

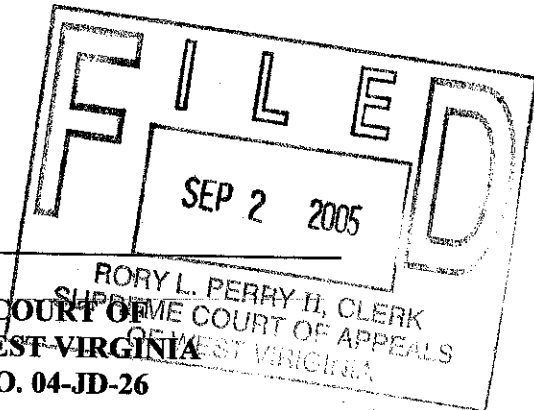
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No. 050864-

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
Charleston, WV

IN THE INTEREST OF:

BOBBY LEE B.



FROM THE CIRCUIT COURT OF
RANDOLPH COUNTY, WEST VIRGINIA
JUVENILE ACTION NO. 04-JD-26

JUDGE JOHN L. HENNING, JR., 20TH JUDICIAL CIRCUIT

BRIEF OF THE APPELLEE,
THE STATE OF WEST VIRGINIA

COUNSEL FOR THE STATE:

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DATED: September 1, 2005

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COMES NOW Earl W. Maxwell, Prosecuting Attorney, and Shannon S. Jones, Assistant Prosecuting Attorney, and hereby submits the following brief in response to the West Virginia Department of Health and Human Resources' Brief in this matter:

I. PROCEDURAL HISTORY

The Department of Health and Human Resources filed this appeal to contest an Order which was entered on December 15, 2004 and denied the relief it requested. The Circuit Court of Randolph County (hereinafter referred to as "the Circuit Court") entered an Order on May 5, 2004 which directed Dr. Thomas Adamski to conduct an evaluation of Bobby B. to determine appropriate placement and treatment options for him. The Circuit Court ordered that Dr. Adamski be paid at the Medicaid rates for his services. Exhibit A, Order, Entered May 5, 2004.

After Dr. Adamski completed his evaluation, he submitted an invoice to the Circuit Court requesting payment at his usual rate. On September 2, 2004, the Circuit Court entered an Order directing the Department of Health and Human Resources (hereinafter "the Department") to provide payment to Dr. Adamski in the amount requested. The Department filed a motion on or about October 6, 2004 requesting that the Circuit Court vacate its September 2, 2004 Order and amend its Order to reflect payment at Medicaid rates.

Following a hearing held on November 8, 2004, the Circuit Court entered an Order on December 15, 2004 which denied the Department's motion to vacate the September 2, 2004 Order. Thus, the Department appealed this matter and now seeks an Order from this Honorable Court to grant the relief it requests.

II. STATEMENT OF THE FACTS

The State of West Virginia charged Bobby B. with one count of sexual abuse in the first degree in violation of West Virginia Code §61-8B-7(a)(3).¹ At a preliminary hearing held May 5, 2004, the Juvenile waived his preliminary hearing. His Counsel proffered that the Juvenile desired to stipulate to adjudication and the Juvenile entered an Alford plea as to the petition's charge.² The Circuit Court found probable cause, accepted the agreement of the parties, and adjudicated the Juvenile as delinquent. The Circuit Court further ordered that the Juvenile be placed in the custody of the Division of Juvenile Services to complete a diagnostic evaluation at the West Virginia Industrial Home for Youth in Salem, West Virginia. The Circuit Court also ordered Dr. Thomas Adamski, Forensic Psychiatrist, to "perform an appropriate sexual offender evaluation of the juvenile and that the Department of Health and Human Resources shall pay for the services not covered by insurance, at Medicaid rates." Exhibit A.

Upon the completion of the evaluation, Dr. Adamski submitted an invoice to the Circuit Court requesting payment for the evaluation. The Circuit Court entered an Order on September 2, 2004 approving his request and directing payment to Dr. Adamski by the Department in the amount of \$1,000.00 (four hours at \$250.00 per hour). Exhibit B, Order, Entered September 2, 2004.

