

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

State of West Virginia

Case No. _____

v. _____

19-M25M-01223
☒ Misdemeanor/ ☐ Felony

MICHAEL JOSEPH MARONEY
 Defendant (Full Name)

XXX-XX- 0664

08 MAR 1968

Social Security Number

Date of Birth

509 WHEELING AVENUE
 Address

WV OLN: E366438

Driver's License / Identification Number

GLEN DALE, WV, 26038, USA
 City, State & Zip Code

LAST KNOWN CELL NUMBER: (304) 281 - 2080
 Phone Number(s)

CRIMINAL COMPLAINT

Mag. Ct. Criminal Procedure Rule 3, 4: 18 U.S. C § 921(a)(33)

I, the undersigned complainant, upon my oath or affirmation state the following is true and correct to the best of my knowledge and belief. On or about 14 MAY 2019 in Marshall County, West Virginia, in violation of West Virginia Code § (Cite specific section, subsection, and/or subdivision, if applicable)

61-10-31(1). CONSPIRACY / 61-8-5(a) HOUSE OF PROSTITUTION / 61-8-5(b) PROSTITUTION, the defendant did (state statutory language of the offense)
 REFER TO ATTACHMENT A.

I Further state that this complaint is based upon the following facts: _____

REFER TO ATTACHMENT B.

Continued on an attached sheet'.) ☒ Yes ☐ No

(If this complaint involves misdemeanor assault / battery [West Virginia Code § 61-2-9] or misdemeanor domestic assault/ battery [West Virginia Code § 61-2-28], check all that apply.)

The defendant

- ☐ is/was the victim's spouse. ☐ is/was living with the victim as a spouse, parent, or guardian.
☐ is/was a parent or guardian of the victim. ☐ is a person who is like a spouse, parent, or guardian of the victim.
☐ has a child in common with the victim. ☒ has none of the above connections to the victim.

Complainant (who appears before Magistrate):

PATROLMAN EZEKIEL GODDARD
 Complainant Name (Full Name)

402 WHEELING AVENUE
 Address

GLEN DALE, WV, 26038, USA
 City, State & Zip Code

(304) 845-5511
 Phone Number(s)

POLICE OFFICER
 Office or Title, if any

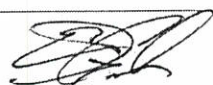
On this complaint, sworn or affirmed before me and signed in my presence on this date by the complainant, the item(s) checked below apply:

Finding


Issuance

- ☐ No probable cause found
☒ Probable cause found

- ☐ Summons issued
☒ Warrant issued
☐ Warrantless arrest

Date 27 AUG 2019 Complainant Signature 

Date 8/27/19

Magistrate Signature 

(Criminal Complaint Continued)

ATTACHMENT A.

61-10-31: CONSPIRACY -

It shall be unlawful for two or more persons to conspire (1) to commit any offense against the state or (2) to defraud the state, the state or any county board of education, or any county or municipality of the state, if, in either case, one or more of such persons does any act to effect the object of the conspiracy.

Any person who violates the provisions of this section by conspiring to commit an offense against the state which is a misdemeanor shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by confinement in the county jail for not more than one year or by a fine of not more than \$1,000, or, in the discretion of the court, by both such confinement and fine.

61-8-5(a): HOUSE OF ILL FAME AND ASSIGNATION -

(a) Any person who shall keep, set up, maintain, or operate any house, place, building, hotel, tourist camp, other structure, or part thereof, or vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation; or who shall own any place, house, hotel, tourist camp, other structure, or part thereof, or trailer or other conveyance knowing the same to be used for the purpose of prostitution, lewdness, or assignation, or who shall let, sublet, or rent any such place, premises, or conveyance to another with knowledge or good reason to know of the intention of the lessee or rentee to use such place, premises, or conveyance for prostitution, lewdness, or assignation; or who shall offer, or offer to secure, another for the purpose of prostitution, or for any other lewd or indecent act; or who shall receive or offer or agree to receive any person into any house, place, building, hotel, tourist camp, or other structure, or vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose; or who for another or others shall direct, take, or transport, or offer or agree to take or transport, or aid or assist in transporting, any person to any house, place, building, hotel, tourist camp, other structure, vehicle, trailer, or other conveyance, or to any other person with knowledge or having reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation; or who shall aid, abet, or participate in the doing of any acts herein prohibited, shall, upon conviction for the first offense under this section, be punished by imprisonment in the county jail for a period not less than six months nor more than one year, and by a fine of not less than \$100 and not to exceed \$250, and upon conviction for any subsequent offense under this section shall be punished by imprisonment in the penitentiary for a period of not less than one year nor more than five years.

