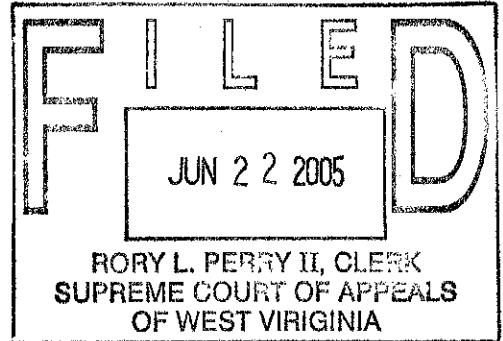


IN THE  
SUPREME COURT OF APPEALS  
OF  
WEST VIRGINIA

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At Charleston

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STATE OF WEST VIRGINIA

Plaintiff Below, Respondent,

vs.

32583  
Case No. 041763  
Underlying proceeding  
No. 03-F-129  
Circuit Court of Monongalia County

CHESDON JAMES HAUGHT

Defendant Below, Petitioner.

---

TO THE HONORABLE JUDGES OF THE SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

BRIEF ON BEHALF OF CHESDON JAMES HAUGHT

CHESDON JAMES HAUGHT  
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W. Va. State Bar No. 7169

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

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Circuit Court of Monongalia County**

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**Defendant Below, Petitioner.**

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**MEMORANDUM OF PARTIES**

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**IN THE  
SUPREME COURT OF APPEALS  
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**At Charleston**

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**STATE OF WEST VIRGINIA**

**Plaintiff Below, Respondent,**

**vs.**

**Case No. 041763  
Underlying proceeding  
No. 03-F-129  
Circuit Court of Monongalia County**

**CHESDON JAMES HAUGHT**

**Defendant Below, Petitioner.**

**BRIEF ON BEHALF OF CHESDON JAMES HAUGHT**

**I. NATURE OF PROCEEDING AND RULING BELOW**

Chesdon James Haught, age 23, was indicted in September 2003 by a Monongalia County Grand Jury on the charges of Kidnapping, First Degree Robbery, and Domestic Battery. The Honorable Robert B. Stone sat as Judge. The State was represented by Assistant Prosecutor, Kathleen Kern. Mr. Haught was represented by Morgantown lawyer Edward L. Harman, Jr., with the law firm Spilman Thomas & Battle, PLLC.

On March 13, 2004, Judge Stone dismissed the First Degree Robbery charge at

the end of the evidence. On the same day, following a four day trial, the jury returned a verdict of not guilty to petit larceny, a verdict of guilty to Kidnapping with a recommendation of mercy, and a verdict of guilty to Domestic Battery. At sentencing, Judge Stone made several findings of fact pursuant to West Virginia Code §61-2-14(a) and sentenced Mr. Haught to the custody of the West Virginia Department of Corrections for life on the Kidnapping conviction and to the North Central Regional Jail for one year on the Domestic Battery conviction. Judge Stone ran said sentences concurrent. Mr. Haught petitions this Court for an appeal of that conviction. The statutory appeal period has not been extended in this matter.

## **II. STATEMENT OF FACTS**

On the evening of April 24, 2003, Stephanie Hilton and Brittany Warnick went to a bar in downtown Morgantown, West Virginia. Hilton testified that she drank probably four to five beers at the Z Club (Hilton direct at page 207, lines 12-19) and Warnick added that she was under the influence of alcohol (Warnick cross at page 177, lines 9-21). Hilton and Warnick left the Z Club and drove around in Hilton's Mazda 626. While driving on Van Voorhis Road, Hilton struck a curb and caused a tire blowout (Hilton direct at page 208, lines 3-5). Hilton was able to drive the car approximately 200 feet to Warnick's boyfriend, Donald Abduhl's, trailer (Hilton direct at page 208, lines 7-8).

