IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

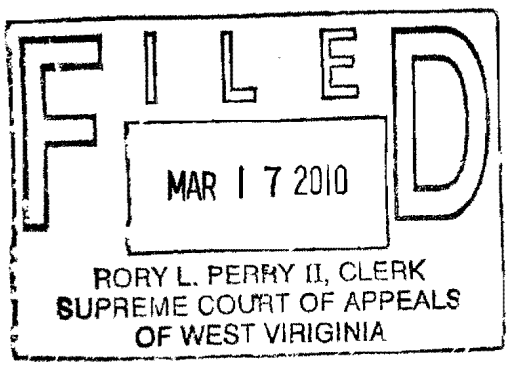
STATE OF WEST VIRGINIA,

v.

Supreme Court No. 35303
Circuit Court No. 08-F-245
(Cabell)

WILLIE SHARP,

Appellant.



APPELLANT'S BRIEF

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Proceedings and Rulings Below

Willie Sharp's two day jury trial began on November 24, 2008, in Cabell County, West Virginia. Mr. Sharp was tried and convicted on one count of delivery of a controlled substance before the Honorable Judge Cummings. [1] The charge was the result of an undercover drug sting conducted on November 2, 2007, by Detective Castle of the Huntington Police Department (Castle) and Agent Bevins of the Drug Enforcement Agency (Bevins). *Trial Transcript (Tr.) 32, 46* These two officers made more than one buy on that day and, there is considerable question as to whether the correct physical evidence was submitted to the West Virginia State Police Crime Lab for testing in Mr. Sharp's case. *Tr. 49, 62, 71* The video, the officers' testimony and their written reports show or reference a single tan chunk as the physical evidence, in Mr. Sharp's case. *Tr. 41, 55. See also Still Photo from Police Video (Appendix (App.)) A-1, Castle's Police Report (App. B), Hunter's Property Report (App. C), Video* But according to the testimony and written report of Carrie Kirkpatrick, the Chemist from the State Police Crime Lab, the physical evidence submitted by the Huntington Police Department, in reference to Mr. Sharp's, case consisted of tan chunks. *Tr. 127 See also Forensic Chemist Report (App. D)*

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[1] Mr. Sharp was originally facing a two count indictment. The second count of possession with intent to deliver was dismissed, by the Honorable Judge Ferguson, prior to trial based on a defense motion. *See Motion Hearing October 1, 2008.* Mr. Sharp's case was originally on the Honorable Judge Ferguson's docket but, due to his retirement it was transferred to the Honorable Judge Cummings docket.

Further error occurred, during Mr. Sharp's trial, when Mr. Sharp's prior criminal record was improperly alluded to during the testimony of Detective Hunter (Hunter).[2] Hunter was explaining how Mr. Sharp was identified from the video. He testified that between him and Corporal Shane Bills, who had worked at the jail years ago, they were able to identify Mr. Sharp using the video, and mug shots from the station. *Tr. 76* Defense counsel objected and, made a contemporaneous motion for a mistrial based on Hunter's testimony but that motion was denied. *Tr. 76, 78-80*

After his conviction, a sentencing date of December 22, 2008, was set for Mr. Sharp. At sentencing, counsel was allowed to address his written motions for a new trial and his motion to set aside the verdict. Counsel argued that his client was denied his right to a fair trial due to the numerous evidentiary errors that occurred during Mr. Sharp's trial. *Sentencing 3-6* Counsel addressed Hunter's inappropriate reference to Mr. Sharp being identified by using mug shots at the station and Hunter's assertion that Corporal Shane Bills who used to work at the jail also helped identify Mr. Sharp. *Sentencing 5-6* Counsel also reiterated his concerns that the wrong physical evidence was submitted to the State Crime Lab to be tested in reference to Mr. Sharp's case. *Sentencing 6* The Court denied all of counsel's motions relying on the overwhelming evidence against Mr. Sharp, specifically referencing the video. *Sentencing 8* The Court failed to address counsel's allegation that the wrong physical evidence was submitted in Mr. Sharp's case.