61-8-5(b): PROSTITUTION -

(b) Any person who shall engage in prostitution, lewdness, or assignation, or who shall solicit, induce, entice, or procure another to commit an act of prostitution, lewdness, or assignation; or who shall reside in, enter, or remain in any house, place, building, hotel, tourist camp, or other structure, or enter or remain in any vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation; or who shall aid, abet, or participate in the doing of any of the acts herein prohibited, shall, upon conviction for the first offense under this section, be punished by imprisonment in the county jail for a period of not less than sixty days nor more than six months, and by a fine of not less than \$50 and not to exceed \$100; and upon conviction for the second offense under this section, be punished by imprisonment in the county jail for a period of not less than six months nor more than one year, and by a fine of not less than \$100 and not to exceed \$250, and upon conviction for any subsequent offense under this section shall be punished by imprisonment in the penitentiary for not less than one year nor more than three years.

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(Criminal Complaint Continued)

ATTACHMENT B.

OFFICERS WITH THE GLEN DALE POLICE DEPARTMENT (402 WHEELING AVENUE, GLEN DALE, MARSHALL COUNTY, WEST VIRGINIA (WV), 26038, USA) HAVE BEEN CONDUCTING A PROSTITUTION INVESTIGATION INTO CORTNIE ANN CLARK (DATE OF BIRTH (DOB): 31 MARCH 1989 / WV DRIVERS LICENSE NUMBER (OLN): F306913), A RESIDENT OF 620 GLEN HAVEN AVENUE, GLEN DALE. MRS CLARK'S RESIDENCE WAS ULTIMATELY DISCOVERED TO BE IN ABSOLUTELY DEPLORABLE CONDITIONS, WITH USED CONDOMS LAYING ABOUT THE FLOORS; USED AND UNCAPPED HYPODERMIC NEEDLES THROUGHOUT; AN UNIMAGINABLE AMOUNT OF HUMAN FECES AND HUMAN URINE THROUGHOUT THE HOUSE; AND A VAST ARRAY OF TRASH EVERYWHERE.

MRS CLARK IS SUSPECTED OF ENGAGING IN PROSTITUTION THROUGH HER CELL PHONE - (304) 559-4856, SKIPTHEGAMES.COM, EROTICMONKEY.COM, AND SEVERAL OTHER WEBSITES WHICH ARE KNOWN TO OFFER AND EXPLOIT PROSTITUTION. OFFICERS HAVE DETERMINED THAT MOST GENTLEMEN CONTACTING MRS CLARK ARE SOLICITING HER FOR SEX. THROUGH THE AFOREMENTIONED WEBSITES, MRS CLARK PROVIDES HER PHOTOGRAPHS, CELL PHONE NUMBER, EMAIL ADDRESS, AND HER "INCALL RATES" OF \$120.00 FOR "30 MINUTES" AND \$190.00 FOR "60 MINUTES". PHOTOGRAPHS ARE TYPICALLY EXCHANGED PRIOR TO MRS CLARK MEETING THESE GENTLEMEN FOR SEX-FOR-MONEY.

