peace officer, or law-enforcement official, humane officer, member of the clergy, circuit court judge, family court judge, employee of the Division of Juvenile Services or magistrate has reasonable cause to suspect that a child is neglected or abused ... such person shall immediately ... cause a report to be made to the Department of Health and Human Resources . . .”

holding official positions at the church, and he is not on it because he has never held a position at the church T. 346.

Pastor Philip Priddy corroborated Patricia Priddy's testimony that Edmonds had no official position in the church. T. 364. Pastor Priddy continued that merely leading prayer at the church does not make a person a church official. Id.

Similarly, Karin Edmonds testified that her husband was not often present at the school or church during school hours, but when he was, he was "either helping my father reconstruct the downstairs basement or he would be with me in my office at my desk typing his English homework so we could print it out." T. 401. Mrs. Edmonds further testified that Green never asked her to leave the classroom to help her husband in another part of the building, nor would Green have been permitted to do so. T. 403. Moreover, Edmonds denied having an official position with the church or school. T. 421. On Tuesdays, Edmonds would go to the school to do his homework. T. 422.

It is clear that in comparison to the magnitude of evidence contradicting Green's testimony and additional evidence questioning Green's reputation for truthfulness, Green's testimony is but a mere scintilla of evidence that he was "charged" with a duty or responsibility for her. W.Va. Code § 61-8D-1(12). Particularly in light of the jury's finding that Edmonds is not guilty of the acts alleged at the school, a reasonable jury cannot rely upon on Green's assertion alone to find that Edmonds is responsible for Green's general supervision or stood *in loco parentis* to her while she is in his home. Id.

There is also insufficient evidence that Edmonds belongs to Group B. Although the record shows that Edmonds was listed on two church bulletins as an "associate youth minister," it appears that his marriage to the pastor's daughter may be the likely cause for

this because there is no evidence that Edmonds acted in any way as a youth pastor to the children at the school or church. Further, there is no evidence that Edmonds had meetings with the church's youth, organized field trips, performed community outreach to children in the community, or in any way carried himself as a youth minister.

Moreover, there is no evidence that Edmonds is included in the class of persons commonly referred to as mandatory reporters. See W.Va. Code § 49-6A-2. The closest cases would either be school "personnel" or "member of the clergy." However, a person must be "employed" by a school to be "school personnel" and there is no evidence that Edmonds was employed by the school. See Webster's New World Dictionary 1008 (3<sup>rd</sup> College Edition, 1989). The only reason Edmonds went to the church/school building was to see his wife, to use the school materials, to give his mother-in-law a ride to work, and to remodel the basement. T. 367-68, 350-51, 346, 354-55, 401, 421-22. In addition, "clergy" refers to a person that is "ordained for religious service," but there is no evidence that Edmonds is an ordained Pentecostal minister. Webster's 261.

Further, the evidence presented regarding Edmonds' duties or responsibilities regarding Green's health, education, welfare, or supervision, is simply too meager for a reasonable jury to rely upon to find him a "person in a position of trust in relation to" Green while she was at his home. W.Va. Code § 61-8D-1(12). In order to meet its burden of proof with regard to Group B, the State must present evidence that Edmonds, by "virtue or his occupation or position," was "*charged* with any duty or responsibility for [Green's] health, education, welfare, or supervision." Id. (emphasis added). Again, to "charge" means "to instruct or command." Black's Law Dictionary 227. The State did not produce one witness or any evidence that either Edmonds is included in the

mandatory reporter group or that Edmonds was “charged” with a duty or responsibility with regard to Green while she was at his home. Although there is evidence that Edmonds once helped to “count [a student] Michael’s pages” in a workbook, this is not evidence in that Edmonds was “charged” with a duty or responsibility for the health, education, welfare, or supervision of Green when she visited Edmonds’ house. T. 350. The jury found Edmonds not guilty of the alleged conduct that occurred at the school despite Green’s testimony to the contrary. Even when Edmonds was at the school, Patricia Priddy, Karin Edmonds, and Edmonds denied that he had any duties there, and further testified that he held no official position in the church. T. 354-55, 357, 364, 421. When viewed in the light most favorable to the prosecution, the evidence presented to the jury is not sufficient to find beyond a reasonable doubt that Edmonds was “charged” with a position of trust in relation to Green when he was at the school, much less when he was in his own home. W.Va. Code § 61-8D-1(12); see W.Va. Code § 61-8D-5(a); Syllabus Point 1, State v. Guthrie.

Although the prosecutor’s closing argument is not evidence, it neatly summarizes the State’s theory of the case against Edmonds in light of the evidence presented at trial. Perhaps the prosecutor was rattled by the defense witnesses’ consistent refutation of the “position of trust” element, but whatever the reason, the prosecutor argues to the jury rather astoundingly:

What is “someone who is responsible for the general supervision of a child’s care?” Surely when an adult male takes a minor, sixteen years old, who is obviously mentally challenged, into a room and shuts the door in the church away from everyone else, he has taken general supervision of that child’s welfare; and surely his actions when he invited her into his house the first time, when he closed the door behind, when he took photographs of her legs, when he laid her down on cushions and rubbed himself against her has taken general supervision of that child’s care, has

taken custody of her. Temporary custody but custody nonetheless. And surely when an adult male picks up a sixteen year old minor and takes that minor to his home and locks the door behind them and gives her a pair of pantyhose to put on and lays her down on some cushions before rubbing his male sex organ against her, he has accepted and is in general supervision of her welfare. He has temporary custody of her at that point. T. 483.