¹ Specifically, the State charged: "That between March 12, 2004 and March 13, 2004, the Juvenile, Bobby B., being fourteen years old or more, subject[ed] another person to sexual contact who [was] eleven years old or less, to wit: That the Juvenile, Bobby B., did forcibly place his middle finger down the victim's underwear on the victim's buttocks. The victim is 5 years of age with his date of birth being 02-23-99."

² The Juvenile denied the specific factual allegations. He, however, admitted there might be enough evidence to convict him and stipulated to an adjudicatory finding that he was delinquent. North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160 (1970).

The Department then filed a motion to vacate the Circuit Court's September 2, 2004 Order on the grounds that it was in violation of West Virginia Code §49-7-33. The Department contended that the Medicaid rate for Dr. Adamski's four hour evaluation would be \$214.89 as determined by the Bureau of Medical Services. The Department asserted that the Circuit Court's May 4, 2004 Order complied with the statute and that it should remain in effect.

Following a hearing on November 8, 2004, the Circuit Court denied the Department's motion. The Circuit Court reasoned that when contemplating placing a juvenile in a treatment facility which would cost the State approximately \$40,000.00 per year, that spending \$1,000.00 on an evaluation by a competent and highly respected forensic psychiatrist who has extensive experience in evaluating sex offenders is not unreasonable. Exhibit C, Order, Entered December 15, 2004. The Circuit Court further denied the Department's subsequent motion for stay by Order entered January 21, 2005.

III. Question Presented

Whether the Circuit Court of Randolph County, West Virginia committed reversible error in ordering payment for Dr. Thomas Adamski that exceeds the Medicaid rate for such services as determined by the West Virginia Department of Health and Human Resources in accordance with West Virginia Code §49-7-33.

IV. Standard of Review

"Where the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a de novo standard of review." Syl. Pt. 1, State v. Steven H., 600 S.E.2d 217, 215 W.Va. 505 (2004) quoting Chrystal R.M. v. Charlie A.L., 194 W. Va. 138, 459 S.E.2d 415 (1995). The matter at bar clearly is the Circuit Court's interpretation and application of West Virginia Code §49-7-33. Thus, the State asserts that this Court should employ a de novo standard of review.

V. Discussion of Law

The State of West Virginia hereby asserts that the Circuit Court of Randolph County, West Virginia did not commit reversible error in ordering payment for Dr. Thomas Adamski that exceeds the Medicaid rate for such services as determined by the Department in accordance with West Virginia Code §49-7-33. Pursuant to W. Va. Code §49-7-33, a circuit court may order the Department to pay for professional services rendered by a psychologist, psychiatrist, physician, therapist or other health care professional to a child or other party to the proceedings.³ These

³ "At any time during any proceedings brought pursuant to articles five [§§ 49-5-1 et seq.] and six [§§ 49-6-1 et seq.] of this chapter, the court may upon its own motion, or upon a motion of any party, order the West Virginia department of health and human resources to pay for professional services rendered by a psychologist, psychiatrist, physician, therapist or other health care professional to a child or other party to the proceedings. Professional services include, but are not limited to, treatment, therapy, counseling, evaluation, report preparation, consultation and preparation of expert testimony. The West Virginia department of health and human resources shall set the fee schedule for such services in accordance with the Medicaid rate, if any, or the customary rate and adjust the schedule as appropriate. Every such psychologist, psychiatrist, physician, therapist or other health care professional shall be paid by the West Virginia department of health and human resources upon completion of services and submission of a final report or other information and documentation as required by the policies and procedures implemented by the West Virginia department of health and human resources." W. Va. Code § 49-7-33.

services include sexual offender evaluations such as the one used in the instant case to assist the Circuit Court in determining the appropriate placement options, rehabilitation programs, and treatment options for the juvenile offender.