AS A RESULT OF THIS INVESTIGATION, MRS CLARK WAS ARRESTED ON 14 JUNE 2019, AND CHARGED WITH PROSTITUTION AND OPERATING A HOUSE OF PROSTITUTION. SUBSEQUENTLY, MRS CLARK ADMITTED DURING SEVERAL INSTANCES THAT SHE IS A PROSTITUTE. MRS CLARK HAS FURTHER CONFIRMED WHAT SHE CHARGES GENTLEMEN FOR HER SEXUAL SERVICES: "\$120.00 FOR A HALF-AN-HOUR" AND "\$190.00 FOR AN HOUR". MRS CLARK FURTHER ADMITTED TO BECOMING A PROSTITUTE SO SHE COULD PURCHASE NARCOTICS, SPECIFICALLY HEROIN. FURTHERMORE, TWO (2) INDIVIDUALS HAVE ALREADY PLED GUILTY TO SOLICITING MRS CLARK FOR PROSTITUTION VIA ELECTRONIC COMMUNICATIONS.

THROUGHOUT THIS INVESTIGATION, PTLM GODDARD DISCOVERED AN INDIVIDUAL UTILIZING THE CELL PHONE NUMBER OF (304) 281 - 2080 TO BE SOLICITING SEX FROM MRS CLARK IN EXCHANGE FOR MONEY; SPECIFICALLY, "120hh190hr", AS MRS CLARK ADVISED THROUGH A TEXT MESSAGE ON 14 MAY 2019, AT APPROXIMATELY 2200 HOURS (HEREAFTER, ALL TIMES WILL BE UNDERSTOOD TO BE APPROXIMATE). A SEARCH OF CELL PHONE NUMBER (304) 218-2080 WAS CONDUCTED THROUGH RESOURCES AVAILABLE TO LAW ENFORCEMENT, WHICH INDICATED THIS NUMBER IS REGISTERED TO MICHAEL J. MARONEY, WITH AN ADDRESS OF 509 WHEELING AVENUE, GLEN DALE, WV

IT WAS FURTHER DETERMINED THAT THE PROVIDER FOR THIS CELL PHONE IS AT&T. AT&T WAS THEN SERVED WITH A SEARCH WARRANT TO OBTAIN THE SUBSCRIBER INFORMATION. THE INFORMATION PROVIDED FROM THE SEARCH WARRANT INDICATED THE OWNER OF THIS CELL PHONE NUMBER IS "MM RADIOLOGY ASSOCIATES", WITH A USER ADDRESS OF 1 MEDICAL PARK, WHEELING, WV, 26003. THE CONTACT NAME WAS "MM RADIOLOGY ASSOCIATES". OFFICERS ARE AWARE THAT MR MARONEY IS A RADIOLOGIST.

THE FIRST DOCUMENTED TEXT MESSAGE WAS OBSERVED ON 14 MAY 2019, AT 1211 HOURS, WHEN MRS CLARK ASKED, "U call last night". AT 1418 HOURS, MRS CLARK RECEIVED THE FOLLOWING RESPONSE, "yes i can call tonight too at about same time i work until 2am". MRS CLARK RESPONDED, "Ok". AT 2200 HOURS, MRS CLARK WAS ASKED, "Is tonight ok? Around 2:15." MRS CLARK ADVISED, "Yea it's 120hh190hr I will be at rental house at 2 waiting for u". AT THIS JUNCTURE, MRS CLARK AND THIS INDIVIDUAL ENGAGED IN CONVERSATION ABOUT THE MONETARY AMOUNT AND THE LENGTH OF TIME FOR HER SEXUAL SERVICES. THROUGHOUT THIS INVESTIGATION, MRS CLARK HAS BEEN DISCOVERED TO REFER TO HER RESIDENCE AT 620 GLEN HAVEN AVENUE AS HER "RENTAL", WHERE SHE CONDUCTS HER PROSTITUTION AND DRUG ACTIVITIES.

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(Criminal Complaint Continued)

B.