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[2] Detective Hunter is a member of the Huntington Police Department. He served as back-up and as an in-field evidence custodian for Castle and Bevins on November 2, 2007. *Tr. 70-71*

At the prosecution's request, Judge Cummings enhanced Mr. Sharp's sentence, as is allowed for in W.Va. Code Section 60A-4-408 (1971)(2005 Repl. Vol.), despite counsel's pleas for leniency on behalf of Mr. Sharp. Counsel pointed out that the prior conviction the court would have to rely on, in order to enhance Mr. Sharp's sentence, was 11 to 12 years old. [3] *Sentencing 25* Counsel also explained that the enhancement was purely discretionary. *Id.* Mr. Sharp was sentenced to 2 to 30 years in prison based on the facts of the case currently before this Court. *Sentencing 28*

[3] His prior conviction was from July of 1997.

Statement of Facts

On November 2, 2007, Castle and Bevins drove through known drug areas within the city of Huntington and attempted to purchase drugs from individuals on the street. *Tr. 32, 45-46* All of the encounters officers had that day were video-recorded by Castle, including the transaction that involved Mr. Sharp. *Tr. 46* The State played this video for jurors during Mr. Sharp's trial. *Tr. 52* The video shows Mr. Sharp approach officers, get into their vehicle, have a discussion, leave the vehicle, and return. Mr. Sharp ultimately sold officers one chunk of a tan substance for twenty dollars.[4] *Tr. 63* Immediately after the exchange, Castle displayed the chunk, to the camera, to further document the physical evidence in Mr. Sharp's case. *Tr. 56* The video clearly displays the one single tan chunk Mr. Sharp sold to officers. The video also shows Castle putting the substance in a bag and documenting the outside of the bag before putting it in the glove box.

Castle and Bevins did not know who Mr. Sharp was when the transaction occurred. Castle testified that he bagged the evidence in Mr. Sharp's case and, identified it by listing the date and time of the buy and a description of the suspect [Mr. Sharp] and his clothing. *Tr. 63-64*

Within minutes of the purchase from Mr. Sharp, officers were approached by another individual. Officers made another buy before they were able to meet Hunter and transfer the evidence in Mr. Sharp's case. Castle testified that they typically drop

[4] Castle and Bevin's testimony and, the video offered at trial show that Mr. Sharp initially put five chunks in Detective Castle's hand. Mr. Sharp took four chunks back when he realized Detective Castle had only given him twenty dollars.

evidence in each case and write their reports in between buys but, they were unable to do so on November 2, 2007, because "things were moving too fast." *Tr. 65*

This second unknown individual is also on video.[5] The video shows him handing Castle several tan chunks for twenty dollars. Castle displays the substance for the camera and bags it just as he did in Mr. Sharp's case. After the second buy, Castle and Bevins can be heard on the video arranging to drop the evidence in both cases. Castle testified that he is unsure who he gave the evidence from the second buy to but he admitted it could have been Hunter. *Tr. 65-66* However, the video demonstrates that immediately after the second buy officers arrange to meet and drop the evidence in both buys. *See Video*

At trial, both undercover officers testified that the substance Mr. Sharp sold to Castle was one chunk. *Tr. 41, 55* The physical evidence was also documented by the video, in Castle's police report and, Hunter's property report. *See Video, App. A-1, App. B, App. C* In his police report, Castle described the substance Mr. Sharp sold to him as one rock of crack cocaine. *See App. B* Additionally, as was noted by defense counsel at trial, the initial notation on Hunter's property record report stated "tan chunks." But, Hunter corrected that mistake by drawing a line through the "s" and initialed the change. *Tr. 91, See App. C*

Although Castle labeled and placed the evidence from each of these buys in separate bags, the bags were not sealed until the evidence was field tested. According to

[5] Counsel would point out that only the portion of the DVD that shows Mr. Sharp was played at trial, however, the entire DVD was entered into evidence and therefore is part of the record in this case.