The Supreme Court of West Virginia has consistently applied a best interests of the child standard to all cases involving juveniles, including delinquency cases, in this state. This Court, in State v. Eddie "Tosh" K., cautioned "those involved in juvenile proceedings not to lose focus of the purpose behind the juvenile justice system: the purpose of this chapter [Chapter 49] is . . . to reduce the rate of juvenile delinquency and to provide a system for the rehabilitation or detention of juvenile delinquents and the protection of the general public." 460 S.E.2d 489, 498; 194 W.Va. 354, 363 (1995). This Court opined that "the child welfare law clearly contemplates that the rehabilitation of delinquent children shall be accomplished by a program of individualized care and treatment directed towards the ultimate goal of reintegrating such children into society so that they no longer pose a threat to themselves or to the public." State ex. rel. R.S. v. Trent, 289 S.E.2d 166, 175, 169 W.Va. 493, 509 (1982). In addition, there is a clear interest in West Virginia for the swift and efficient administration of justice in juvenile cases. W.Va. Constitution Article 3 Section 17; W.Va. Code §49-5-1, et. seq.; and West Virginia Trial Court Rule 16.07.

In the case sub judice, Judge Henning ordered that Dr. Thomas Adamski, a licensed forensic psychiatrist, perform a sex offender evaluation on the juvenile as part of the evaluation process to assist the court in determining the proper treatment for the juvenile. Dr. Adamski has an excellent history of providing competent, complete, and prompt evaluations of criminal

defendants. In the Twentieth Circuit, there is no provider who would conduct a comparable evaluation as a Medicaid provider at the Medicaid rates. Thus, the Circuit Court ordered that Dr. Adamski perform the evaluation and, when his bill was submitted, the Circuit Court ordered the full payment for Dr. Adamski.

While the State recognizes that this Court has recently issued decisions upholding W.Va. Code §49-7-33 regarding the payment of services rendered in juvenile delinquency cases, the State asserts that these decisions are contrary to the long-standing common law propositions and would fail in this case to serve the public policy interests of our State's citizens.⁴ When this statute is applied in judicial circuits having no qualified expert performing such evaluations at the Medicaid rates, the goals of the higher public interest are not served. Chapter 49 of the West Virginia Code clearly indicates that the purpose of the child welfare laws are to administer swift and efficient justice for the juvenile and to rehabilitate juveniles so that they might become productive members of our society. The Circuit Court of Randolph County followed these higher guiding principles in requesting the evaluation of the juvenile by a highly qualified professional and by ordering his subsequent payment.

Courts in West Virginia have a duty to interpret statutes in such a way as to give full effect to the clear meaning of the Legislature. This Court, in Click v. Click, found that "it is the duty of a court to construe a statute according to its true intent, and give to it such construction as will uphold the law and further justice. It is as well the duty of a court to disregard a construction,

⁴ Hewitt v. State of West Virginia Department of Health and Human Resources, 575 S.E.2d 308, 212 W.Va. 698 (2002) and State ex rel. Artimez v. Recht, 613 S.E.2d 76, 2005 W. Va. LEXIS 1 (2005).

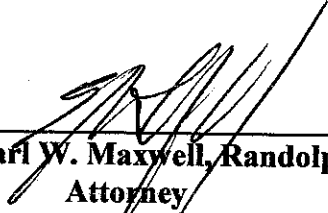
though apparently warranted by the literal sense of the words in a statute, when such construction would lead to injustice and absurdity." Syllabus Point 2, 127 S.E. 194, 98 W.Va. 419 (1925) noted in Footnote 5 In re Greg H., 542 S.E.2d 919, 208 W.Va. 756 (2000). The Department contends that the Circuit Court interpreted the statute inconsistently with its clear meaning and the intent of the Legislature. The State, however, asserts that to have strictly applied the statute in this matter would be inconsistent with the overarching principles in child welfare law.

