

IN THE CIRCUIT COURT OF ROANE COUNTY, WEST VIRGINIA

FILED
CIRCUIT COURT
ROANE COUNTY, W. VA.

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STATE OF WEST VIRGINIA,

BEVERLY GREATHOUSE
CIRCUIT CLERK

vs.

FELONY NO. 05-F-59

Honorable Thomas C. Evans, III

RAYMOND LEE ELSWICK,
Defendant.

JAN 12 2009

ORDER

(for Jury Trial December 9th & 10th, 2008)

On the 9th day of December, 2008, came the State of West Virginia by Shelly DeMarino, Special Prosecuting Attorney in and for Roane County, West Virginia. Came also the Defendant Raymond Elswick in person and by counsel Lee Benford and Morgan Hayes for a jury trial.

Whereupon, the State moved to amend the information, to correct typographical error, which motion was objected by the Defendant and **GRANTED** by the Court.

Whereupon, the Court then proceeded with jury selection. Whereupon, the parties having announced ready to proceed and advising the court that there was no reason not to swear the Jury, the panel duly selected was duly sworn in open court and in the presence of the Defendant to well and truly try the issues joined herein.

Thereupon, counsel for the State and counsel for the defendant gave their opening statement to the jury panel. Whereupon, the State began presentation of evidence. The Court took recess and there being insufficient opportunity to complete the trial on this date, this action was continued to December 10, 2008.

On December 10, 2008, again came the State by her attorney and again came the Defendant in person and by his attorneys. Whereupon, the State concluded the presentation of evidence, and the State announced that it 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. Thereafter, the defendant rested.

Thereupon, instructions of the Court were read to the jury.

Thereupon, counsel for the State and the defendant presented their closing arguments.

The Court finds that exhibits one (1) through four (4) and eight (8) were admitted into evidence and will send exhibits one (1) through four (4) to the jury room. Counsel for the defendant moved that the order be redacted to so as not reflect the prior felony conviction, which the state objected. The Court Ordered it submitted as redacted.

Thereupon, after, after hearing all the testimony, instructions of the Court, and arguments of counsel, the said jury retired to their chamber to consider of their verdict.

Thereupon, after mature and due deliberations the jury returned into open Court on the 10th day of December, 2008, and announced its verdict to be as follows:

(1-a.) We, the Jury, **FIND** that a person identified in the records as “Raymond Elswick” was previously convicted in the Circuit Court of Jackson County, W. Va., in Criminal case No. 85-F-44, for Burglary, a felony crime punishable by confinement in the penitentiary, on or about October 7, 1985 and sentenced by said court on or about October 21, 1985.

/s/ Rachael Hall, Foreperson, Date 12/10/08

(1-b.) We, the Jury, **FIND** that the Defendant in this action, RAYMOND ELSWICK, is the same person previously convicted of the offense described in paragraph no. 1-a.,above.

/s/ Rachael Hall, Foreperson, Date 12/10/08

(2-a.) We, the Jury, **FIND** that a person identified in the records as “Raymond Elswick” was previously convicted in the Circuit Court of Roane County, W. Va., in Criminal case No. 93-F-16, for Breaking and Entering a Building other than a Dwelling, a felony crime punishable by confinement in the penitentiary, on or about June 15, 1994 and sentenced by said court on or about June 27, 1994.

/s/ Rachael Hall, Foreperson, Date 12/10/08

(2-b) We, the Jury, **FIND** that the Defendant in this action, RAYMOND ELSWICK, is the same person previously convicted of the offense described in paragraph no. 2-a., above.

/s/ Rachael Hall, Foreperson, Date 12/10/08

Whereupon, the Defendant requested to have the jury polled. Thereafter, said verdicts appearing unanimous and in proper form, and without objection, the same are **ORDERED** filed and recorded.

The Court inquired as to whether the parties was prepared to proceed to sentencing. Counsel for the Defendant informed the Court that there would be no post-trial motions.

The Defendant addressed the Court on his own behalf.

The Defendant stands before this Court having been convicted of voluntary manslaughter and although the previous two convictions are not crimes of violence to a person, case law states that the crimes Breaking and Entering and Burglary carry with them the potential of violence.

Therefore, the Court FINDS the current ~~offense~~^{offense of} voluntary manslaughter is a crime of violence and the two (2) prior felony convictions carry with them the potential of violence. Therefore, it is the Judgment of the Court that upon conviction of crime of voluntary manslaughter by jury of peers in July of 2008, and by conviction in December 2008, having been convicted of two (2) prior felonies that the Defendant is committed to the Custody of the Commissioner of the West Virginia Department of Corrections for placement at the West Virginia Penitentiary in accordance with W.VA. Code §61-11-18, for a term of his natural life, and to be given time credit for time served.

Whereupon the Court informed the Defendant of his right to petition the West Virginia Supreme Court of Appeals for any errors of law.

Thereupon, the jury was discharged.

The Defendant is remanded to custody.

The Clerk is directed to send a true copy of this ORDER to all counsel of record and the Commission of the West Virginia Department of Corrections.

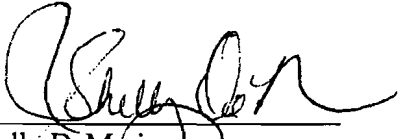
It is so **ORDERED**.

ENTERED this the 29th day of December, 2008



THOMAS C. EVANS, III, JUDGE
05-F-59
12-9th & 10th - 2008

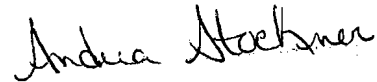
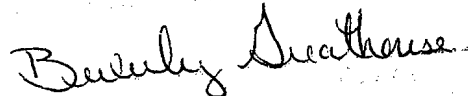
Prepared by:



Shelly DeMarino
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Entered in CR C.O.B. No. 53 Page _____
this 8 day of Jan, 2009

Approved as to Form by:



Lee Benford, Esq.
Counsel for Defendant

Morgan Hayes, Esq.
Counsel for Defendant