trial testimony, it was Hunter not Castle that completed the field test on this evidence. *Tr. 71-72* Hunter testified that once he completed the field test he sealed the bag with red and white evidence tape and later put the evidence in an evidence locker at the Huntington Police Department. *Tr. 72*

Carrie Kirkpatrick was the chemist from the State Crime Lab who analyzed the evidence, submitted by the Huntington Police Department, in Willie Sharp's case. Ms. Kirkpatrick testified that the physical evidence she analyzed in regard to Mr. Sharp's case consisted of "tan chunks weighing .16 grams." *Tr. 127* Her written report reflects the same. *See App. D* On cross examination, Ms. Kirkpatrick agreed that she was dependent on the police department to submit the correct physical evidence in each case. *Tr. 126* The State did not attempt to refute or explain the noticeable discrepancy regarding the description of the physical evidence in Mr. Sharp's case. The State's own witnesses and video evidence were in conflict. The video, the officers' testimony and their written reports document one rock, one solid chunk and, the chemist testified that she tested tan chunks. Defense counsel pointed this discrepancy out several times during trial. His assertion was never acknowledged, disputed or explained by the State. The State merely verified the chain of custody which was not enough in this case because officers held evidence in the two cases during numerous steps in the chain of custody. *Tr. 128*

The way that officers were able to identify Mr. Sharp also became a huge contention at trial and ultimately resulted in a motion for a mistrial by Mr. Sharp. *Tr. 76* During trial, the State asked Detective Hunter if he viewed the video and if he had identified Mr. Sharp. *Id.* Detective Hunter replied: "[w]ell, Corporal Shane Bills and

myself, after the purchase is done, a lot of times we will review the Hawk [video] to try to determine who the suspect is. And we were able to look at our photo mug shot, our pictures at headquarters. And Corporal Bills is also—had worked in the jail years ago." *Id.* This drew an immediate objection and motion for a mistrial from defense counsel. *Id.*

The State did not understand the nature of Mr. Sharp's objection and began arguing why Hunter's identification should stand. *Tr. 77* The trial court pointed out to the State the improper inferences Hunter's testimony contained. "It's the inference that he has been incarcerated." *Id.* "The inference that he has a criminal record." *Tr. 78* The State agreed that both of these inferences existed. *Tr. 77-78* The Court then took a recess to consider counsel's motion for a mistrial. The Court denied counsel's motion for a mistrial. *Tr. 78-80* The Court explained to counsel that he was entitled to a cautionary instruction but, would recommend against it as an instruction would only draw more attention to the evidence. *Tr. 80* Counsel reiterated his concerns that the jury was exposed to prior bad acts on behalf of the defendant and the cumulative effect it would have with other improper evidence the jury was exposed to earlier in trial. *Tr. 81* Counsel expressed concern that no instruction that the court would give could lessen the impact of Hunter's testimony. *Tr. 78* Ultimately, a cautionary instruction was not given.

DESCRIPTION OF THE PHYSICAL EVIDENCE GIVEN BY THE STATE'S WITNESSES

State v. Willie Sharp	Evidence	"Tan Chunk"	"Tan Chunks"
Agent Bevins	Testimony	X	
Detective Castle	Police Report	X	
Detective Castle	Testimony	X	
Detective Castle	Video	X	
Detective Hunter	Property Report	X*	
Carrie Kirkpatrick Forensic Chemist Who Tested The Physical Evidence	Forensic Report		X
Carrie Kirkpatrick	Testimony		X

*Detective Hunter initially recorded "tan chunks" on the property report he prepared in Mr. Sharp's case but, he marked through the "s" in chunks and initialed the change that he made. *See Attached Property Report, Tr. 91-92*

Assignments Of Errors

I. The State Did Not Produce Sufficient Evidence At Trial To Support Mr. Sharp's Conviction Of Delivery Of A Controlled Substance Because The State Failed To Prove That The Proper Physical Evidence Was Tested In His Case. Counsel Argued That The Wrong Physical Evidence Was Submitted To The Lab For Analysis And, The State Did Not Properly Refute Counsel's Argument Or Attempt To Explain The Discrepancies In Its Own Witnesses' Testimony And Reports. Therefore The State Failed To Meet An Essential Element Of Its Case And Mr. Sharp's Conviction Cannot Stand.

