

15-1017

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

v.

Case No. 14-F-5-2  
THOMAS A. BEDELL, Judge

ADAM D. BOWERS,

Defendant.

ORDER

**GRANTING STATE'S MOTION, AS AMENDED, TO PRECLUDE  
REFERENCE TO ANY ADMISSION OF GUILTY PLEAS OR  
PARTICULAR CONDUCT OR COURT PROCEEDINGS OF JOSEPH BUFFEY**

**PROHIBITING ANY REFERENCE, INTRODUCTION OR USE AT  
TRIAL HEREIN OF ANY ADMISSION OF GUILTY PLEAS OR  
PARTICULAR CONDUCT OR COURT PROCEEDINGS OF JOSEPH BUFFEY**

Pending before this Court is the *State's Motion To Preclude Reference To And Admission Of Guilty Pleas Of Joseph Buffey* originally filed herein on May 15, 2014 by and through James F. Armstrong, Esq., Assistant Prosecuting Attorney in and for Harrison County, West Virginia.

Therein, the State of West Virginia avers, pursuant to Rules 401, 402 and 403 of the *West Virginia Rules Of Evidence*, that guilty pleas of Joseph A. Buffey to two (2) counts of First Degree Sexual Assault and one (1) count of Robbery previously entered by him for criminal offenses in *State Of West Virginia v. Joseph A. Buffey*, Case No. 02-F-10-2, in which there was the same victim, Ms. Luzader, are irrelevant to the issue of whether the Defendant, Adam D. Bowers, was also a perpetrator of said offenses.

As such, the State requests this Court order that the Defendant, Adam D. Bowers, be precluded from referencing, introducing or otherwise using these previously entered guilty pleas; thereby making them inadmissible at his trial.

On October 31, 2014, this Court conducted a Pre-Trial Hearing in this instant matter. Thereat, inquiry was made of respective legal counsel as to the status of multiple motions filed by the State including this pending Motion upon noting that no responses had then yet been filed by the Defendant, Adam D. Bowers. Defendant's legal counsel advised this Court that Mr. Bowers opposed this particular Motion. Thereupon, this Court then heard the argument of respective legal counsel thereon.

Legal counsel for Mr. Bowers then proffered to this Court that despite best efforts he had yet to file any Response to this pending Motion. The State then proffered that there are actually two (2) issues arising out of its Motion as to what Mr. Bowers may or may not present at trial in regards to Mr. Buffey, to-wit: (a) the admissibility of Mr. Buffey's guilty pleas in Case No. 02-F-10-2; and (b) the admissibility of evidence as to Mr. Buffey's particular conduct.

This Court noted thereat that the State's Motion presently before it, in essence, requests that no reference be made to any involvement of Joseph Buffey in the crimes with which Mr. Bowers is presently charged. It further informed the respective parties and legal counsel that the State's present Motion addresses only the admissibility issue of Mr. Buffey's guilty pleas and not the admissibility issue of Mr. Buffey's particular conduct. Accordingly, this Court then ordered respective legal counsel to more thoroughly brief these issues and provided deadlines for responsive briefs to be respectively filed.

The State of West Virginia timely filed its *State's Memorandum In Support Of Request To Preclude Reference To And Admission Of Conduct Of And Proceedings Respecting Joseph Buffey At Defendant's Trial* on November 14, 2014.<sup>1</sup>

Therein, it essentially, "...averts that Buffey's conduct and court proceedings in regard thereto are inadmissible at the trial of Bowers as such evidence is barred, in part, by the Rules of Evidence and also because such evidence does not constitute an alternative perpetrator defense and is not inconsistent with Bowers' guilt." (See State's Memorandum In Support on p. 2 at ¶ 2). Accordingly, it further requests this Court to, "...prohibit any reference to, and admission of, Joseph Buffey's conduct and court proceedings related to the crimes for which Defendant in this matter is charged...". See *Id.* on p. 4 at ¶ 2).

Mr. Bowers filed his *Defendant's Memorandum In Opposition To State's Motion To Preclude Admission Of and Reference to Guilty Pleas Of Joseph Buffey* on November 20, 2014 by and through his legal counsel. Therein, he essentially summarizes his opposition to the State's Motion by stating, to-wit:

There is no question that the Buffey materials provide a direct link to the identification of Mr. Buffey as the perpetrator in the crime committed against the victim in this matter. Along with introduction of the fact that the investigation totally and completely shifted from a single perpetrator theory to a multiple perpetrator theory – even where that is inconsistent with the evidence at hand – the Defendant should be permitted the opportunity to offer evidence to show that another person committed the crime for which he is now accused. In order to do so, the Defendant must be permitted the opportunity to reference, introduce or otherwise utilize the guilty pleas previously entered by Joseph Buffey in Case Number 02-F-10-2. (See Defendant's Memorandum in Opposition on p. 5 at ¶ 2).

Trial in this matter having been continued for various reasons, Mr. Bowers then filed his *Defendant's Memorandum In Opposition To State's Motion To Preclude*

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<sup>1</sup> Accompanying such Memorandum is a copy of *United States v. Pannell*, 178 F.2d 98 (3rd Circ. 1949).

*Reference To And Admission Of Conduct Of And Proceedings Respecting Joseph Buffey At Defendant's Trial* on March 27, 2015 by and through his legal counsel amending his previous Memorandum in Opposition filed on November 20, 2014.<sup>2</sup>

### Findings, Conclusions and Analysis

After reviewing the various pleadings and arguments by respective legal counsel as well as considering pertinent legal authority, this Court finds and concludes from its analysis, to-wit:

1. Relevancy and admissibility of particular evidence in a particular criminal proceeding such as this to be made a matter of record and submitted to a jury for further consideration must be determined on a case-by-case basis by a trial court, in its evidentiary gatekeeper role, pursuant to Rules 401 through 403 of the *West Virginia Rules Of Evidence* which are part of the paramount authority in making such determinations. *State v. Derr*, 192 W.Va. 165, 451 S.E.2d 731 (1994).

2. The revised *West Virginia Rules Of Evidence* (effective September 2, 2014) provide the following as to Rules 401, 402 and 403 thereof, to-wit:

(a) Rule 401 states that “[E]vidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.”

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<sup>2</sup> Such amended Memorandum differs from Mr. Bower’s earlier Memorandum only in the following ways, to-wit: (a) it’s caption; (b) two footnotes added on pg. 3 addressing the victim’s current mental status which renders her unable to testify in this proceeding which he asserts as making such information on Mr. Buffey even more relevant; and (c) removing language as to “the admission of guilt by Mr. Buffey- in an investigation” on pg. 4 and replacing it with “the conduct of Mr. Buffey as well as the proceedings instituted against him; as the result of an investigation” on pg. 4 and removing language as to “and conviction” on pg. 5 and replacing it with “of evidence pertaining to the conduct” likewise on pg. 5 of the March 27, 2015 Memorandum.

(b) Rule 402 states that “[R]elevant evidence is admissible unless any of the following provides otherwise: (a) the United States Constitution; (b) the West Virginia Constitution; (c) these rules; or (d) other rules adopted by the Supreme Court of Appeals of West Virginia. Irrelevant evidence is not admissible.”