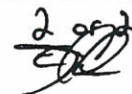
MRS CLARK WAS ASKED, "what is the address". SHE ANSWERED, "Glen dale I will give address when u are headed this way". THROUGHOUT THEIR CONVERSATION, MRS CLARK REQUESTED A PHOTOGRAPH OF THE PERSON SOLICITING HER, AS SHE ROUTINELY DEMANDS. MRS CLARK RECEIVED THE FOLLOWING STATEMENT, "i cant send pic....but i am normal and nice". MRS CLARK REPLIED, "I cant meet w out pic sorry. Have a good night babe". MRS CLARK THEN RECEIVED, "ok sorry i could be a regular". MRS CLARK THEN REPLIED, "I dont know u and I need to see if u someone I want to meet and to make sure I dont know u. I got robbed the other day from a guy using multiple numbers. Sorry". THIS PERSON STATED, "but i hope u understand i cant send pic". LATER, THIS PERSON CONTINUED, "if u reconsider....and i hope you do.....text me i drive by GD on my way home and would like to have an occasional stop". UNDETERRED, MRS CLARK WROTE, "I dont meet anyone without a picture sorry I am very careful who I meef because of my job. have a good night babe". THIS PERSON REMAINED PERSISTENT AND STATED, "i want to meet....if i send pic....is it a go?" MRS CLARK ANSWERED, "Yea".

ON 16 MAY 2019, AT 0108 HOURS, MRS CLARK RECEIVED A PHOTOGRAPH FROM THIS GENTLEMAN, WHO WAS LOOKING DIRECTLY INTO THE CAMERA LENS, SMILING, AND WEARING A LIGHT BLUE-IN-COLOR POLO-LIKE SHIRT, CLEARLY DISPLAYING HIS IDENTITY. AT 0126 HOURS, MRS CLARK RECEIVED THE FOLLOWING MESSAGE FROM THIS GENTLEMAN, "now can i stop by". PTLM GODDARD COMPARED THIS PHOTOGRAPH WITH MICHAEL JOSEPH MARONEY'S WV OLN (E366438) PHOTOGRAPH AND BELIEVES BOTH PICTURES TO BE OF MR MARONEY.

ON 05 JUNE 2019, AT 2335 HOURS, MR MARONEY ASKED, "Can I stop by for a massage?" AT 2350, MR MARONEY CONTINUED, "quick in and out". AT 2351, MRS CLARK REPLIED, "Ys". MR MARONEY THEN REQUESTED AN ADDRESS, TO WHICH MRS CLARK ADVISED, "It's 120 I can do a car date. Glen haven ave Glen Dale". MR MARONEY RESPONDED, "no prob with the 120....i can be there in 10 min". MRS CLARK STATED, "Ok tell me when to come outside just park in drive way and we can mess around there". AT A LATER TIME, MRS CLARK WROTE, "Ok when u are on street tell me to come outside. I just dont want u to be a cop". ON 06 JUNE 2019, AT 0001 HOURS, MR MARONEY ADVISED, "i am not a cop". AT 0030 HOURS, MR MARONEY SAID, "i am not sure why my car alarm was going off but i think it is because of a motion detector after being off for a certain amount of time sorry". MR MARONEY STATED, "i was very nervous being in a car", WHICH IS AN ABRIDGED QUOTE. IN ANOTHER ABRIDGED QUOTE, MR MARONEY WROTE, "i am totally free tomorrow and a few days next week and can provide a place if you cant.....if you are interested . let me know". ALSO, ON 06 JUNE 2019, AT 2332 HOURS, MR MARONEY STATED, "I can be there in 15 min Inside tonight?" SHORTLY THEREAFTER, MRS CLARK RESPONDED, "Yea babe that is a rental house though its a mess b there in 10". MR MARONEY REPLIED, "ok...seeya in 15 mini dont care about a mess".

THE LAST DOCUMENTED MESSAGE BETWEEN MRS CLARK AND MR MARONEY WAS OBSERVED ON 13 JUNE 2019, AT 2014 HOURS, AT WHICH TIME MRS CLARK SENT MR MARONEY A PHOTOGRAPH OF HERSELF, WITH THE FOLLOWING ATTACHED MESSAGE, "Come fuck me :) ".

PURSUANT TO A SEARCH WARRANT, A CELL PHONE WAS SEIZED FROM A VEHICLE BELONGING TO MR MARONEY. OFFICERS CALLED THE NUMBER COMMUNICATING WITH MRS CLARK AND THE CELL PHONE SEIZED FROM MR MARONEY'S VEHICLE RANG.



IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

v.