The evaluation completed by Dr. Adamski was requested by the Court to provide an individualized and expert recommendation for the future treatment program of the juvenile. Dr. Adamski has an excellent reputation within the Twentieth Circuit of rendering expert opinions based on his years of experience in working with sex offenders. There is no other evaluator with a comparable level of expertise working in the Twentieth Circuit. Unfortunately, Dr. Adamski is not a registered Medicaid provider and does not submit to the Medicaid rates. The State asserts that spending just \$214.89 on an evaluation when the placement options being considered for the juvenile cost approximately \$40,000.00 per year is absurd. To spend \$1,000.00 for such a reliable and expert opinion to assist in making such a costly placement decision is not unreasonable. Further, the evaluation served the interests of the juvenile justice system and society by providing a competent and timely evaluation geared toward an individualized assessment of the juvenile's needs so that the parties involved could work for the juvenile's rehabilitation.

VI. Conclusion and Request for Relief

FOR THE ABOVE STATED REASONS, the State of West Virginia respectfully requests that this Honorable Court uphold the December 15, 2004 Order of the Circuit Court of Randolph County which ordered payment to Dr. Thomas Adamski for his evaluative services.

**Respectfully Submitted,
The State of West Virginia**



**Earl W. Maxwell, Randolph County Prosecuting
Attorney
WV State Bar Identification No. 5735**



**Shannon S. Jones, Assistant Prosecuting Attorney
WV State Bar Identification No. 9398**

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IN THE CIRCUIT COURT OF RANDOLPH COUNTY, WEST VIRGINIA

IN RE: BOBBY LEE BURNLEY
Michelle Cain, Mother of the Juvenile

DOB: 6-11-89
JUVENILE CASE NO: 04-JD- 26

ORDER

This 5th day of May, 2004, came the State of West Virginia by its Assistant Prosecuting Attorney, Matthew H. Fair; Tammy Cook; Randolph County Juvenile Probation Officer; Peggy Burns, Juvenile Coordinator for Prosecutor's Office; Bobby Lee Burnley, Juvenile; Timothy Prentice, Attorney for the Juvenile; Michelle Cain, Parent of the Juvenile, pursuant to notice setting this matter for a Preliminary Hearing.

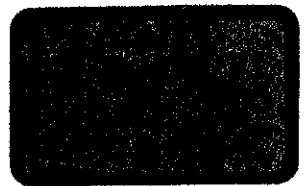
The State then advised the Court that it was ready to proceed on the issue of probable cause. Counsel for the Juvenile then advised the Court that based on the facts and circumstances in this matter and after conferring with the State, the Juvenile waived the preliminary hearing.

The Court, finding that said waiver is proper, does hereby accept said waiver of said probable cause hearing and said probable cause is hereby found.

The parties thereupon announced that the parties agreed to an adjudication in this matter and the juvenile, by counsel, advised the Court that the plea was an "Alford" style plea denying the facts but still agreeing to be adjudicated. Counsel further advised the Court that he felt that this was in the best interests of the juvenile.

The Court then had the juvenile sworn and inquired as to whether or not he understood what the plea was and whether he agreed with the plea. The Court, finding that the juvenile agreed with the plea and understood the plea, then inquired of the juvenile's mother who agreed with the plea.

Based on the record in this matter and the State agreeing to said "Alford" style plea, and finding that it is in the best interests of the juvenile, the Court does hereby accept the plea of the juvenile to the allegations in the petition and does hereby adjudicate the juvenile a delinquent for



Sexual Abuse in the First Degree, where the juvenile, being over fourteen years old, subjected another juvenile who is under the age of eleven, to-wit: 5 years old, to sexual contact and which conduct which would be a violation of §61-8B-7 (a)(3) if said juvenile were an adult.

After a continuance until the afternoon docket, the parties announced that they agreed that the juvenile undergo a 60 diagnostic evaluation at the Industrial Home for Youth. Counsel for the juvenile then moved for home confinement pending said evaluation.