Hilton and Warnick entered the trailer at some point after 1:00 a.m. (Hilton cross at page 21, lines 9-14) and told Abduhl about the accident. At 1:07 a.m., the first person Hilton calls is Chesdon Haught at his house in Pennsylvania. This first call is made at 1:07 a.m. (Hilton cross at page 22, lines 6-24). At 1:11 a.m. Haught calls Hilton's cellular telephone, and at 1:15 a.m., Hilton calls Haught again (Hilton cross at page 25, lines 1-

15). Hilton testified that she did not want Haught to come to the trailer, but the first two telephone calls she makes from Abduhl's trailer are to Haught. Haught became aware that Hilton had an accident and offered to come and help (Hilton cross at page 25, lines 18-21).

After speaking with Haught, Hilton decided to call her mother and ask for help. At 1:21 a.m. and 1:22 a.m., Hilton placed two calls to her mother's house in Kingwood, West Virginia (Hilton direct at page 211, lines 1-2). Hilton asked her mother to call AAA and have someone come and fix the tire. AAA was called and a tow truck driver was dispatched. Hilton testified that she was going to stay at the trailer, but she still called AAA to come and fix her tire in the middle of the night.

During her telephone call with her mother, Hilton and Abduhl got into an argument. Abduhl asked Hilton to leave the trailer because she was insulting him and getting on his nerves (Abduhl's direct at page 221, lines 2-4). Hilton's insults were loud enough to wake Abduhl's roommate, Larry Fellows. Fellows began pounding on the wall and the door so Abduhl told Hilton to get out (Hilton direct at page 220, lines 11-23). Hilton left the trailer and sat on the porch.

Haught arrived while Hilton was sitting outside waiting for the tow truck. Hilton told him that she did not want to talk and told him to leave (Hilton direct at page 214, lines 15-20), but Haught refused because he thought she was drunk. Hilton went inside the trailer, grabbed her car keys, and went back out to the car (Hilton direct at page 222, lines 9-13). Hilton testified that Haught took money out of her car while she was in the trailer (page Hilton direct at page 215, lines 11-17). Hilton confronted Haught when she realized that her money was missing from the car. Initially, Haught denied that he took Hilton's money and continued to ask her to go to his house because she was drunk

(Hilton direct at pages 46-47, lines 20-24, 1-5).

The tow truck driver, Lee Haught, arrived at the trailer and immediately began working on the flat tire. Haught and Hilton continued to talk while Lee Haught worked on the tire. At one point, Haught went inside the trailer and apologized to Abduhl for Hilton's behavior earlier in the evening and asked him for a cigarette (Abduhl's direct at page 223, lines 13-18). According to Abduhl, Haught appeared calm (Abduhl's direct at page 224, lines 10-11).

Haught went back outside to keep Hilton company. She continued to ask Haught to leave, but he refused because he felt that she was drunk. Eventually, Haught got into his car and left. Lee Haught continued to work on the tire as Hilton sat in her car. Lee Haught overheard Hilton say that she had too much to drink (Lee Haught's cross at page 142, lines 1-5). A couple of minutes later, Haught returned to the trailer and immediately asked Hilton if he could use her cellular telephone (Lee Haught's cross at page 143, lines 15-17). Haught told Hilton that she was coming with him because she was drunk (Hilton's cross at page 45, lines 18-22). He grabbed her by the arms, stood her up, and then carried her over his shoulder to his car where he places her back on her own feet (Hilton's cross at page 48, lines 17-24). The conversation continues until Hilton decides to go with him and climbs into his car (Hilton's cross at page 54, lines 5-18). At no point did Hilton ask for help from the tow truck driver or her friends in the trailer. (Lee Haught's cross at page 147, lines 10-16). Lee Haught continued to change the tire and never offered to help (Lee Haught's cross at page 154, lines 3-14).

When Lee Haught finished with the tire, he knocked on the trailer door and handed Warnick the keys. Warnick told Lee Haught that she would take care of the situation. Lee Haught did not call 911, but rather contacted his dispatcher and said he

was finished with the job (Lee Haught's cross at page 153, lines 17-20). Warnick and Abduhl also did not contact 911 to report the incident (Warnick's cross at page 192, lines 1-8). Instead, Warnick attempted to call Hilton's cellular telephone.

At the time, Hilton believed that Haught was driving around the block. But she quickly realized that Haught was taking her to his house. Haught continued to tell Hilton she was drunk and did not need to drive (Hilton's cross at page 59, lines 2-5). As the two continued toward Haught's house in Pennsylvania, Hilton opened the door and jumped out of the car (Hilton's cross at page 59, lines 15-19). Haught stopped, put Hilton back into the car, and continued toward his house.