(c) Rule 403 states that “[T]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”

3. Rulings on the admissibility of evidence are largely within a trial court’s sound judicial and legal discretion. *State v. Berry*, 227 W.Va. 221, 707 S.E.2d 831 (2011).

4. In exercising such discretion to either exclude or limit admissibility of relevant evidence, a trial court’s authority is tempered by its overall obligation to administer the conduct of trial in a fair and equitable manner. (See, in particular, Rule 102 and Rule 403 as well as Rule 611(a) of the *West Virginia Rules Of Evidence*).<sup>3</sup>

5. Mr. Bowers intended purpose for utilizing such Buffey evidence is based upon the State having operated under a single perpetrator theory during all times of its original investigation of these particular crimes throughout which only Mr. Buffey was originally identified, arrested, and held in connection therewith culminating in his plea hearing on February 11, 2002, and sentencing hearing on May 21, 2002, whereat his guilty pleas were accepted. Mr. Buffey allocated to such crimes in those particular court

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<sup>3</sup> In particular, Rule 102 states “[T]hese rules shall be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination. Rule 611(a) states, in pertinent part, that “[T]he court should exercise reasonable control over the mode and manner of...presenting evidence so as to: (1) make those procedures effective for determining the truth; (2) avoid wasting time...”.

proceedings and at no point throughout did he make reference to another individual generally or Mr. Bowers particularly being involved.

6. Furthermore, Mr. Bowers avers that offering such Buffey related evidence at his trial will demonstrate that the State altered its original position of a single perpetrator theory of the Buffey criminal investigation to now set forth a multiple perpetrator theory only after 2012 testing of certain evidentiary items belonging to the victim and collected from the crime scene produced a sufficient DNA sample for a subsequent CODIS search which purportedly resulted in a match with his DNA profile.

7. Such evidence testing and DNA searching having been allowed by this Court only after separate civil proceedings were undertaken on behalf of Mr. Buffey in support of his second, post-conviction *Habeas Corpus* petition which was ultimately denied by this Court and is presently under appeal to the *Supreme Court of Appeals of West Virginia*.

8. The State argues that in light of the evidence and charges, Mr. Buffey's conduct is not inconsistent with the purported guilt of Bowers. The State relies on *State v. Frasher*, 164 W.Va. 572, 265 S.E.2d 43 (1980) and its additional citation of *United States v. Pannell*, 178 F.2d 98 (3rd Circ. 1949) in allowing evidence of guilt of someone other than defendant to be admissible only if it tends to demonstrate such guilt to be inconsistent with that of the defendant.

9. The identification of Mr. Bowers through additional DNA testing and CODIS search of such testing results which led to criminally charging Mr. Bowers in this instant criminal matter arose directly from civil proceedings initiated by Mr. Buffey seeking Habeas relief from underlying criminal convictions with resulting sentencing and

incarceration arising from the same criminal circumstances presently confronting Mr. Bowers. However, there were other unrelated criminal charges and investigations involving Mr. Buffey at the time of his convictions which were addressed and concluded.

10. In keeping with Rule 611(a) of the *West Virginia Rules of Evidence*, this Court is mandated to exercise reasonable control over the presentation of evidence so as to assist in the effective ascertainment of the truth.

11. In precluding the use of any evidence arising from Mr. Buffey's criminal proceedings as to the same victim and criminal charges with which Mr. Bowers is presently confronted, this Court deems such exclusion to be fully within its discretion and necessary for the effective ascertainment of the truth.

12. Without such exclusion, the probative value of such evidence would unquestionably be substantially outweighed by the danger of unfair prejudice or bias in favor of Mr. Bowers. If such evidence were to be admitted, it would unnecessarily confuse the issues and ultimately be quite likely to mislead the jury.

13. The lack of sufficient relevancy, probative value or admissibility of such evidence related to Mr. Buffey in regard to Mr. Bower's criminal proceedings, as addressed and specifically identified herein by this Court, is deemed necessary for an appropriately developed evidentiary record upon which a jury will render verdicts and a final adjudication of these criminal proceedings.

14. In essence, if such evidence were fully allowed to be introduced in this matter, such would be to inferentially or otherwise also try Mr. Buffey who originally waived his right to a jury trial and alternatively entered Rule 11(f) guilty pleas upon which he was sentenced and incarcerated in 2002 yet now seeks Habeas relief thereon

presently on appeal and pending before the West Virginia Supreme Court of Appeals under its controlling mandate.

15. To otherwise allow, by denying the State's pending Motion, would improperly and unnecessarily allow Mr. Bower's to unnecessarily confuse the issues and improperly mislead the jury. Such evidence is deemed to not establish any alternative perpetrator theory in keeping with applicable case law authority asserted as being supportive of Mr. Bower's arguments and position in this instant matter. It would only provide Mr. Bowers a means for collaterally attacking the State's initial single perpetrator theory which became a two perpetrator theory as a result of Mr. Buffey's Habeas proceedings and related DNA testing upon which a CODIS data base search was conducted that has purportedly identified Mr. Bowers.

16. Any allowance given Mr. Bowers to assail the State's purported single or multiple perpetrator theory in these criminal matters by way of Mr. Buffey's prior conduct and proceedings would be in contravention to this Court's analysis herein under and determinations made thereon pursuant to Rules 401, 402 and 403.

17. The purportedly related evidence and testimony of Mr. Buffey as to his entering into a plea agreement and proffering guilty pleas in keeping therewith while foregoing a jury trial and the full presentation of evidence for ultimate determination of either guilt or non-guilt is certainly distinguishable, in pertinent part, from *State v. Malick*, 193, W.Va. 545, 457 S.E.2d 482 (1995) and from *State v. Harman*, 165 W.Va. 494, 270 S.E.2d 146 (1980).

18. The "Buffey materials" (as identified by Mr. Bower's legal counsel in his pleadings on this matter), in this Court's estimation, do not provide a direct link to the

identification of Mr. Buffey as the perpetrator (and not Mr. Bowers) in the crime committed against the victim in this matter.

19. The current mental status of the victim in this matter which appears to render her unable to testify in these proceedings is deemed by this Court not to make any greater argument in favor of Mr. Bowers for admissibility of any “Buffey materials” related to Case No. 02-F-10-2.

20. Mr. Buffey’s guilty pleas, admissions or particular conduct are not deemed by this Court to be evidence which demonstrates his guilt as being inconsistent with that of Mr. Bowers and, as such, they do not unilaterally constitute an alternative perpetrator defense. Without such inconsistency being sufficiently demonstrated, there will be no admissibility of any such evidence on Mr. Bower’s behalf. See Malick; *State v. Zaccagnini*, 172 W.Va. 491, 308 S.E.2d 131 (1983); and *Frasher* (citing *Pannell* for substantive discussion regardless of pleas entered being *nolo contendere* or of guilt).

21. Furthermore, any statements of Mr. Buffey pertaining to the underlying investigation and evidentiary development in Case No. 02-F-10-2 constitute statements made in an out-of-court setting by a non-testifying declarant for the purpose of proving the truth of the matter asserted and, as such, would be barred under Rule 801 and Rule 802 of the *West Virginia Rules of Evidence*.