The Court, having made a thorough review of the file in this matter and having heard the evidence presented and the recommendations of the parties and the Juvenile Probation Officer for Randolph County and being familiar with this case and for matters more fully shown on the record, makes the following findings and conclusions:

1. That the Court is concerned with the safety of the community and that there is no less restrictive placement for the juvenile than detention pending placement.
2. Based on the record in this matter, the recommendations of the parties and their witnesses and the totality of the situation it is hereby ORDERED and ADJUDGED that the care, custody and control of the Juvenile, be placed with the Division of Juvenile Services and the Juvenile be sentenced to **the Industrial Home for Youth, Industrial, W.Va.** for a 60 day diagnostic evaluation.
3. That the Court, knowing that the Detention Centers are at capacity, the Court ORDERS that due to the circumstances in this case it is in the best interests of the Juvenile and society that the Juvenile, shall be placed in a Secure Detention Facility pending transfer to Salem. The detention facilities available are listed below:

Eastern Regional Juvenile Detention Center

900 South Queen Street
Martinsburg, WV 25401

Southern Regional Juvenile Detention Center
Rt. 1 Box 626
Princeton, WV 24740

North Central Regional Juvenile Detention Center
PO Box 3362
Parkersburg, WV 26103

Northern Regional Juvenile Detention Center
1000 Chapline Street
Wheeling, WV 26003

South Central Regional Juvenile Detention Center
7 Industrial Boulevard
Industrial, WV. 26375

It is ORDERED that the Sheriff of Randolph County or his authorized agent shall transport said Juvenile to said detention facility and to and from said facility for all future Court proceeding.

It is further ORDERED that the Division of Juvenile Services transport said juvenile from said detention facility to the Industrial Home for Youth at Salem for the aforesaid evaluation and upon completion of said evaluation, return said juvenile to a detention facility.

The Court feels these services are in the best interest of this Juvenile and that all reasonable efforts have been realized to date, in an attempt to maintain said Juvenile in his/her natural home with his/her parents and that continuation in the home at this time is not in the juvenile(s) best interests.

It is ORDERED that the Sheriff of Randolph County or his authorized agent shall transport said Juvenile to and from said detention facility and to any further hearings in this matter.

It is further ORDERED that Dr. Thomas Adamski perform an appropriate sexual offender evaluation of the juvenile and that the Department of Health and Human Services shall pay for services not covered by insurance, at Medicaid rates.

All of which is hereby ORDERED and ADJUDGED.

It is Ordered that copies of this Order be sent to counsel of record, the Randolph County Juvenile Probation Officer, 4 Randolph Avenue, Elkins, WV 26241 and the WV Department of Health and Human Resources, 227 Third Street, Elkins, WV 26241.

Enter this 5th day of May, 2004.

[Handwritten Signature]
Judge John Henning

ENTERED
MAY - 5 2004
ORDER BOOK
NUMBER _____ PAGE _____
PHILIP D. RIGGLEMAN, CLERK

cc: Sheriff (v.a. law)
Probation (v.a. law)

A TRUE COPY:
ATTEST:
PHILIP D. RIGGLEMAN
CLERK OF THE CIRCUIT COURT
BY [Signature] DEPUTY

IN THE CIRCUIT COURT OF RANDOLPH COUNTY, WEST VIRGINIA

IN RE: BOBBY LEE BURNLEY, DOB: 6/11/89
Michelle L. Cain, Parent of the juvenile

JUVENILE NO. 04-JD-26 & 04-JD-17

ORDER

By order entered on the 23rd day of July, 2004, Thomas R. Adamski, M.D. was requested to perform a Forensic Psychiatric Evaluation on the above named juvenile to aid the Court in making an informed decision in this case. Dr. Adamski having subsequently performed and submitted his Forensic Psychiatric Evaluation, together with a statement for his services in this matter, and the Court having reviewed Dr. Adamski's fee in this case and finding it to be reasonable, hereby

ORDERS that the West Virginia Department of Health and Human Resources shall pay unto Thomas R. Adamski, M.D., Forensic Psychiatrist, 1011 Chestnut Ridge Road, Morgantown, West Virginia 26505-3630 the sum of \$1,000.00 for his services in performing said evaluation.