Hilton kicked and punched Haught and asked him to take her back. Haught continued to tell her that she was drunk and could not drive. At some point, Hilton kicked and punched the dashboard and the windshield. Eventually, Hilton broke the windshield and Haught decided to turn the car around. As Haught drives her back toward Morgantown, she forces the car off the road (Hilton's cross at pages 80-83, lines 11-24, 1-13). The two get out of the car. A calm Hilton tries to help Haught push the car back onto the road.

Two cars approach while the two are pushing the car. Suddenly, Hilton attempts to flag one down (Hilton's cross at page 86, lines 5-9). A second car stops to see what Hilton needs and a third car stops beside Haught to help get the car back onto the road (Conner's direct at 187, lines 8-12). Hilton asks the driver of the second car, Allen Conner, if she can use his cellular telephone to call Warnick for a ride. After the car is on the road, Haught walks up behind Hilton and reaches into her pocket. Haught grabs money and tells Hilton that it was for the damage she inflicted on his car (Hilton's cross at page 89, lines 2-4). Haught climbed into his car and drove away. Conner gave Hilton

a ride to a local convenient store to wait on Warnick to pick her up. The clerk at the convenient store called 911 and the Monongalia County Sheriff's department responded. Haught turned himself in and was arrested and charged with Kidnapping and 1<sup>st</sup> Degree Robbery.

The Monongalia County Grand Jury indicted Haught for Kidnapping, 1<sup>st</sup> Degree Robbery, and Domestic Battery in October, 2003. The trial began on March 9, 2004 and concluded on March 12. Judge Stone dismissed the 1<sup>st</sup> Degree Robbery indictment at the conclusion of the evidence. The jury found the defendant not guilty of petit larceny, guilty of domestic battery, and guilty with a recommendation of mercy for kidnapping.

On May 17, 2004, the Court denied the Defendant's request for a judgment of acquittal and Motion for a New Trial and proceeded to sentencing. The Court interpreted West Virginia Code §61-2-14(a) by saying that the West Virginia Legislature has determined what factors the court should consider during sentencing under the Kidnapping statute (Sentencing hearing at page 36, lines 9-12). The Court went further by stating that "the case law in West Virginia puts the responsibility squarely on the shoulders of the sentencing judge to make certain findings concerning these factors." (Sentencing hearing at page 36, lines 15-17). The Court briefly discussed a couple of the factors before focusing on whether or not the victim suffered any bodily injury. The Court reviewed the testimony and determined that Hilton suffered bodily injury and sentenced Haught to life with a recommendation of mercy.

### **III. ASSIGNMENT OF ERROR**

WEST VIRGINIA CODE §61-2-14(a) VIOLATED THE DEFENDANT'S DUE PROCESS AND RIGHT TO TRIAL BY JURY BECAUSE THE JUDGE MADE

## FINDINGS OF FACT THAT ENHANCED THE DEFENDANT'S PUNISHMENT.

### IV. TABLE OF AUTHORITIES

Blakely v. Washington, 124 S.Ct. 2531 (2004).

Apprendi v. New Jersey, 120 S.Ct. 2348 (2000).

In re Winship, 397 U.S. 358, 90 S.Ct. 1068 (1970).

State v. Farmer, 193 W.Va. 84, 454 S.E.2d 378 (1994).

Walton v. Arizona, 497 U.S. 639, 110 S.Ct. 3047 (1990).

Ring v. Arizona, 536 U.S. 584, 122 S.Ct. 2428 (2002).

### V. ARGUMENT

WEST VIRGINIA CODE §61-2-14(a) VIOLATED THE DEFENDANT'S DUE PROCESS AND RIGHT TO TRIAL BY JURY BECAUSE THE JUDGE MADE FINDINGS OF FACT THAT ENHANCED THE DEFENDANT'S PUNISHMENT.