Case No.: 19-M25M-01223

MICHAEL JOSEPH MARONEY,

Defendant.

**DEFENDANT'S REPLY TO STATE'S RESPONSE TO
DEFENDANT'S MOTION TO DISMISS**

COMES NOW, Defendant, by counsel, and replies to the State's response as follows:

1. Judge Hummel's order specifically provides:

Notwithstanding and without taking this Court's ruling any further, it must be noted that a near-identical issue was before the West Virginia Supreme Court of Appeals in *State v. Fuller*, 239 W.Va. 203, 800 S.E.2d 241 (2017). In *Fuller*, the Court addressed ambiguity in the very statute which Petitioner complains; to-wit, W. Va. Code § 61-8-5.

Further, it is believed that a Rule 60(b) motion has been filed with the Circuit Court regarding Judge Hummel's order.

2. Ms. Clark gave a statement voluntarily, and not an affidavit, after she elected to secure new counsel. Also, a member of Ms. Clark's family was present during the statement.

WHEREFORE, Defendant requests the complaint against him be dismissed.

Defendant,
Michael Joseph Maroney,
by counsel,



Paul J. Harris
W. Va. Bar # 4673
32 Fifteenth Street
Wheeling, WV 26003
304.232.5300

CERTIFICATE OF SERVICE

I hereby certify a true and exact copy of this *Defendant's Reply to State's Response to Defendant's Motion to Dismiss* was served via facsimile only this 20th day of September, 2019 as follows:

Marshall County Prosecuting Attorney's Office
600-7th Street
Moundsville, WV 26041
(304) 843-0320 – fax


Paul J. Harris

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

WARRANT FOR ARREST

State of West Virginia

v.

Case No(s). 19-M25M-01223

Michael J. Maroney
509 Wheeling Avenue
Glen Dale, WV 26038

To Any Law Enforcement Officer:

WHEREAS this court has found probable cause to believe that the defendant, Michael J. Maroney did commit an offense or offenses in this County on or about

14th day of May, 2019, previous to the issuance of this warrant 1 count(s) 61-08-05(a): Houses of ill fame and assignation; penalties; jurisdiction of courts. (House)

14th day of May, 2019, previous to the issuance of this warrant 1 count(s) 61-08-05(b): Houses of ill fame and assignation; penalties; jurisdiction of courts. (Prostitution)

14th day of May, 2019, previous to the issuance of this warrant 1 count(s) 61-10-31: Conspiracy; construction of section; penalties

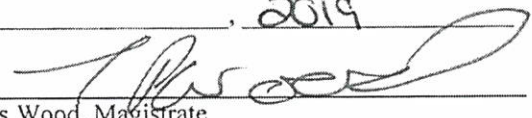
against the peace and dignity of the State.

Therefore, you are commanded in the name of the State of West Virginia to apprehend the above-named defendant and bring that person before any magistrate in this County, to be dealt with in relation to the charge(s) according to law.

This arrest warrant is to be executed in the following manner (*check one*):

- ☒ Forthwith
☐ Between the hours of 9 a.m. and 4 p.m., Monday through Friday
☐ Other (*as specified*):

Given under my hand this 27 day of August, 2019


Thomas Wood, Magistrate

Executed by: _____ in _____ County, W.Va.,
on _____
(Date)

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

v.

Case No.: 19-M25M-01223

MICHAEL JOSEPH MARONEY,

Defendant.

DEFENDANT'S DEMAND FOR A JURY TRIAL

COMES NOW, Michael Joseph Maroney, by counsel, and demands a trial by jury in the above-captioned matter.

Defendant,
Michael Joseph Maroney,
by counsel,



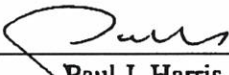
Paul J. Harris
W.Va. Bar # 4673
32 Fifteenth Street
Wheeling, WV 26003
304.232.5300

RECEIVED
2019 SEP - 3 P 12:51
MARSHALL COUNTY

CERTIFICATE OF SERVICE

I hereby certify a true and exact copy of this *Defendant's Demand for a Jury Trial* was served via facsimile only this 3rd day of September, 2019 as follows:

Marshall County Prosecuting Attorney's Office
600-7th Street
Moundsville, WV 26041
(304) 843-0320 – fax



Paul J. Harris

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

v.