II. The Trial Court Abused Its Discretion When It Denied Mr. Sharp's Motion For A Mistrial Based On Hunter's Inappropriate And Unnecessary Reference To Mr. Sharp's Prior Criminal Record And Prior Incarcerations, In The Presence Of The Jury.

DISCUSSION OF LAW

I. The State Did Not Produce Sufficient Evidence At Trial To Support Mr. Sharp's Conviction Of Delivery Of A Controlled Substance Because The State Failed To Prove That The Proper Physical Evidence Was Tested In His Case. Counsel Argued That The Wrong Physical Evidence Was Submitted To The Lab For Analysis And, The State Did Not Properly Refute Counsel's Argument Or Attempt To Explain The Discrepancies In Its Own Witnesses' Testimony And Reports. Therefore The State Failed To Meet An Essential Element Of Its Case And Mr. Sharp's Conviction Cannot Stand.

The State failed to prove that Willie Sharp was guilty of delivery of a controlled substance beyond a reasonable doubt. There is a huge discrepancy in the State's evidence. The video, the officers' testimony and their written reports all refer to the physical evidence that Mr. Sharp sold to them as one chunk, or one rock. *Tr. 41, 55, See also video, App. A-1, App. B, App. C* The chemist from the State Police Crime Lab, who tested the physical evidence in Mr. Sharp's case, testified and documented in her report that she received and tested tan chunks. *Tr. 120, 127, App. D* Defense counsel pointed out this discrepancy at trial and suggested that the wrong physical evidence was submitted in Mr. Sharp's case. *Tr. 126, 169-70, Sentencing 6* The State did not acknowledge counsel's argument or make any attempt to refute it, on the record at trial.

The State was required to prove that on or about the 2nd day of November 2007, Willie Sharp committed the offense of Delivery of a Controlled Substance by unlawfully, feloniously, knowingly, and intentionally delivering a narcotic drug "crack" cocaine, a controlled substance, to an undercover police officer, against the peace and dignity of the State. *W.Va. Code Section 60A-4-401(2005)(2005 Repl. Vol.)* In *State v. Guthrie, 194*

W.Va. 657,667, 461 S.E.2d 163, 173, (1995), this Court adopted the United States Supreme Court's standard for reviewing a sufficiency of the evidence claim it announced in *Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).* "[A]n appellate court, while reviewing the record in the light most favorable to the prosecution must determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." This Court further explained "the relevant question is whether, 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 beyond a reasonable doubt." *Id. at 174, 668*

Without proof that the proper physical evidence was in fact tested there is no way that Mr. Sharp's conviction can stand. There was a major discrepancy in the description of the physical evidence that officers received from Mr. Sharp and the physical evidence that was submitted to the lab for testing in his case. Defense counsel pointed this out and argued that the evidence was switched. *Tr. 126, 169-70, Sentencing 6* The State made no effort to explain why tan chunks were analyzed by the lab in Mr. Sharp's case when all the other evidence supports Mr. Sharp conveying one tan chunk to officers.