The Clerk of this Court is directed to forward a copy of this order to counsel of record and to Thomas R. Adamski, M.D., and to forward a certified copy of this order and the original statement to the West Virginia Department of Health and Human Services.

Enter this the 2 day of September, 2004.

A TRUE COPY:

ATTEST:

PHILIP D. RIGGLEMAN
CLERK OF THE CIRCUIT COURT

BY Michelle L. Cain DEPUTY

Thomas R. Adamski
JUDGE

ENTERED

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By: *Michelle L. Cain*

04-12-04
PA
TL
Prentice
Adamski
04-30-17



IN THE CIRCUIT COURT OF RANDOLPH COUNTY, WEST VIRGINIA

IN RE: BOBBY LEE BURNLEY,
Michelle Cain, Mother of the Juvenile

DOB: 6-11-89
JUVENILE CASE NO. 04-JD-26

ORDER

On this the 8th day of November, 2004, this matter came on for hearing to consider the West Virginia Department of Health and Human Resources' ("Department") Motion to Vacate the September 2, 2004 Payment Order Concerning Thomas R. Adamski, MD, upon the appearances of the Department, by C. Carter Williams, Assistant Attorney General, the State of West Virginia, by Shannon Jones, Randolph County Assistant Prosecuting Attorney, and Timothy H. Prentice, Esquire on behalf of the juvenile, Bobby Lee Burnley.

Whereupon, the Court heard statements and argument of respective counsel herein concerning said motion which are more fully spread upon the record herein. Specifically, the Department contended that the Court's September 2, 2004, Order herein directing payment to Thomas R. Adamski, MD in the amount of \$1,000.00 for an evaluation of the juvenile violates West Virginia Code § 49-7-33 inasmuch as said amount exceeds the medicaid rate of payment for said evaluation, and because the Court itself had previously ordered the evaluation by Dr. Adamski be paid at the medicaid rate by Order dated May 5, 2004. The Department further contended that it had now paid Dr. Adamski at the medicaid rate and had therefore fulfilled its statutory obligation under § 49-7-33.

Whereas, upon consideration of all of which, the Court does hereby FIND the



following:

1. That the juvenile, Bobby Lee Burnley, is now fifteen (15) years of age, and that he was fourteen (14) years of age at the time that he committed the offense for which he was adjudicated delinquent herein, that offense being sexual assault of a five (5) year old child;
2. That sexual assault of any individual at any age is a very serious matter; however, the Court believes that sexual assault of a child is even more serious;
3. That because of his conduct and the offense that he committed, which would have been a crime if here were an adult, the juvenile had been in detention since approximately April of this year, or at least for a number of months;
4. That the juvenile is presently in a treatment facility in Ohio which costs roughly \$3,000.00 per month and he is expected to be there for at least a year which will result in a cost per annum roughly of \$40,000.00;
5. That Dr. Adamski regularly does work for this Court, which is not only accepted by the Court and respected, but also accepted by most if not all members of the bar that practice before this Court;
6. That not only does Dr. Adamski do a thorough and excellent evaluation, he also does it promptly which is important to the Court and the parties;
7. That a psychological or psychiatric evaluation is of huge significance to the Court in deciding what to do with this youth, when in essence the Court is making a \$40,000.00 decision to try and treat this youth so that he does not sexually assault another child;

8. That the State [Department] has suggested that the statute [§ 49-7-33] only permits the payment of \$214.00 for this evaluation completed by Dr. Adamski, that being the applicable medicaid rate;

9. That the Court believes, however, that you generally get what you pay for, and that the Court would be very reluctant to make a \$40,000.00 per annum decision which perhaps involves the sexual assault of young children on a \$214.00 evaluation.