Case No.: 19-M25M-01223

MICHAEL JOSEPH MARONEY,

Defendant.

STIPULATED HIPAA QUALIFIED PROTECTIVE ORDER

COME NOW, the State of West Virginia, by its assistant prosecuting attorney, Joseph Canestraro, Esq., and Defendant, by counsel, Paul J. Harris, Esq. and agree to the entry of this Order and finding good cause for its entry, the Court determines that the same should be GRANTED.

Accordingly, pursuant to West Virginia Magistrate Rule of Criminal Procedure 29, discovery in the above-captioned matter, shall be governed by the following HIPAA Qualified Protective Order. The Parties shall serve a copy of this Order simultaneously with any discovery request made to a third party. It is hereby ORDERED AND ADJUDGED as follows:


1. In accordance with the requirements of the regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), the Court hereby enters a HIPAA Qualified Protective Order, as that term is defined in the foregoing regulations. In addition to the foregoing federal laws and regulations, this Order is entered to ensure compliance with applicable state laws and regulations governing patient privacy and protecting healthcare information.

2. For purposes of this Order, the term Protected Health Information (PHI) shall have the same scope and definition as set forth in 45 C.F.R. § 160.103 and 164.501. Protected health information includes, but is not limited to, health information, including demographic information, relating to either (a) the past, present, or future physical or mental condition of an individual, (b) the provision of health care to an individual, or (c) the payment for the provision of health care to an individual, which identifies the individual or which reasonably could be expected to identify the individual.
3. Pursuant to 45 C.F.R. § 164.512(e)(I)(v)(A), the parties shall not use or disclose PHI for any purpose other than this litigation. However, for purposes of the litigation, the parties may disclose PHI to the presiding judge and the judge's support staff; the parties, their attorneys of record, the attorneys' firms (i.e., attorneys, support staff and consultants), the parties' insurers, experts, consultants, court reporters, videographers, and copy services.
4. If a party wishes to file PHI with the Court, it must be filed under seal, following the appropriate procedures to do so. However, any party may file a pleading or document with the Court that describes, summarizes, quotes, or contains PHI, as long as that party redacts the name of the person to whom the PHI pertains, and files an unredacted version under seal. Any party may use documents containing PHI at trial or an evidentiary hearing, including but not limited to introducing them into evidence and asking a witness about their contents. If a party moves a document containing PHI into evidence and wants it to be a part of the record, the Court shall appropriately instruct the Clerk on how to handle such documents.
5. Prior to disclosing PHI to persons involved in this action, the parties and their attorneys shall take reasonable steps to ensure that such persons do not use or disclose the PHI for any purpose other than this litigation. This shall include, but not be limited to, informing each such person that the PHI may not be used or disclosed for any purpose other than


this litigation and obtaining their signature on the Acknowledgment that is attached hereto.

6. Pursuant to 45 C.F.R. § 164.512(e)(1)(v)(B) within 60 days of the conclusion of these proceedings, any recipient of PHI under this Order shall either return the PHI to the covered entity that provided it or destroy the PHI (including all copies made). If destroyed, the recipient of PHI shall send a declaration to the party producing the PHI material that the documents have been destroyed in accordance with this Order. For purposes of this Order, the conclusion of these proceedings shall mean the point at which this litigation is fully concluded, including by final order by the Court ending the case, the conclusion of any appeals and proceedings on remand, or the expiration of time for any party to seek further appellate review.
7. This Order does not control or limit the use of PHI that was received by means other than through this Order (for example, through consent of the individual or through a public records request). However, the requirements of Paragraph 4 apply to all PHI, regardless of how it was obtained.
8. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed PHI to any person or in any circumstance not authorized under this Order, the Receiving Party must, not later than 30 calendar days after learning of the disclosure, (a) notify in writing the Disclosing Party of the unauthorized disclosures; (b) use its best efforts to retrieve all unauthorized copies of the PHI; (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order; and (d) request that such person or persons execute the Acknowledgment that is attached hereto.