To define “a person in a position of trust in relation to a child” in this manner is unconstitutionally vague as applied to Edmonds because the conduct described above in no way distinguishes whether Edmonds is in a position of trust in relation to Green. See Syllabus Point 1, State v. Flinn, 158 W.Va. 111, 208 S.E.2d 538 (1974) (“A criminal statute must be set out with sufficient definiteness to give a person of ordinary intelligence fair notice that his contemplated conduct is prohibited by statute and to provide adequate standards for adjudication.”) In fact, absent additional evidence of one of the actors being a person in a position of trust, the conduct described by the prosecutor is perfectly legal; for the jury to find otherwise not only contradicts the law, but commonly-held notions of the age of consent in West Virginia. See W.Va. Code § 61-8B-9(a); Veronica Nett, Ex-coach found at motel to appear in court, Charleston Gazette, September 23, 2009, <http://wvgazette.com/News/200909230396><sup>3</sup>. The fact that the prosecutor so broadly defined a “person in a position of trust in relation to a child” during her closing argument speaks volumes about the weakness of the State’s proof of this element.

The mere fact that a sixteen year old acquaintance visits an adult in his home does not automatically place that adult in a “position of trust.” There must be more than

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<sup>3</sup> The Gazette reports that the “legal age of consensual sex in West Virginia is 16” in an article describing the case of a sixteen year old Pocahontas High School student and an ex-Pocahontas volleyball coach found together in a hotel room in Nitro. Apparently, no evidence of sexual contact was found and the adult was charged with contributing to the delinquency of a minor.

friendship to establish the position of trust. In an analogous case, a defendant that had an “amiable work relationship and perhaps even a friendship” with the victim of a robbery was found not to occupy a position of trust in relation to the victim. State v. Mann, 560 S.E.2d 776, 792 (N.C. 2002). According to Mann’s supervisor at work, the victim

showed particular concern for defendant following ... layoffs and asked [the supervisor] how defendant had responded to the news. When defendant called the victim and asked her to meet him for lunch to discuss his unemployment benefits, she agreed. Further, the evidence showed [the victim] occasionally drove defendant home from work when he had no transportation. Id.

Despite the evidence of a potential friendship between the defendant and the victim, the North Carolina Supreme Court held that the evidence presented at trial did not “demonstrate ‘the existence of a relationship between the defendant and victim generally conducive to reliance of one upon the other.’” Id., quoting State v. Daniel, 354 S.E.2d 216 (N.C. 1987), construing N.C. Gen. Stat. § 15A-1340.16(d)(15)<sup>4</sup>. Therefore, the Mann court held that absent such a relationship, there can be no “position of trust” to abuse. In the instant case, Green testified that Edmonds “was a friend” to her, and that is the most persuasive evidence in the record of any relationship between Edmonds and Green outside of the alleged sexual contact. T. 214-15. However, mere friendship with a child should not and does not constitute occupying a “position of trust in relation to a child.” W.Va. Code § 61-8D-1(12). To otherwise hold would be an unconstitutionally vague interpretation of the statute because the class of potential defendants would be so broad that no adult would have fair notice of when sexual contact with a sixteen or seventeen year old is legal. See Syllabus Point 1, State v. Flinn; W.Va. Code § 61-8B-9(a).

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<sup>4</sup> North Carolina’s statute allows an “aggravated” sentence when a jury finds that “the defendant took advantage of a position of trust or confidence, including a domestic relationship, to commit the offense.”

There must be more facts than are present in the instant case to establish that Edmonds stood in position of trust to Green when she visited in his home. For example, in a different case, an adult asked a child's father for permission to take a twelve year old child back to the adult's trailer purportedly to help with some household chores. See People v. Duncan, 33 P.3d 1180 (Colo. App. 2001), construing C.R.S. §18-3-401(3.5)<sup>5</sup>; 221 W.Va. 229, 654 S.E.2d 115. While at the trailer, the adult had sexual contact with the child, and was charged and convicted of sexual assault on a child by one in a position of trust. See C.R.S. § 18-3-405.3. The trial court found, and the Court of Appeals agreed, that Duncan occupied a position of trust because he had "affirmatively asked the [child's] father for permission to take the [child] home to work, and the father consented, [therefore] it was reasonable to construe that permission as notice to defendant that he was in a position of trust to perform parental duties and supervision with respect to the [child]." Duncan at 1182. In the instant case, Green visited Edmonds home on her accord. The record reflects that there was no parental permission given for Green to visit Edmonds in his home.