Chesdon Haught was denied his due process and right to a trial by jury because West Virginia Code §61-2-14(a) allowed the trial court to consider factors that enhanced the Defendant's sentence. In Blakely v. Washington, the United States Supreme Court recently held that any fact that increases a sentence beyond the statutory maximum must be submitted to the jury. 124 S.Ct. 2531 (2004). In Blakely, the defendant pleaded guilty to kidnapping which carried a statutory maximum sentence of 53 months. Id at 2532. However, the trial court sentenced the defendant to 90 months after the court found that he acted with deliberate cruelty pursuant to Washington law. Id. The Court ruled that this finding of fact by the trial court violated the defendant's right to trial by jury.

In the present case, §61-2-14(a) clearly violates the Sixth Amendment and the United States Supreme Court's ruling in Blakely. §61-2-14(a) provides:

Any person who, by force, threat, duress, fraud or enticement take, confine, conceal, or decoy, inveigle or entice away, or transport into or out of this state or within this state, or otherwise kidnap any other person, or hold hostage any other person for the purpose or with the intent of taking, receiving, demanding or extorting from such person, or from any other person or persons, any ransom, money or other thing, or any concession or advantage of any sort, or for the purpose or with the intent of shielding or protecting himself, herself or others from bodily harm or of evading capture or arrest after he or she or they have committed a crime shall be guilty of a felony and, upon conviction, shall be punished by confinement by the division of corrections for life, and, notwithstanding the provisions of article twelve [§§ 62-12-1 et seq.], chapter sixty-two of this code, shall not be eligible for parole: Provided, That the following exceptions shall apply: (1) A jury may, in their discretion, recommend mercy, and if such recommendation is added to their verdict, such person shall be eligible for parole in accordance with the provisions of said article twelve; (2) if such person pleads guilty, the court may, in its discretion, provide that such person shall be eligible for parole in accordance with the provisions of said article twelve, and, if the court so provides, such person shall be eligible for parole in accordance with the provisions of said article twelve in the same manner and with like effect as if such person had been found guilty by the verdict of a jury and the jury had recommended mercy; (3) in all cases where the person against whom the offense is committed is returned, or is permitted to return, alive, without bodily harm having been inflicted upon him, but after ransom, money or other thing, or any concession or advantage of any sort has been paid or yielded, the punishment shall be confinement by the division of corrections for a definite term of years not less than twenty nor more than fifty; (4) in all cases where the person against whom the offense is committed is returned, or is permitted to return, alive, without bodily harm having been inflicted upon or her, but without ransom, money or other thing, or any concession or advantage of any sort having been paid or yielded, the punishment shall be confinement by the division of corrections for a definite term of years not less than ten nor more than thirty.

§61-2-14(a) requires a trial court to make certain findings of fact if the jury

returns a guilty verdict with a recommendation of mercy. In the present case, the jury returned a guilty verdict with a recommendation of mercy and the trial court made several findings of fact before sentencing the Defendant. Pursuant to §61-2-14(a), the trial court felt obligated to sentence the Defendant according to the factors the legislature set forth for the court to consider (Sentencing hearing at page 39, lines 13-18). The Court made a finding of fact that Hilton suffered bodily injury and sentenced Haught to life with mercy. The trial court made a finding of fact that enhanced the defendant's sentence and denied his right to a trial by jury.

The State of West Virginia has argued that the defendant received the statutory maximum sentence. The State has also argued that the defendant received the exact sentence the jury gave him. The defendant disagrees with the State's position. In reality, when a jury returns a guilty verdict with a recommendation of mercy, the defendant is looking at a 10-30 year definite sentence not a life with mercy sentence. The trial court makes certain findings of fact that can enhance the defendant's sentence to either a 20-50 year definite sentence or a life with mercy sentence. The State's position is that life with mercy is what the jury gave the defendant. However, the jury was not given these additional facts to consider. And one can only speculate as to how the jury would have viewed the additional facts. While both interpretations are different, the fact remains that the trial court still considers the same facts in both instances. Enhance and reduce are words with opposite meanings. But, both words mean some type of change. Therefore, the difference between enhance or reduce is irrelevant. Under the statute, the trial court's findings of fact can change the sentence. Clearly, the statute violates the Blakely, decision.