#### Rulings

Accordingly, this Court hereby **ORDERS** that the *State’s Motion To Preclude Reference To And Admission Of Guilty Pleas Of Joseph Buffey*, as amended to further preclude any reference or admission herein as to Mr. Buffey’s particular conduct as it may relate to any criminal matters of Mr. Bowers herein, be and is **GRANTED**.

Having so ruled, this Court further hereby **ORDERS** that the Defendant, Adam D. Bowers, be and is prohibited from making any reference to, introduction or use of any admissions of Joseph A. Buffey and/or Joseph A. Buffey's particular conduct and court proceedings at the trial of Defendant, Adam D. Bowers, in this particular criminal matter.

Upon such rulings now being made, this Court *sua sponte* hereby **ORDERS** that the Defendant, Adam D. Bowers, be and is **GRANTED** any and all appropriate objections and exceptions thereto.

Finally, this Court **DIRECTS** the Clerk of this Court to provide and/or otherwise send a certified copy of this Order to the following:

James F. Armstrong, Esq.  
Assistant Prosecuting Attorney  
Harrison County, West Virginia  
Harrison County Courthouse  
301 West Main Street  
Clarksburg, WV 26301  
*In and For the State of West Virginia*

Christopher M. Wilson, Esq.  
300 Adams Street  
Fairmont, WV 26554  
*Counsel for Defendant  
Adam D. Bowers*

David B. DeMoss, Esq.  
301 Adams Street  
Fairmont, WV 26554  
*Counsel for Defendant  
Adam D. Bowers*

ENTER: May 5, 2015

  
THOMAS A. BEDELL, Chief Judge

STATE OF WEST VIRGINIA  
COUNTY OF HARRISON, TO-WIT

I, Donald L. Kopp II, Clerk of the Fifteenth Judicial Circuit and the 18<sup>th</sup>  
Family Court Circuit of Harrison County, West Virginia, hereby certify the  
foregoing to be a true copy of the ORDER entered in the above styled action  
on the 5 day of May, 2015.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix  
the Seal of the Court this 5 day of May, 2015.

Donald L. Kopp II /pg  
Fifteenth Judicial Circuit & 18<sup>th</sup> Family Court  
Circuit Clerk  
Harrison County, West Virginia

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

v.

Case No. 14-F-5-2  
THOMAS A. BEDELL, Chief Judge

ADAM DEREK BOWERS,

Defendant.

ORDER

**DENYING DEFENDANT, ADAM DEREK BOWERS'S, MOTION FOR  
JUDGMENT OF ACQUITTAL OR, ALTERNATIVELY, MOTION FOR NEW TRIAL**

Defendant's Motion and Arguments in Support

Pending before this Court is the Defendant, Adam Derek Bowers's (hereafter referred to as Defendant Bowers), *Motion For Judgment Of Acquittal Or, Alternatively, Motion For New Trial* originally filed herein on June 18, 2015 by and through his legal counsel, Christopher M. Wilson, Esq., and David B. DeMoss, Esq., pursuant to Rule 29 and Rule 33 of the *West Virginia Rules of Criminal Procedure*.

Therein, *inter alia*, Defendant Bowers moves this Court for judgment of acquittal, or alternatively, a new trial in that the guilty verdicts rendered by the Jury in this matter as to Count 1, Count 2, Count 3 and Count 4 contained in his *Indictment* are contrary to the evidence adduced at trial and contrary to the administration of justice.

As generally summarized by this Court, Defendant Bowers avers and/or reasserts in support of such Motion that, to-wit:

(a) At no point in time during the trial did the State establish that Defendant Bowers was ever in possession of a knife on November 30, 2001, or at any point thereafter nor did it offer any evidence whatsoever regarding the knife allegedly used to perpetrate the felony offenses of First Degree Sexual Assault as contained in Count One and Count Two of his *Indictment* and in keeping with this Court's charge to the Jury. As such, the State failed to establish the *prima facie* elements necessary for him to be convicted of such Counts. (See Motion at Paragraph Nos. 5 – 11).

(b) At no point in time during the trial did the State establish that a breaking and entering occurred at 309 Bridge Street<sup>1</sup> on November 30, 2001 or at any point thereafter nor did it offer any evidence whatsoever regarding the breaking of any entrance or access device located in the home. As such, the State failed to establish the *prima facie* elements necessary for Defendant Bowers to be convicted of the felony offense of Burglary as contained in Count Three of his *Indictment* and in keeping with this Court's instruction given to the Jury. (See Motion at Paragraph Nos. 12 – 18).

(c) At no point in time during the trial did the State establish that Defendant Bowers was ever in possession of a knife on November 30, 2001, or at any point thereafter nor did it offer any evidence whatsoever regarding the knife allegedly used to perpetrate the felony offense of First Degree Robbery as contained in Count Four of his *Indictment* and in keeping with this Court's instruction given to the Jury thereon. As such, the State failed to establish the *prima facie* elements necessary for Defendant Bowers to be convicted of such Count. (See Motion at Paragraph Nos. 19 - 25).

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<sup>1</sup> The address of the victim's residential home in Clarksburg, Harrison County, West Virginia.

(d) This Court's prohibition of any reference, introduction or use at trial herein of any admission of guilty pleas or particular conduct or court proceedings of Joseph Buffey was in error and constitutes alternative grounds upon which it may grant the relief requested herein.<sup>2</sup>

#### State's Response and Arguments in Opposition

The State of West Virginia filed its *State's Response To Defendant's Motion For Post Verdict Judgment Of Acquittal* on June 23, 2015 by and through James F. Armstrong, Esq., Assistant Prosecuting Attorney. Therein, *inter alia*, the State requests that this Court deny Defendant Bowers's pending Motion as presented.

Having specifically averred under its "Facts" and proffered "Analysis/Authorities" therein, the State arguably concludes it unequivocally demonstrated that Defendant Bowers "...perpetrated the crimes committed against the victim, because said crimes were committed following the burglary of the victim's home, because said crimes were committed with the use of a knife..." through testimony and evidence presented at trial<sup>3</sup> and that this Court "...correctly, and in accordance with established precedent, prohibited the introduction of evidence that another individual also participated in the crimes, ... ." (See Response Page 10 of 11 at ¶ 1).

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<sup>2</sup> On May 5, 2015, this Court's *Order Granting State's Motion, As Amended, To Preclude Reference To Any Admission Of Guilty Pleas Or Particular Conduct Or Court Proceedings Of Joseph Buffey* and *Prohibiting Any Reference, Introduction Or Use At Trial Herein Of Any Admission Of Guilty Pleas Or Particular Conduct Or Court Proceedings Of Joseph Buffey* was caused to be entered herein.

The particular proceedings and related conduct being addressed thereby are fully referenced therein having originated in *State of West Virginia v. Joseph A. Buffey*, Felony Case No. 02-F-10-2 and further addressed post-conviction in Habeas proceedings in *State of West Virginia ex rel. Joseph A. Buffey v. David Ballard, Warden*, Civil Action No. 12-C-183-2.