No one disputes that the officers made more than one buy on the day Mr. Sharp conveyed the single tan chunk to officers. Furthermore, Castle conceded that officers were unable to follow routine procedure and process the evidence and complete their reports in Mr. Sharp's case prior to making a second buy. *Tr. 65* Based on the facts and circumstances surrounding this case, there is a strong probability that the physical evidence in these two cases was mistakenly switched prior to being sealed, as defense

counsel argued at trial and sentencing. *Tr. 169-70, Sentencing 6* A point that makes Mr. Sharp's argument even more compelling, that the physical evidence in the two cases was in fact switched or confused, is that the second individual who sold to the officers sold them several tan chunks for twenty dollars. *See Video, App. A-2*

Additionally, according to the trial testimony of Hunter, while the evidence was labeled and placed in separate bags by Castle immediately after each buy, these bags were not sealed until after the evidence was field-tested. Hunter testified that he field tested the evidence in Mr. Sharp's case not Castle. *Tr. 71-72* The evidence was not sealed with the red and white evidence tape until after Hunter completed the test. *Id.*

Once Mr. Sharp raised serious doubts about the accuracy of the State's evidence on a critical element of its case, the State was obligated to answer or refute Mr. Sharp's claims. This Court held that "the state is under a constitutional obligation to prove every essential element of a crime beyond a reasonable doubt." *Pinkerton v. Farr, 159 W.Va. 223, 232, 220 S.E.2d 682,688 (1975)* The State did not do that. The State made no attempt to explain why the video, the officers' testimony and reports showed or described one chunk in Mr. Sharp's case while the chemist's testimony and report referred to tan chunks.

Merely verifying the chain of custody was not enough in this case because of the unusual nature of the situation. Verifying the chain of custody does not take away the risk of confusion that existed while Castle held the evidence in both cases and while Hunter not only held but field-tested the evidence. The chance of the physical evidence being confused or switched existed until the evidence bags were sealed and that did not

occur until after the evidence was field-tested by Hunter. Officers verified they did not follow routine procedure. They made more than one buy before dropping the evidence on that day. Furthermore, the second individual the officers bought from before they transferred the evidence to Hunter sold several tan chunks for twenty dollars. *See Video, App. A-2*

The discrepancy of the State's own witnesses as to the description of the substance itself makes it impossible for the State to rectify this issue. The video supports the testimony of the officers and their written reports that Mr. Sharp conveyed one tan chunk. The chemist testified that she received and analyzed tan chunks in reference to Mr. Sharp's case. This solidifies Mr. Sharp's claim that the physical evidence was switched in these two cases. Furthermore, the State offered no explanation for why such a major discrepancy existed. Mr. Sharp cannot be convicted of conveying a controlled substance when the State failed to prove with certainty that the physical evidence analyzed in his case was in fact the chunk that he transferred to officers. Mr. Sharp's respectfully requests that this Court reverse his conviction.

II. The Trial Court Abused Its Discretion When It Denied Mr. Sharp's Motion For A Mistrial Based On Hunter's Inappropriate And Unnecessary Reference To Mr. Sharp's Prior Criminal Record And Prior Incarcerations, In The Presence Of The Jury.

During direct examination, Hunter testified that officers were able to identify Mr. Sharp by reviewing "photo mug shot, our pictures at headquarters. And Corporal Bills is also – had worked in the jail years ago." *Tr. 76* Counsel immediately objected and

moved for a mistrial. *Id.* Counsel argued that the prejudice suffered by Mr. Sharp based on Hunter's testimony was far beyond what any admonition by the court could solve. *Tr. 78* Unfortunately, the court denied counsel's motion. *Tr. 80* This Court applies an abuse of discretion standard, when reviewing facts associated with a motion for a mistrial, to determine whether a mistrial was warranted. *See State v. Williams, 172 W.Va. 295,304, 305 S.E2d 251, 261 (1983)*

After denying counsel's motion, the court offered to give a cautionary instruction but recommended against it as it would only call further attention to the information.[6] *Id.* The instruction was not requested but, as counsel argued, the prejudice was so detrimental that an instruction would not cure it. *Tr. 78* As was recognized by the trial court, Hunter's testimony communicated to the jury at least two impermissible inferences. *Tr. 77-78* The testimony inferred that Mr. Sharp had been incarcerated before and that he had a prior criminal record. This Court has continuously held that use of prior bad acts to show conformity therewith is impermissible. In *State v. Harris, 166 W.Va. 72, 76, 272 S.E.2d 471, 474 (1980),* the policy reasons behind this rule was explained :

> when one is placed on trial for the commission of a particular offense, he is to be convicted if at all, on the evidence of the specific charge against him. The purpose of the rule excluding evidence in a criminal prosecution of collateral offenses is to prevent a conviction for one crime by use of evidence tending to show that the accused engaged in other legally unconnected criminal acts, and to prevent the inference that because the accused engaged or may have engaged in other crimes previously, he was more liable to commit the crime for which he is being tried.