ENTER this 20th day of July, 2020.

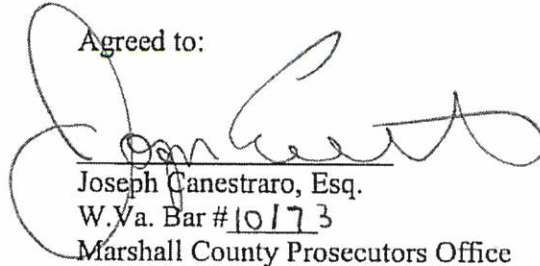

The Honorable Thomas Wood

Prepared by:



Paul J. Harris, Esq.
W.Va. Bar # 4673
32 Fifteenth Street
Wheeling, WV 26003
304.232.5300

Agreed to:



Joseph Canestraro, Esq.
W.Va. Bar # 10173
Marshall County Prosecutors Office
600 Seventh Street
Moundsville, WV 26041

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

vs.

Case No. 19-M25M-01223

MICHAEL JOSEPH MARONEY,

Defendant.

RECEIVED

2019 DEC -3 P 3:25

MAGISTRATE COURT
MARSHALL COUNTY

**STATE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS FOR
FAILURE TO PRODUCE TWO CELLULAR PHONES FOR INSPECTION**

Now comes the State of West Virginia, and in opposition to Defendant's Motion to Dismiss for Failure to Produce Two Cellular Phones for Inspection states as follows: The parties discussed the inspection of the two cellular phones at the initial hearing on October 31, 2019. The State advised that it would contact Marshall University to see if the forensic lab there could access the phones. Counsel for defendant suggested an "expert witness" in Pittsburgh. No identifying information for said expert was provided.

The Agreed Order faxed to the Prosecutor's Office fails to identify the expert witness. Further, said Order was prepared without consultation with the State. The phone call referenced in Defendant's Motion was made by a secretary in defense counsel's office and a message was left. This message was left on November 27, 2019. November 28 and 29 were State holidays. The State received Defendant's Motion via facsimile on December 2, 2019, the first workday after the holiday.

The State continues to agree to have the phones inspected. However, despite many efforts, the State has not found an entity that can inspect said phones. Defense Counsel has failed to provide any information with regard to its alleged expert witness. The State cannot release evidence without knowing at least the name and credentials of

any alleged "expert." Further, said evidence will be accompanied by law enforcement for any inspection.

Defense counsel seeks to dismiss this matter without good cause and without providing the necessary information to satisfy its agreement with the State. The State stands ready to cooperate with defense counsel in the inspection once said information is provided.

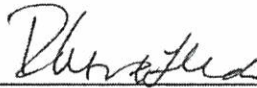
Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Rhonda L. Wade", is written over a horizontal line.

Rhonda L. Wade
Prosecuting Attorney
Marshall County, West Virginia

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of the foregoing **State's Response to Defendant's Motion to Dismiss for Failure to Produce Two Cellular Phones**, was had upon the Defendant, via facsimile to the Defendant's counsel, Paul Harris, on this 3rd day of December, 2019.

A handwritten signature in cursive script, appearing to read 'Rhonda L. Wade', is written over a horizontal line.

Rhonda L. Wade
Prosecuting Attorney
Marshall County, West Virginia

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

vs. 19-M25M-01223

MICHAEL MARONEY,

Defendant.

**STATE'S MOTION FOR PROOF OF
CONVEYANCE OF PLEA OFFER**

Now comes the State of West Virginia, by and through Prosecuting Attorney Rhonda L. Wade and files this following Motion requesting that the defendant file proof that the State's plea offer has been conveyed to the defendant in this matter. In support of this Motion the State sets forth that a plea offer of was made to defense counsel at the last two (2) hearings scheduled in this matter. Defendant has not been present at any hearing in this matter. Rule 1.4 of the West Virginia Rules of Professional Conduct require that a lawyer "promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules" *W.Va. Prof Cond., Rule 1.4.* As defendant has not been present at the time that the plea offers were made, the State requests proof that said offers have been conveyed to the defendant, and that the defendant has made the final decision of how to respond to the offer.