10. That the Court rather believes that it can make the best decision based upon a thorough evaluation report which the Court has received in this matter, and the Court does not believe that it can obtain a thorough and prompt evaluation at the amount represented by the Department; and,

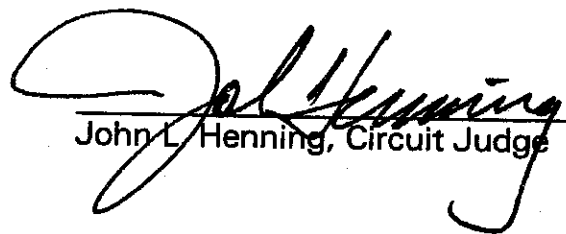
11. That the Court believes is has inherent power to take such action as it deems appropriate to have this juvenile evaluated and perhaps prevent the sexual assault of young children.

WHEREAS, upon consideration of the foregoing, the Court does hereby ORDER and ADJUDGE that the Department's motion be, and is hereby, DENIED. It is further ORDERED and ADJUDGED that the Department's objections and exceptions to this ruling be, and are hereby, noted and saved for appeal, and in fact the Court does further encourage the Department to appeal this decision of the Court so that the Department does not have to come back with a like motion on often occasions because the Court anticipates making exactly the same ruling the next time that this payment issue is brought before the Court to address.

It is further ORDERED and ADJUDGED that the Clerk shall provide attested copies of this Order to the following after entry by the Court:

- a. Shannon Jones, Randolph County Assistant Prosecuting Attorney, Randolph County Courthouse, 4 Randolph Avenue, Elkins, WV 26241;
- b. Timothy H. Prentice, Esquire, 106 Elm Street, Elkins, WV 26241; and,
- c. C. Carter Williams, Assistant Attorney General, 15 Grant Street, Suite 1, Petersburg, WV 26847.

ENTERED on this the 13th day of December, 2004.



 John L. Henning, Circuit Judge

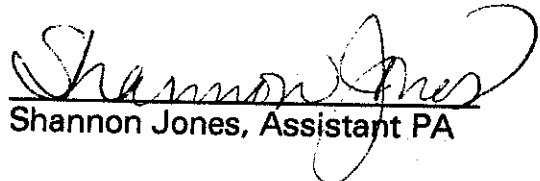
Prepared by:

C. Carter Williams
 Assistant Attorney General
 15 Grant Street, Suite 1
 Petersburg, WV 26847

ENTERED

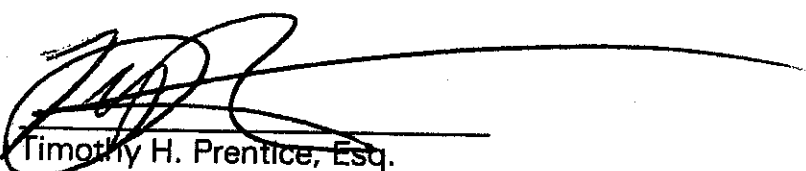
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 Sw. ORDER BOOK
 NUMBER 52 PAGE _____
 PHILIP D. RIGGLEMAN, CLERK
 By: W. Moore - Deputy

Approved by:



 Shannon Jones, Assistant PA

one
 for
 TC
 Prentice
 Williams



 Timothy H. Prentice, Esq.

A TRUE COPY:
 ATTEST:
 PHILIP D. RIGGLEMAN
 CLERK OF THE CIRCUIT COURT
 BY W. Moore DEPUTY

CERTIFICATE OF SERVICE

I, the undersigned, appearing on behalf of the State of West Virginia in the above captioned case, hereby certify that I have served a copy of the Brief in the above captioned case attached hereto upon the following parties appearing as counsel, or pro se, on this the 1st day of September, 2005, by having said documents delivered by first class mail postage prepaid to the following addresses.

C. Carter Williams, Assistant Attorney General
15 Grant Street, Suite 1
Petersburg, WV 26847

Tim Prentice, Esquire
Elm Street
Elkins, WV 26241

Attested:



Shannon S. Jones, Assistant Prosecuting Attorney
Office of Prosecutor Randolph County
2nd Floor Courthouse Annex
4 Randolph Avenue
Elkins, WV 26241