<sup>3</sup> Joe Luzader (victim's son), Dori Josimovich (Sexual Assault Nurse Examiner) who examined and treated the victim at the hospital), Clarksburg Police Department Lieutenant Jason Snider (investigating officer in Defendant Bowers's criminal matter prosecuted herein), Alan Keel (DNA analysis and expert witness as to the DNA evidence).

## Conclusion

This Court has fully reviewed and considered the parties' respective arguments contained in Defendant Bowers's post verdict *Motion For Judgment Of Acquittal Or, Alternatively, Motion For New Trial* and the State's Response To Defendant's Motion For Post Verdict Judgment Of Acquittal as well as the totality of the record contained in the *Felony Indictment File No. 14-F-5-2* maintained by the Clerk of this Court. It has further taken into consideration applicable rules and pertinent legal authority as well as conducted its own legal research.

Having duly deliberated all thereon, this Court finds and concludes that Defendant Bowers's post verdict *Motion For Judgment Of Acquittal Or, Alternatively, Motion For New Trial* should be DENIED, as to his request for judgment of acquittal or, alternatively, a new trial, all upon its further analysis herein stated *infra*.

## Analysis

1. Rule 29(c) of the *West Virginia Rules of Criminal Procedure* states, to-wit:

If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within ten days after the jury is discharged or within such further time as the court may fix during the ten-day period. If a verdict of guilty is returned the court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned the court may enter judgment of acquittal. It shall not be necessary to the making of such a motion that a similar motion has been made prior to the submission of the case to the jury. *[Effective October 1, 1981; amended effective September 1, 1995.]*

2. By its *Trial Order / Order Directing Presentence Investigation / Order Directing 60 Day Evaluation / Order Scheduling Sentencing Hearing* caused to be entered on June 3, 2015, this Court *inter alia* "ordered that all post trial motions shall be filed and served upon opposing counsel by June 19, 2015, with responses to the same

to be filed with the court and served upon opposing counsel by July 10, 2015.” (See Order on Page 4 of 6 at ¶¶ 8).

3. Such *Trial Order* herein further states, in pertinent part to this Motion, that:

Thereupon, witnesses for the State testified relative to the charges contained in the Indictment in this case and the State rested.

Thereupon, counsel for the defendant moved the Court for a judgment of acquittal in favor of the defendant, which motion was opposed by the State and was denied by the Court.

Thereupon, the defendant and his witness testified relative to the charges contained in the Indictment in this case and the defendant rested.

Thereupon, counsel for the defendant renewed his motion for the judgment of acquittal in favor of the defendant, which motion was opposed by the State and was denied by the Court.

(See *Id.* on Page 2 of 6 at ¶¶ 5 - 8) and that:

Thereupon, after mature and due deliberations, the jury returned into open Court on the 28th day of May, 2015, and announced its verdicts to be as follows:

“We, the Jury, find the defendant, Adam Derek Bowers, Guilty of First Degree Sexual Assault as charged in Count One of the Indictment.”

/s/ David Mong, Foreperson

“We, the Jury, find the defendant, Adam Derek Bowers, Guilty of First Degree Sexual Assault as charged in Count Two of the Indictment.”

/s/ David Mong, Foreperson

“We, the Jury, find the defendant, Adam Derek Bowers, Guilty of Burglary as charged in Count Three of the Indictment.”

/s/ David Mong, Foreperson

“We, the Jury, find the defendant, Adam Derek Bowers, Guilty of First Degree Robbery as charged in Count Four of the Indictment.”

/s/ David Mong, Foreperson

On motion of counsel for the defendant, the Clerk polled each member of the jury panel to determine whether the guilty verdicts returned were his/her verdicts, to which all twelve (12) jurors responded in the affirmative.

Thereupon, the jury was released.

(See *Id.* on Page 3 of 6 at ¶¶ 3 - 5).

4. In timely and procedural keeping with such Order and Rule, Defendant Bowers filed his pending Motion now being considered and ruled upon herein and the State filed its Response thereto.

5. The respective pleadings of the parties as to this Motion along with the totality of the procedural and evidentiary record herein are deemed sufficient upon which this Court may rule without entertaining any further responsive pleadings or conducting a hearing for purposes of entertaining oral argument.

6. Defendant Bowers essentially contends there to have been insufficient evidence to convict him of the crimes for which he was convicted and as contained in the various Counts of his *Indictment*. Additionally, he renews his objection to this Court's prior ruling made during pre-trial proceedings in prohibiting the introduction of evidence demonstrating the participation in the crimes committed against the victim herein by another individual.<sup>4</sup>

7. Syllabus Points 1 and 3, *State v. Guthrie*, 194 W.Va. 657, 461 S.E.2d 163 (1995) respectively state:

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<sup>4</sup> See this Court's general summary of Defendant Bower's pending Motion arguments *supra*.

The function of [the court] when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, is sufficient to convince a reasonable person of the defendant's guilt beyond a reasonable doubt. Thus, the relevant inquiry 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 proved beyond a reasonable doubt.

...

A criminal defendant challenging the sufficiency of the evidence to support a conviction takes on a heavy burden. A [court] must review all the evidence, whether direct or circumstantial, in the light most favorable to the prosecution and must credit all inferences and credibility assessments that the jury might have drawn in favor of the prosecution. The evidence need not be inconsistent with every conclusion save that of guilt so long as the jury can find guilt beyond a reasonable doubt. Credibility determinations are for a jury and not a [court]. Finally, a jury verdict should be set aside only when the record contains no evidence, regardless of how it is weighed, from which the jury could find guilt beyond a reasonable doubt. ...

8. In even more particularity as to a court's reviewing the sufficiency (or insufficiency as the case may be) of evidence underlying a criminal conviction, Syllabus Point 2, *State v. LaRock*, 196 W.Va. 294, 470 S.E.2d 613 (1996) unequivocally states:

When a criminal defendant undertakes a sufficiency challenge, all the evidence, direct and circumstantial, must be viewed from the prosecutor's coign of vantage, and the viewer must accept all reasonable inferences from it that are consistent with the verdict. This rule requires the trial court judge to resolve all evidentiary conflicts and credibility questions in the prosecution's favor; moreover, as among competing inferences of which two or more are plausible, the judge must choose the inference that best fits the prosecution's theory of guilt.

9. There was evidence presented by the State of West Virginia during Defendant Bowers's Trial from which the Jury could and evidently did find that he possessed a knife during the commission of the crimes alleged in Count 1, Count 2 and Count 4 of his *Indictment*, in that to-wit:

- (a) The victim described a knife being used and being raped at knife point;
- (b) The victim advised that the perpetrator of the sexual assaults utilized a knife during the commission of the sexual assaults and the robbery;
- (c) The perpetrator of these crimes left DNA at the crime scene;
- (d) Defendant Bowers's DNA matched that of the DNA left by the perpetrator of the crimes.

10. As such, the Jury is deemed to have made a reasonable inference that Defendant Bowers used a knife in the commission of the crimes. Under *Guthrie*, this Court accepts such inference by the Jury in this matter which is consistent with its verdicts of guilty as to Defendant Bowers.