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[6] The Court later agreed that counsel needed to "preserve any error that may or may not be made." However, the Court told counsel again that he did not think that Hunter's testimony affected the fairness of the trial. *Tr. 81-82*

Hunter's testimony on this point was not necessary at trial. Two officers, Bevins and Castle, had already made in-court identifications of Mr. Sharp as the person who sold to them on November 2, 2007. *Tr. 37, 48*

In *United States v. Reed, 376 F.2d 226 (7th Cir. 1967),* a case that is directly on point with Mr. Sharp's case, the court reversed based solely on testimony regarding mug shots. The *Reed* court held that the testimony regarding the mug shots "made the difference between the trial of a man presumptively innocent of any criminal wrongdoing and the trial of a known convict." *Id. at 228* Additionally, the court opined that the testimony regarding the mug shots allowed the State to indirectly admit the defendant's prior criminal record which is something it could not have otherwise admitted into evidence. *Id.* The Court also held that a cautionary instruction could not ease the prejudice that was generated in Reed's trial by this testimony, relying on *United States v. Harman, 349 F.2d 316 (4th Cir. 1965) . Id*

This Court also found that a limiting instruction would not cure the prejudice that resulted in the improper use of prior bad acts in *State v. McDaniel, 211 W.Va. 9, 15, 560 S.E.2d 484, 490 (2001).* In *McDaniel,* a rape conviction was reversed because evidence of a prior rape was introduced at trial. In support of this decision this Court held that "[a]ny jury, no matter how well instructed, would be sorely tempted to convict a

defendant simply because of such a prior act, regardless of the quantum of proof of the offense for which the defendant was actually charged."[7]

Hunter's testimony turned Mr. Sharp into a known convict before the jury that was to decide his fate on his current charges. There was nothing the court could have said or done that could have changed the impact of his testimony. The prejudice was too great. Mr. Sharp no longer had a clean slate. Hunter's testimony destroyed Mr. Sharp's presumption of innocence and allowed the State to admit evidence that it could not otherwise legally present at Mr. Sharp's trial. The prejudice Mr. Sharp suffered due to Hunter's testimony was irreparable and if this Court follows the Court's decision in *Reed,* Mr. Sharp's conviction must be reversed.

There is also a considerable body of case law regarding the use of mug shots at trial and while these cases are not directly on point they can provide this Court some guidance while reviewing this case. The Court in *United States v. Harrington, 490 F.2d 487 (2d Cir. 1973),* looked at the standards in place regarding the use of mug shots and comprised a three part test to determine whether the use of mugs shots constitutes reversible error. The *Harrington Court* held that to uphold the use of mug shots three criteria must be met: (1) The government must show a demonstrable need to use the photos; (2) The mug shots must not imply that the accused has a prior criminal record; and (3) the manner of their introduction must not draw attention to the source or

[7] Counsel would note that in *McDaniel* the evidence submitted was held to be appropriate 404(b) evidence by the trial court prior to its admission. It was also evidence of the same offense that the defendant was on trial for in the new case.

implications of the photographs. *Id. at 494. See also U.S. v. Fosher, 568 F.2d. 207, 214(1st Cir. 1978), U.S. v. Torres-Flores, 827 F.2d 1031 (5th Cir. 1987).*

Even though the photographs themselves were not used in Mr. Sharp's case, all of the protections that were put in place by *Harrington* were violated by Hunter's testimony. Mr. Sharp suffered the same prejudice through Hunter's testimony that he would have if the mug shots had been displayed. Hunter's testimony was not necessary to identify Mr. Sharp, and it indicated that Mr. Sharp had a prior criminal record in two respects: (1) there were photos of Mr. Sharp at the police station for officers to compare to the video footage that was just shot and, (2) Corporal Bills who had worked at the jail years before recognized him. Based on Hunter's testimony jurors would naturally think that Mr. Sharp had a prior criminal record and therefore had been arrested before and had served time.