Another way to consider the defendant's argument is to reverse the wording of

the West Virginia kidnapping statute. If the statute was written that the defendant is sentenced to 10 to 30 definite years unless the court determines (1) that the victim was not returned voluntarily, or (2) that the victim was harmed, or (3) that a ransom was paid or yielded, then it clearly violates the Blakely decision. The trial court's findings of fact would enhance the defendant's sentence beyond the statutory maximum. Even though the West Virginia statute is not written this way, the trial court is still considering the same facts in both instances. The trial court's findings enhance or reduce the defendant's sentence. The defendant will receive the same sentence whether it is reduced or enhanced. Other than evidence of prior convictions, the jury should consider the findings of fact that affect a sentence, not the judge.

The West Virginia kidnapping statute allowed the trial court to make factual determinations which increased the maximum sentence of the Defendant. In Apprendi v. New Jersey, the United States Supreme Court ruled that a New Jersey hate crime statute that allowed the trial court to make factual findings which could increase the maximum sentence of a defendant violated the due process clause. 120 S.Ct. 2348 (2000). In Apprendi, the defendant pleaded guilty to two counts of possession of a firearm for unlawful purpose. Pursuant to the New Jersey hate crime statute, the court then heard testimony to determine if the crimes were motivated by racial bias. The hate crime statute allowed the court to enhance the defendant's maximum sentence if the court found that the crimes were motivated by racial bias. Id at 2352. The United States Supreme Court ruled that other than the fact of prior conviction, any fact that enhances the penalty for a crime beyond the statutory maximum must be submitted to the jury, and proven beyond a reasonable doubt. The United States Supreme Court ruled that the hate crime statute allowed the trial court to make a finding of fact regarding an issue

that should have been submitted to the jury and the case was reversed. Id.

The West Virginia kidnapping statute is similar to the New Jersey hate crime statute because it allows the trial court to enhance the defendant's sentence after certain findings of fact are made. Under the West Virginia statute, the trial court is allowed to consider the following factors: (1) was the victim returned, or permitted to return, (2) alive, without bodily harm having been inflicted upon or her (3) without ransom, money or other thing, or any concession or advantage of any sort having been paid or yielded.

In the present case, the jury returned a verdict of guilty with a recommendation of mercy. With this verdict, the kidnapping statute allowed the trial court to consider the above listed factors. The trial court went through the factors and found by a preponderance of the evidence that the victim suffered bodily injury. Therefore, the defendant was sentenced to life with parole eligibility. The trial court's findings of fact increased the defendant's sentence from a ten (10) to thirty (30) year determinate sentence, to a life sentence with parole eligibility after ten (10) years. Therefore, the defendant's right to a trial by jury was denied because the trial court's finding of facts took the decision out of the jury's hands.

The jury returned a guilty verdict with a recommendation of mercy, but was not given the opportunity to determine if (1) the victim was returned, or permitted to return, (2) alive, without bodily harm having been inflicted upon or her, and (3) without ransom, money or other thing, or any concession or advantage of any sort having been paid or yielded. The United States Supreme Court ruled that the Fourteenth and Sixth Amendments of the United States Constitution entitle a defendant to a jury determination of every element of the crime beyond a reasonable doubt. In re Winship, 397 U.S. 358, 90 S.Ct. 1068 (1970). The West Virginia Legislature did not consider

these factors to be elements of kidnapping, but considers these factors important when sentencing a defendant. Obviously, these factors are very important in sentencing and the legislature took the decision away from the jury. If these factors are to be used in sentencing, they must be submitted to the jury. Otherwise, the statute violates a defendant's due process and right to a trial by jury.

The trial court gave the defendant a sentence that was more than the statutory maximum under the kidnapping statute. Any fact that increases a sentence beyond the prescribed statutory maximum must be submitted to the jury and proved beyond a reasonable doubt. Appendi. Under the West Virginia kidnapping statute, the defendant can be sentenced to a determinate sentence of ten (10) years to thirty (30) years if the trial court finds that any of the above listed factors are met. If the trial court finds that the victim was voluntarily returned unharmed, but with a ransom being paid, the defendant is sentenced to a twenty (20) to fifty (50) year determinate sentence. If the trial court finds that the victim was not voluntarily returned or suffered bodily injury, the defendant is sentenced to life with mercy.