11. There was evidence presented by the State of West Virginia during Defendant Bowers's Trial from which the Jury could and evidently did find that he broke and entered the victim's home in commission of the crime alleged in Count 3 of his *Indictment*, in that to-wit:

- (a) The victim was asleep in her bedroom on the upstairs floor of her residence at 309 Bridge Street when the perpetrator(s) entered her home uninvited;
- (b) A perpetrator had stated to the victim that entry to her home was made through a side door and it appeared to the first witness to arrive at the victim's home following the commission of these crimes that entry was gained through the side door;
- (c) The victim normally kept the doors to her home shut;
- (d) No evidence was presented that any of the doors to the victim's home were open at the time the crimes were committed or that the perpetrator(s) of these crimes were invited into the victim's home.

12. As such, the Jury had sufficient evidence presented to find that the perpetrator(s) of these crimes broke and entered the identified victim's home at the time in question and this Court accepts such finding by the Jury in this matter as consistent with its verdicts of guilty as to Defendant Bowers.

13. The State of West Virginia is deemed to have met its burden of establishing the *prima facie* elements through the introduction of sufficient evidence at Trial necessary for a conviction on the charge of First Degree Sexual Assault as outlined in Count 1 and Count 2 of Defendant Bower's *Indictment*.

14. The State of West Virginia is deemed to have met its burden of establishing the *prima facie* elements through the introduction of sufficient evidence at Trial necessary for a conviction on the charge of Burglary as outlined in Count 3 and Count 2 of Defendant Bower's *Indictment*.

15. The State of West Virginia is deemed to have met its burden of establishing the *prima facie* elements through the introduction of sufficient evidence at Trial necessary for a conviction on the charge of First Degree Robbery as outlined in Count 4 of Defendant Bower's *Indictment*.

16. This Court reaffirms its ruling reflected in its Order previously entered herein on May 5, 2015 as to Defendant Bowers being prohibited from making any reference to, introduction or use of any admissions of Joseph A. Buffey and/or Joseph A. Buffey's particular conduct and court proceedings at the trial of Defendant, Adam D. Bowers, in this particular criminal matter. Such ruling and disallowance of any introduction of evidence concerning the participation of such person as an additional individual in the crimes committed upon the victim herein or his related court proceedings was fully addressed and reviewed as reflected in that Order's "Findings,

Conclusions and Analysis" contained therein. (Particularly see Pages 4 - 9 of 10 as contained in the Order specifically identified herein *supra* at n.2).

17. This Court determines that Defendant Bowers's verdicts of guilty rendered by the Jury in this matter as to Count 1, Count 2, Count 3 and Count 4 in his *Indictment* are not contrary to the evidence adduced at Trial or to the overall administration of justice.

18. This Court determines that, upon additional review in light of the full evidentiary record, its prior rulings reflected in its Order caused to be entered herein on May 5, 2015 is correct and, as such, will not be disturbed so that Defendant Bowers be granted any post verdict Judgment of Acquittal or, alternatively, a New Trial upon any of the Counts contained in his *Indictment* upon which the Jury herein, having fully deliberated all thereon, found him guilty.

#### Rulings

Accordingly, this Court hereby **ORDERS** that Defendant, Adam D. Bowers's *Motion For Judgment Of Acquittal Or, Alternatively, Motion For New Trial* be and is **DENIED**.

Having so ruled, this Court further hereby **AFFIRMS** the *Trial Order* caused to have been previously entered herein on June 3, 2015 and the verdicts of guilty announced by the Jury herein upon Defendant, Adam Derek Bowers, as charged in Count 1, Count 2, Count 3 and Count 4 of his *Indictment* and as reflected therein.

Upon such rulings now being made, this Court *sua sponte* hereby **ORDERS** that the Defendant, Adam Derek Bowers, be and is **GRANTED** any and all appropriate objections and exceptions thereto for all pertinent purposes.

Having so ordered and affirmed, this Court **REMINDS** the respective parties and legal counsel that the **SENTENCING HEARING** previously set in this matter has been rescheduled by its Order entered on August 13, 2015. As now set therein, such hearing will be held on **Monday, September 14, 2015 at 9:00AM**.

Finally, this Court **DIRECTS** the Clerk of this Court to provide and/or otherwise send a certified copy of this Order to the following:

James F. Armstrong, Esq.  
Assistant Prosecuting Attorney  
Harrison County, West Virginia  
Harrison County Courthouse  
301 West Main Street  
Clarksburg, WV 26301  
*State of West Virginia*

Christopher M. Wilson, Esq.  
Law Office of Christopher M. Wilson, PLLC  
300 Adams Street  
Fairmont, WV 26554  
*Counsel for Defendant*  
*Adam D. Bowers*

David B. DeMoss, Esq.  
301 Adams Street  
Fairmont, WV 26554  
*Counsel for Defendant*  
*Adam D. Bowers*

ENTER: August 13, 2015

  
\_\_\_\_\_  
THOMAS A. BEDELL, Chief Judge

STATE OF WEST VIRGINIA  
COUNTY OF HARRISON, TO-WIT

I, Donald L. Kopp II, Clerk of the Fifteenth Judicial Circuit and the 18<sup>th</sup>  
Family Court Circuit of Harrison County, West Virginia, hereby certify the  
foregoing to be a true copy of the ORDER entered in the above styled action  
on the 18 day of August, 2015.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix  
the Seal of the Court this 18 day of August, 20 15.

Donald L. Kopp II / pg  
Fifteenth Judicial Circuit & 18<sup>th</sup> Family Court  
Circuit Clerk  
Harrison County, West Virginia

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

vs.

Case No. 14-F-5-2  
(Thomas A. Bedell, Chief Judge)

ADAM DEREK BOWERS,

Defendant.

**SENTENCING ORDER/ORDER COMMITTING DEFENDANT TO CUSTODY OF  
COMMISSIONER OF THE WEST VIRGINIA DIVISION OF CORRECTIONS/**

On the 14<sup>th</sup> day of September, 2015, came the State of West Virginia by James F. Armstrong, Assistant Prosecuting Attorney for Harrison County, West Virginia, and came also the defendant, Adam Derek Bowers, in person, and by Christopher Wilson and David DeMoss, his counsel. Also present for said proceedings were Eric Spatafore, Adult Probation Officer, and Sergeant J. M. Walsh of the Clarksburg Police Department.

Whereupon, the Court reviewed the procedural history of the above captioned matter for the record.

Thereupon, the Court, without objection of counsel for the State and counsel for the defendant, ORDERED that the Presentence Investigation Report of Eric Spatafore, dated June 12, 2015, be filed and made a part of the record in this case. *WHICH THE COURT NOTED THAT THE DEFENDANT REFUSED TO COOPERATE IN ITS PREPARATION*

Thereupon, the Court noted that the defendant, Adam Derek Bowers, had refused to cooperate in the sixty (60) day diagnostic evaluation, and as a result, none was performed.

Thereupon, the Court addressed the Recidivist Information filed by the State in this matter and the Court noted the position of the State.

Thereupon, the Court granted defendant's Motion to Dismiss Recidivist Information and the same was ORDERED dismissed for the reasons set forth in defendant's written motion.

Thereupon, the Court addressed State's Motion for Finding of Multiple Violations of Qualifying Offense.