A common theme in the case law dealing with the use of mug shots is preventing the inference of a prior criminal record. Courts have reversed numerous cases because of the improper inference to a prior criminal record mug shots carry with them. In *Johnson v. Com.,* 345 S.E.2d 303, 308 2 Va. App. 447, 455-56 (1986), the court held that because the photographs were introduced with inscriptions indicating to the jury that the defendant had a prior criminal record reversal was required. In *State v. Tate, 341 S.E. 2d 380, 288 S.C. 104 (1986)*, the appellate court reversed holding that the trial court erred in allowing the use of a photo array that implied the defendant had a prior criminal record because the photos were not properly sanitized. Again in *Sloane v. State, 437 So. 2d 16 (Miss. 1983)*, the introduction of mug shots was held to be reversible error because the

photos implied that the defendant had a prior criminal record as the photos had enough markings to indicate they came from police files. *See Also Ecby v. State, 840 S.W.2d 761(Tex. App. Huston 1st Dist. 1992)* (Defendant was prejudiced by admission into evidence of un-redacted department of corrections identification card labeling him as an inmate.); *People v. Carroll, 61 A.D.2d 760, 402 N.Y. S.2d 8 (1978 N.Y. App. Div.)* (Introduction of redacted "mug shot" of defendant, coupled with testimony that police were looking for defendant prior to the line up, constituted reversible error.)

Because of Hunter's testimony, jurors decided Mr. Sharp's fate knowing that he had a prior criminal record; a fact that never should have come out and a fact that the prosecution could not legally reveal at trial considering Mr. Sharp did not testify. This is the type of information that courts take great pains to keep out of a trial, as is demonstrated above. Mr. Sharp's presumption of innocence was stripped from him the moment Hunter revealed that he had a prior criminal record. Unfortunately, this revelation is the type of violation that an admonishment from the court would not cure. The constitutional right to a fair trial that is guaranteed to every criminal defendant by the Sixth and Fourteenth Amendments, United States (U.S.) Constitution, and Article III, §§ 10, 14, West Virginia (W.Va.) Constitution, encompasses the right to a trial free from unfair prejudice. Criminal defendants are also guaranteed the right to a jury trial by a fair and impartial jury. Hunter's testimony denied Mr. Sharp these basic rights and therefore his conviction should be reversed.

Relief Requested

Fore the foregoing reasons Mr. Sharp requests that this Court reverse his conviction and order that all charges against him be dismissed as to his first assignment of error. If this Court were to grant relief on his second assignment of error, Mr. Sharp requests that this Court reverse his conviction and remand it back the Cabell County Circuit Court for a new trial.

Respectfully submitted,

WILLIE SHARP.,
By Counsel

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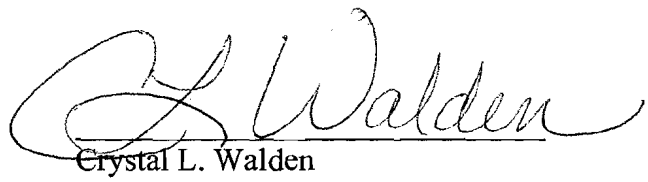
CERTIFICATE OF SERVICE

I, Crystal L. Walden, hereby certify that on the 17th day of March, 2010, I mailed a copy of the foregoing *Appellant's Brief* to Dawn Warfield, West Virginia Attorney General's Office, 1900 Kanawha Boulevard, East, Room E-26, Charleston, West Virginia 25305.



Crystal L. Walden
Deputy Public Defender

EXHIBITS

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