Similarly in State v. Collins, this Court held that a pattern of temporary custodial situations with implicit parental permission can establish a custodial relationship. See Collins at 234; W.Va. Code § 61-12-1(4). Unlike Collins, however, in the instant case there is no pattern of temporary custodial situations, nor is there evidence of "implicit" parental permission or knowledge that Green was at Edmonds' house. Collins at 234.

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<sup>5</sup> Colorado defines a person "in a position of trust" as "any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties, or responsibilities concerning a child, including a guardian or someone otherwise responsible for the general supervision of a child's welfare, or a person who is charged with any duty or responsibility for the health, education, welfare, or supervision of a child, including foster care, child care, family care, or institutional care, either independently or through another, no matter how brief, at the time of the unlawful act."

Even viewing the State's evidence in the most favorable light, when Green visited Edmonds' house while he was in the midst of remodeling, Edmonds was not charged with any more duties or responsibilities for Green than the person reading this brief. Unlike Duncan and Collins, the facts and circumstances surrounding Edmonds' offenses of conviction are indistinguishable from otherwise legally-sanctioned consensual sexual contact between an adult and a sixteen year old. See W.Va. Code § 61-8B-9(a). In order to be a "person in a position of trust," it is of no moment that an adult is the son-in-law of a child's teacher, or if the adult is married to the child's school administrator. What matters is whether the adult is acting *in loco parentis* and is responsible for the general supervision of the child, or by virtue of his or her position or occupation is charged with a duty or responsibility for the health, education, welfare, or supervision of the child. See W.Va. Code § 61-8D-1(12). No reasonable jury could find beyond a reasonable doubt that Edmonds was so charged when he was in his home. See, Syllabus Point 1, State v. Guthrie. Even if this Court accepts that sexual contact occurred as alleged in Counts Five, Six, and Seven of the Indictment, Edmonds did not break the law because he did not occupy a position of trust in relation to Green. To hold otherwise would apply the "position of trust" statute in an unconstitutionally vague manner that would invalidate long-standing law regarding the age of consent. See Syllabus Point 1, State v. Flinn; W.Va. Code §§ 61-8D-5, 61-8B-9(a).

II. Green was not under Edmonds' care, custody, or control while she was at Edmonds' home.

Just as there is insufficient evidence in the record for a reasonable jury to find that Edmonds was a person in a position of trust in relation to Green, there is also insufficient evidence of Green being "under [Edmonds'] care, custody or control" while Green was at

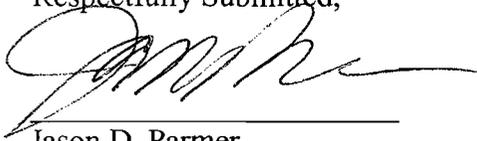
Edmonds' home. W.Va. Code § 61-8D-5. "Care" is defined as "charge; protection; custody; something to watch over or attend to; a responsibility." Webster's 212. To "control" is "to exercise authority over; direct; command." Id. 303. "Custody" in this context is defined as "a guarding or keeping safe; care; protection; guardianship." Id. 341. The concepts of "care" and "custody" are encompassed within duties or responsibilities of people in Groups A and B, and this has been adequately addressed in Section I of this brief.

The prosecutor also attempted to prove that Edmonds exercised "control" over Green. W.Va. Code § 61-8D-5(a). However, the only type of control that the prosecutor alleges Edmonds to have had over Green with respect to the counts of conviction is limited to Green's assent to changing positions during sexual contact. T. 200-201, 204, 208-212, 486. Moreover, the crimes of conviction – Counts 5, 6, and 7 of the Indictment – occurred at Edmonds' home, not at the church/school building. T. 312. Green was sixteen years old at the time of the alleged crime, and she testified that she voluntarily went to Edmonds' house on two separate occasions during which she had sexual contact with Edmonds. T. 206, 210. Although Green testified that Edmonds locked the door, Green neither entered nor exited Edmonds' house under any duress. The facts relied upon by the prosecutor clearly do not constitute the type of control contemplated by the statute, and at most all they prove is a consensual, legal sexual relationship. See W.Va. Code §§ 61-8D-5(a), 61-8B-9(a); Syllabus Point 1, State v. Guthrie. There is simply insufficient evidence in the record of any type of "control" that Edmonds had over Green that could reasonably justify a jury finding of this element as required by statute. W.Va. Code § 61-8D-5.

RELIEF REQUESTED

WHEREFORE, Appellant Timothy Edmonds prays that this Court enter an Order acquitting Edmonds because there is insufficient evidence that he occupied a position of trust in relation to Green at the time of the alleged offenses, and all other relief deemed just and proper.

Respectfully Submitted,

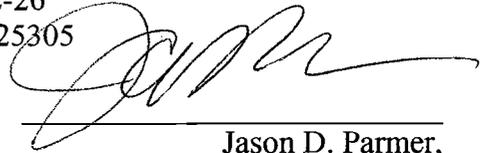
A handwritten signature in black ink, appearing to read 'J. Parmer', written over a horizontal line.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the Appellant's Brief in the case of State of West Virginia v. Timothy C. Edmonds has been delivered by first-class mail to the following party on April 30, 2010:

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