After consideration of all of which, the court granted State's Motion for Finding of Multiple Violations of Qualifying Offense and ORDERED that the defendant, Adam Derek Bowers, register as a sex offender for life.

Thereupon, the Court advised the defendant of the requirements of the Sexual Offender Registration Act, and the Court, the defendant, Adam Derek Bowers, and counsel for the defendant signed in open Court the Notice and Acknowledgement of Sex Offender Registration Requirements. The defendant received a copy of the Notice and Acknowledgement of Sex Offender Registration Requirements entered by the Court. **The Court thereupon directed the Clerk of this Court to send a copy of the Notice and Acknowledgement of Sex Offender Registration Requirements form to the Sex Offender Registry within seventy-two (72) hours of entry of this Order.**

The Court further ORDERED that the defendant meet with a Probation Officer within forty-eight (48) hours of said proceedings and fill out a sex offender registration sheet, which sheet shall be submitted to the Harrison County Circuit Clerk's Office and shall be sent to the Sex Offender Registry with a certified copy of this Sentencing Order as well as the Notice of Sex Offender Registration Requirements.

Pursuant to West Virginia Code §62-12-26, it was further ORDERED that the defendant, Adam Derek Bowers, shall be required to serve a period of fifty (50) years supervised release by the Harrison County Adult Probation Office, to commence upon expiration of the terms of imprisonment to be imposed upon the defendant or upon his discharge from parole, whichever should occur later, and upon the following terms and conditions:

1. Defendant shall register with the West Virginia State Police as a sex offender within three business days of being released from incarceration, in accordance with West Virginia Code §15-12-2.

2. Unless otherwise authorized, the defendant shall maintain a single, verifiable residence within Harrison County, at which defendant shall reside. Defendant's supervising officer must approve any change of address, within the county or otherwise.

3. The defendant is required to inform all persons living at his place of residence about all of his sex related conditions of supervised release.

4. The defendant shall maintain full-time employment or perform community service as approved by his probation officer until fully employed. Defendant's probation officer must first approve any employment, or community service and locations, and may contact defendant's employer at any time. Defendant will not work in certain occupations that involve being in the private residences of others, such as, but not limited to, door-to-door sales, soliciting, home service visits or delivery.

5. Defendant shall not establish a residence or accept employment within one thousand (1,000) feet of a school or childcare facility or within one thousand (1,000) feet of the residence of a victim or victims of any sexually violent offense for which he has been convicted in accordance with West Virginia Code §62-12-26(b)(1).

6. Defendant may not establish a residence or any other living accommodation in a household in which a child under 16 years of age resides, without petitioning the Court and being granted a modification of this condition; which modification can only be granted if the defendant is the child's parent, grandparent, or stepparent before being convicted, the defendant's rights to any children in the home have not been terminated, the child is not a victim of a sexually violent

offense committed by the defendant, and the Court determines that the defendant is not likely to cause harm to any child residing in the home.

7. The defendant shall attend, actively, participate in, and successfully complete a Court-approved sex offender treatment program as directed by the Court and in accordance with West Virginia Code §62-12-2. Prompt payment of any fees is defendant's responsibility and defendant must maintain steady progress toward all treatment goals as determined by defendant's treatment provider. Unsuccessful termination from treatment or non-compliance with other required behavioral management requirements will be considered a violation of defendant's supervised release. Defendant will not be permitted to change treatment providers without the prior written permission of defendant's probation officer or subsequent to a written Order from the Court.

8. Defendant shall not be present at nor enter within two blocks of any park, school, playground, swimming pool, daycare center, or other specific locations where children are known to congregate unless approved by defendant's supervising probation officer.

9. Defendant shall not participate in any activity which involves children under eighteen (18) years of age, such as, but not limited to youth groups, Boy Scouts, Girl Scouts, Cub Scouts, Brownies, 4-H, YMCA, youth sports teams, baby sitting, volunteer work, or any activity defendant's supervising probation officer deems inappropriate.

10. Defendant must report any incidental contact with persons under age eighteen (18) to his supervising probation officer within twenty-four (24) hours of the contact.

11. Defendant shall not possess obscene matter as defined by West Virginia Code §61-8A-1 or child pornography as defined in Title 18 U.S.C. §2256(8), including but not limited to: videos, magazines, books, DVD's, and material downloaded from the Internet. Defendant shall not visit strip clubs, adult bookstores, motels specifically operated for sexual encounters, peep

shows, bars where partially nude or exotic dancers perform, or businesses that sell sexual devices or aids. Defendant shall not possess pictures, films, video, or digital images of children under 12 years of age, unless approved by defendant's supervising officer.

12. Defendant shall not miss any appointments for treatment, psychotherapy, counseling, or self-help groups such as any 12 Step Group, Community Support Group, etc., without the prior approval of his supervising probation officer. Defendant shall comply with the attendance policy for attending appointments as outlined by defendant's supervising probation officer.

13. Defendant shall continue to take any medication prescribed by his physician until otherwise directed.

14. Defendant shall sign a waiver of confidentiality, release of information, and any other document required that permits his supervising probation officer and other behavioral management or treatment provider to collaboratively share and discuss his behavioral management conditions, treatment progress, and probation needs, as a team. This permission may extend to: (1) sharing his relapse prevention plan and treatment progress with his significant others and/or his victim's therapist as directed by his supervising probation officer or treatment provider(s); and (2) sharing of his modus operandi behaviors with law enforcement personnel.

15. Defendant shall be subject to a curfew at the direction of his supervising probation officer.

16. Defendant shall notify his supervising probation officer of his establishment of any dating, intimate and/or sexual relationship, no later than 48 hours after the establishment of such relationship.

17. Defendant shall not engage in a dating, intimate or sexual relationship with any person who has children under the age of eighteen (18) years.

18. Defendant shall submit to polygraph testing in accordance with West Virginia Code §62-11D-2 to assist his supervising probation officer in monitoring his compliance with his conditions of probation and treatment, which shall be at his own expense, unless he has been judicially determined to be unable to pay for such tests.

19. Defendant shall be subject to electronic monitoring, and at the outset such monitoring methods and levels shall be determined by defendant's supervising officer, subject to a minimum of radio frequency monitoring with curfews. Following an assessment to determine the level and type of electronic monitoring necessary for public protection, to be completed within 30 days of the beginning of the supervised release term, the supervising officer may modify the defendant's system and protocol to provide a greater or lesser degree of monitoring. The electronic monitoring shall be at defendant's own expense, unless judicially determined to be unable to pay for such monitoring.

20. That the defendant not violate any laws of the State of West Virginia, any other State, any County or municipality or of the United States of America, and will notify defendant's supervising officer within forty-eight hours of any arrest for any reason.

21. That defendant not leave the State of West Virginia without first obtaining the consent of defendant's supervising officer or of this Court.

22. That defendant complies with any and all rules and regulations that may be established in writing by defendant's supervising officer.

23. That defendant shall not possess or carry any firearms or lethal weapons of any type, or reside in a home or occupy a vehicle in which any such firearms or lethal weapons are present.