In Chesdon Haught's case, the jury returned a guilty verdict with a recommendation of mercy. Therefore, without any further determination by the jury, the defendant's maximum sentence should have been a ten (10) to thirty (30) year determinate sentence. However, the West Virginia kidnapping statute gives the trial court the power to make findings of fact that can enhance a defendant's penalty beyond the statutory maximum. Pursuant to the statute, the trial court found that Hilton suffered bodily injury and sentenced him to life with mercy. Therefore, the bodily injury finding was a fact that increased Haught's sentence beyond the statutory maximum without being submitted to the jury.

The West Virginia Supreme Court of Appeal's earlier decision in State v. Farmer should be overruled because the United State's Supreme Court has handed down more recent decisions that clearly show that any fact that is used in sentencing a defendant must be submitted to the jury. See Appendi. In State v. Farmer, this Court ruled that findings by the trial court are made solely to determine the defendant's sentence and are not elements of the crime of kidnapping. 193 W.Va. 84, 454 S.E.2d 378 (1994). The Court ruled that the kidnapping statute did not violate the defendant's due process rights and right to a trial by jury. Id. at 85. In making this decision, this Court relied on the 1990 U.S. Supreme Court decision in Walton v. Arizona, 497 U.S. 639, 110 S.Ct. 3047. However, the Ring v. Arizona decision overrules the Walton decision and says that the Court is persuaded that Walton cannot survive the Appendi decision. 536 U.S. 584, 122 S.Ct. 2428, at 586 (2002). In Ring, the Court stated that "Arizona's argument based on the Walton distinction between an offense's elements and sentencing factors is rendered untenable by \*587Appendi's repeated instruction that the characterization of a fact or circumstance as an element or a sentencing factor is not determinative or the question "who decides," judge or jury. Id. Based upon Ring, the State v. Farmer ruling that the kidnapping statute does not violate the due process and right to trial by jury because the trial court's findings of fact are not elements of the crime needs to be overruled. Clearly, the West Virginia kidnapping statute violates Chesdon Haught's due process and right to trial by jury based upon the recent rulings in Appendi, Ring, and Blakely.

## **VI. CONCLUSION**

West Virginia Code §61-2-14(a) violated Chesdon Haught's due process and right

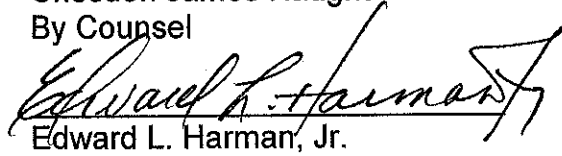
to trial by jury because the jury did not determine every fact which was legally essential to the his punishment. The West Virginia kidnapping statute allows the trial court to make certain findings of fact that affect a defendant's sentence. It does not matter how the statute is interpreted. Regardless of whether it is enhanced or reduced, the trial court still considers the exact same factors when determining the sentence. These factors should be submitted to the jury and not determined by the judge. Therefore, the kidnapping statute violated the defendant's due process and right to a trial by jury.

**VII. RELIEF**

Upon reviewing the above stated reasons the Court is asked to reverse the defendant's conviction and grant him an unconstitutional discharge and to prohibit the State from pursuing any further legal sanctions against him, or in the alternative to grant the defendant a reversal and a new trial.

Respectfully submitted,

Chesdon James Haught  
By Counsel



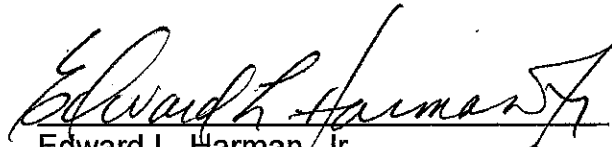
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**CERTIFICATE OF SERVICE**

I, Edward L. Harman, Jr., counsel for Chesdon James Haught, do hereby certify that I have served a true copy of the foregoing "**BRIEF ON BEHALF OF CHESDON JAMES HAUGHT**" upon the following, by placing the same in the United States mail, first class, postage prepaid, and addressed as follows on June 21<sup>st</sup>, 2005.

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