24. That defendant shall not consume or possess any alcoholic beverages including the so-called nonintoxicating beer or wine, nor associate with anyone possessing or consuming the same, nor frequent any establishment where the same are served or sold for consumption on the

premises. Further, defendant shall not consume or possess any controlled substance or drug paraphernalia, other than those substances that may be prescribed for defendant by a licensed physician and taken in the prescribed dosages, nor associate with anyone possessing or consuming the same.

25. The defendant shall submit at defendant's own expense to random drug and alcohol tests of defendant's blood, breath, saliva or urine at the discretion of the supervising officer. Failure to provide a sample within a reasonable time and attempts to alter, adulterate, substitute or tamper with a test will be a violation of these terms and conditions. Any attempt to alter, adulterate, substitute or tamper with a sample may result in a new criminal charge.

26. Pursuant to West Virginia Code §62-12-26(f), and based upon the Court's determination of the defendant's inability to pay, the defendant shall not be required to pay a supervision fee, subject to later modification upon a change of circumstances brought before the Court.

27. The defendant shall abide by all requirements made applicable through the *Computer Use Conditions* written agreement.

28. The defendant shall report as directed to the Court or assigned supervising officer and permit the officer to visit the defendant's home, place of employment or school. The defendant shall answer truthfully all reasonable inquiries made by the supervising officer. The defendant shall submit to any and all searches of the defendant's person, residence, property or effects by the supervising officer at any time the officer deems it necessary based upon reasonable suspicion or safety concerns, and agrees to the seizure of any property found or discovered as a result of the search.

The Court further informed the defendant of the provisions of West Virginia Code §16-3C-2 dealing with mandatory HIV testing. The Court thereupon entered an appropriate Order directing HIV testing.

The Court thereupon noted that DNA testing shall be performed and thereupon entered an appropriate Order directing DNA testing.

Thereupon, the Court advised the defendant that pursuant to Chapter 62, Article 4, Section 17 of the Code of West Virginia, if costs, fines, forfeitures, penalties or restitution imposed by the Court on the defendant in this matter are not paid in full when Ordered to do so by the Court, the Circuit Clerk shall notify the West Virginia Division of Motor Vehicles of such failure to pay and upon such notice, the Division of Motor Vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until such time that the costs, fines, forfeitures or penalties are paid. The original notice advising the defendant of the same was ORDERED filed and made a part of the record in this case and a copy of said notice provided to the defendant, counsel for the defendant and counsel for State.

Thereupon, the Court advised the defendant of his rights with respect to an appeal in this matter.

Thereupon, the Court inquired of the parties as to whether there was any restitution due and owing the victim, to which counsel responded in the negative. Based on the representations of counsel, the Court found that there was no restitution obligation.

Thereupon, the Court heard the sentencing recommendations of counsel for State and counsel for the defendant.

The Court thereupon advised the defendant of his right of allocution and the defendant, Adam Derek Bowers, declined to address the Court prior to imposition of sentence.

Nothing further being offered in delay of judgment herein with regard to defendant's finding of guilty of the felony offense of First Degree Sexual Assault as contained in Count One of the Indictment in this case, it was considered and ORDERED by the Court that said defendant, Adam Derek Bowers, be committed to the custody of the Commissioner of the West Virginia Division of Corrections for a term of not less than fifteen (15) years nor more than thirty-five (35) years from the 16<sup>th</sup> day of August, 2013, thereby giving the defendant credit for time previously served.

Nothing further being offered in delay of judgment herein with regard to defendant's finding of guilty of the felony offense of First Degree Sexual Assault as contained in Count Two of the Indictment in this case, it was considered and ORDERED by the Court that said defendant, Adam Derek Bowers, be committed to the custody of the Commissioner of the West Virginia Division of Corrections for a term of not less than fifteen (15) years nor more than thirty-five (35) years. It was further ORDERED that said term of imprisonment run consecutively with the term of imprisonment therefore imposed upon the defendant pursuant to his finding of guilty of the felony offense of First Degree Sexual Assault as contained in Count One of the Indictment in this case.

Nothing further being offered in delay of judgment herein with regard to defendant's finding of guilty of the felony offense of Burglary as contained in Count Three of the Indictment in this case, it was considered and ORDERED by the Court that said defendant, Adam Derek Bowers, be committed to the custody of the Commissioner of the West Virginia Division of Corrections for a term of not less than one (1) year nor more than fifteen (15) years. It was further ORDERED that said term of imprisonment run concurrently with the term of imprisonment theretofore imposed upon the defendant pursuant to his finding of guilty of the

felony offense of First Degree Sexual Assault as contained in Count Two of the Indictment in this case.

Nothing further being offered in delay of judgment herein with regard to defendant's finding of guilty of the felony offense of First Degree Robbery as contained in Count Four of the Indictment in this case, it was considered and ORDERED by the Court that said defendant, Adam Derek Bowers, be committed to the custody of the Commissioner of the West Virginia Division of Corrections for a term of forty (40) years. It was further ORDERED that said term of imprisonment run consecutively with the terms of imprisonment imposed upon the defendant pursuant to his finding of guilty of the felony offense of First Degree Sexual Assault as charged in Count Two of the Indictment in this case and his finding of guilty of the felony offense of Burglary as contained in Count Three of the Indictment in this case.

It was further ORDERED that the defendant, Adam Derek Bowers, pay the costs assessed in this matter within one (1) year of his ultimate release from imprisonment or placement on parole and the State of West Virginia was granted a judgment for said costs.

Thereupon, the defendant was remanded to the North Central Regional Jail and Correctional Facility awaiting his transfer to the Penitentiary of this State.

**COUNT ONE OFFENSE: FIRST DEGREE SEXUAL ASSAULT**  
**TERM: 15-35 YEARS**

**CONVICTION DATE: MAY 28, 2015**  
**SENTENCE DATE: SEPTEMBER 14, 2015**  
**EFFECTIVE SENTENCE DATE: AUGUST 16, 2013**

**COUNT TWO OFFENSE: FIRST DEGREE SEXUAL ASSAULT**  
**TERM: 15-35 YEARS**

**CONVICTION DATE: MAY 28, 2015**  
**SENTENCE DATE: SEPTEMBER 14, 2015**  
**EFFECTIVE SENTENCE DATE: TO BEGIN UPON COM-  
PLETION OF COUNT ONE  
TERM OF IMPRISONMENT**

**COUNT THREE OFFENSE: BURGLARY**  
**TERM: 1-15 YEARS**

|                                 |   |
|---------------------------------|---|
| <b>CONVICTION DATE:</b>         | <b>MAY 28, 2015</b>   |
| <b>SENTENCE DATE:</b>           | <b>SEPTEMBER 14, 2015</b>   |
| <b>EFFECTIVE SENTENCE DATE:</b> | <b>TO BEGIN UPON COM-<br/>PLETION OF COUNT ONE<br/>TERM OF IMPRISONMENT<br/>AND TO RUN CONCURRENT-<br/>LY WITH COUNT TWO<br/>TERM OF IMPRISONMENT</b> |

**COUNT FOUR OFFENSE: FIRST DEGREE ROBBERY**  
**TERM: 40 YEARS**

|                                 |   |
|---------------------------------|---|
| <b>CONVICTION DATE:</b>         | <b>MAY 28, 2015</b>   |
| <b>SENTENCE DATE:</b>           | <b>SEPTEMBER 14, 2015</b>   |
| <b>EFFECTIVE SENTENCE DATE:</b> | <b>TO BEGIN UPON COM-<br/>PLETION OF COUNTS TWO<br/>AND THREE TERMS OF<br/>IMPRISONMENT</b> |

It was further ORDERED that the Clerk of this Court transmit a copy of this Order, duly certified, to the following parties:

James Armstrong  
Assistant Prosecuting Attorney  
Third Floor, Courthouse  
301 West Main Street  
Clarksburg, West Virginia 26301

North Central Regional Jail  
#1 Lois Lane  
Greenwood, West Virginia 26415

Christopher Wilson, Esq.  
300 Adams Street  
Fairmont, West Virginia 26554

West Virginia Division of Corrections  
1409 Greenbrier Street  
Charleston, West Virginia 25311

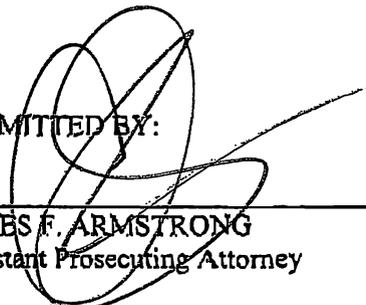
Eric Spatafore  
Harrison County Adult Probation Office  
Sixth Floor, Courthouse  
301 West Main Street  
Clarksburg, West Virginia 26301

David DeMoss, Esq.  
301 Adams Street, Suite 802  
Fairmont, West Virginia 26554

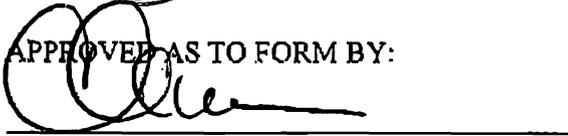
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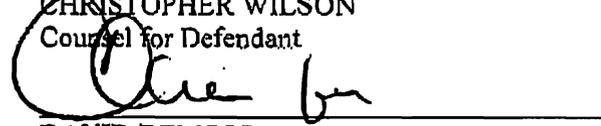
THOMAS A. BEDELL, CHIEF JUDGE

SUBMITTED BY: 

JAMES F. ARMSTRONG  
Assistant Prosecuting Attorney

APPROVED AS TO FORM BY: 

CHRISTOPHER WILSON  
Counsel for Defendant



DAVID DEMOSS  
Counsel for Defendant

STATE OF WEST VIRGINIA  
COUNTY OF HARRISON, TO-WIT

I, Donald L. Kopp II, Clerk of the Fifteenth Judicial Circuit and the 18<sup>th</sup>  
Family Court Circuit of Harrison County, West Virginia, hereby certify the  
foregoing to be a true copy of the ORDER entered in the above styled action  
on the 22 day of September, 2015.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix  
the Seal of the Court this 22 day of September, 2015.

Donald L. Kopp II / dj  
Fifteenth Judicial Circuit & 18<sup>th</sup> Family Court  
Circuit Clerk  
Harrison County, West Virginia

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

vs.

Felony Indictment No. 14-F-5-2  
(Thomas A. Bedell, Chief Judge)

ADAM DEREK BOWERS,

Defendant.

**JUDGMENT AND COMMITMENT ORDER**

On this 14<sup>th</sup> day of September, 2015, came the attorney for the State and the Defendant appearing in person and represented by Christopher Wilson, Esquire, and David DeMoss, Esquire.

IT IS ADJUDGED that the Defendant has been convicted by a finding of guilty of two (2) counts of the felony offense of First Degree Sexual Assault as contained in Counts One and Two of the Indictment in this case, one (1) count of Burglary as contained in Count Three of the Indictment in this case, and one (1) count of First Degree Robbery as contained in Count Four of the Indictment in this case, and the Court having asked the Defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the Defendant is guilty as charged and convicted.

IT IS ADJUDGED that the Defendant is hereby committed to the custody of the Commissioner of the West Virginia Division of Corrections for imprisonment for a term of not less than fifteen (15) years nor more than thirty-five (35) years pursuant to his finding of guilty of the felony offense of First Degree Sexual Assault as contained in Count One of the Indictment in this case.

CONVICTION DATE: May 28, 2015

SENTENCE DATE: September 14, 2015

EFFECTIVE SENTENCE DATE: August 16, 2013

IT IS ADJUDGED that the Defendant is hereby committed to the custody of the Commissioner of the West Virginia Division of Corrections for imprisonment for a term of not less than fifteen (15) years nor more than thirty-five (35) years pursuant to his finding of guilty of the felony offense of First Degree Sexual Assault as contained in Count Two of the Indictment in this case.

CONVICTION DATE: May 28, 2015

SENTENCE DATE: September 14, 2015

EFFECTIVE SENTENCE DATE: to begin upon completion of Count One term of imprisonment

IT IS ADJUDGED that the Defendant is hereby committed to the custody of the Commissioner of the West Virginia Division of Corrections for imprisonment for a term of not less than one (1) year nor more than fifteen (15) years pursuant to his finding of guilty of the felony offense of Burglary as contained in Count Three of the Indictment in this case.

CONVICTION DATE: May 28, 2015

SENTENCE DATE: September 14, 2015

EFFECTIVE SENTENCE DATE: to begin upon completion of Count One term of imprisonment and to run concurrently with Count Two term of imprisonment

IT IS ADJUDGED that the Defendant is hereby committed to the custody of the Commissioner of the West Virginia Division of Corrections for imprisonment for a term of forty

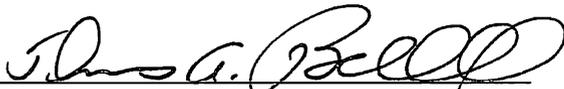
(40) years pursuant to his finding of guilty of the felony offense of First Degree Robbery as contained in Count Four of the Indictment in this case.

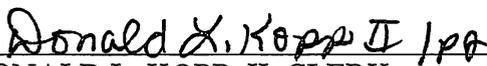
CONVICTION DATE: May 28, 2015

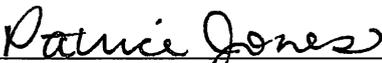
SENTENCE DATE: September 14, 2015

EFFECTIVE SENTENCE DATE: to begin upon completion of Counts Two and Three terms of imprisonment

IT IS ORDERED that the Clerk forthwith transmit this record, duly certified, of the judgment and commitment to: (1) Christopher Wilson, Esq., 300 Adams Street, Fairmont, West Virginia, 26554, (2) David DeMoss, Esq., 301 Adams Street, Suite 802, Fairmont, West Virginia, 26554, (3) the Harrison County Prosecuting Attorney's Office, (4) North Central Regional Jail, #1 Lois Lane, Greenwood, West Virginia, 26415, and (5) Division of Corrections, Office of the Commissioner, Building 84, 1409 Greenbrier Street, Charleston, West Virginia, 25311-1068, Attention: Diane Skiles.

  
THOMAS A. BEDELL, CHIEF JUDGE

  
DONALD L. KOPP, II, CLERK

  
DEPUTY CIRCUIT CLERK

A TRUE COPY: Certified this 22 day of September, 2015.