Respectfully submitted,



Rhonda L. Wade
Marshall County Prosecuting Attorney

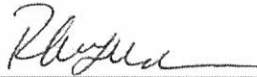
CERTIFICATE OF SERVICE

The undersigned hereby certifies that services of the following:

State's Motion in Limine and State's Motion for Proof of Conveyance of Plea Offer

was had upon the defendant, by mailing a true copy of the same to him, via U.S. Mail,
this 17th day of March, 2020, as follows:

Paul Harris
32 15th Street
Wheeling, WV 26003



Rhonda L. Wade
Prosecuting Attorney
Marshall County, West Virginia

FILED

2019 SEP 23 PM 3:45

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIASTATE OF WEST VIRGINIA

Vs.

// MAGISTRATE COURT CASE NO. 19-M25M-01223MICHAEL JOSEPH MARONEYADMINISTRATIVE ORDER
Ruling on Magistrate Court Motion
for Disqualification or Request for Voluntary Recusal

Upon review of the required written statements and application of the pertinent provision(s) of the Code of Judicial Conduct, it is hereby ORDERED that *(initial appropriate item)*:

_____ The reasons stated are insufficient for disqualification or recusal and therefore Magistrate
_____ shall preside in the above-styled case.

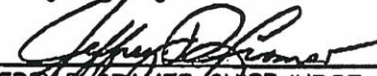
JDC

The reasons stated are sufficient for disqualification or recusal and therefore Magistrate Zachary B. Allman shall not preside in the above-styled case and the magistrate clerk shall forthwith reassign the case to another magistrate or, if necessary, shall request the assignment of an out-of-county magistrate. The magistrate to whom the case is reassigned shall set a new return date and notify the parties within five days of receiving the case. This matter is assigned to Magistrate Tom Wood for Further Proceedings.

The Circuit Clerk shall forthwith transmit a certified copy of this order to the Magistrate Court Clerk.

ENTER this 23rd day of September, 2019.

Supervising Judge Signature


JEFFREY D. CRAMER, CHIEF JUDGE

Mag. Admin Rule IB

SCA-C&M1028/ 3-97

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

v.

Case No. 19-M25M-01223

MICHAEL JOSEPH MARONEY

MAGISTRATE REQUEST FOR VOLUNTARY RECUSAL

As the magistrate assigned to the above-styled case, the undersigned hereby requests approval by the supervising circuit judge of voluntary recusal from presiding in this case and reassignment of the case to another magistrate.

The undersigned believes recusal is required for the following reason(s):

I had been employed by the Marshall County Prosecutors Office when the criminal investigation began.

Based upon that fact, I believe it is my responsibility to disqualify myself in any proceeding in which my impartiality may be reasonably questioned.

This case (check one) ☐ does ☒ does not involve an expedited proceeding (i.e., one requiring a final hearing to be held within 10 days of filing).

My assistant shall forthwith give notice to the parties in this case by providing a copy of this request.

09/23/2019
Date


Magistrate Signature

Notice to Parties: Contact the magistrate court to see whether the requested action has been granted or denied and whether a change has been made in the previously scheduled hearing date.

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,
Plaintiff,

v.

MICHAEL JOSEPH MARONEY,
Defendant.

Case No. 19-M25M-01223

DEFENDANT'S MOTION FOR INDIVIDUAL VOIR DIRE

COMES NOW Defendant, by counsel, and moves the Court for an Order permitting individual voir dire as follows:

- 1) The West Virginia Supreme Court of Appeals recently reopened the Courts throughout West Virginia after Covid-19 forced the continuance of most cases.
- 2) Covid-19 is a potentially deadly disease.
- 3) Covid-19 is still very much present in West Virginia, and efforts to protect the court staff, attorneys, and jury pool are required.
- 4) Based on recent news reports, Ohio County, West Virginia will most likely be the first court in the state to hold a jury trial.
- 5) The Circuit Clerk of Ohio County, West Virginia provided a statement that they are contemplating bringing each juror individually.

WHEREFORE, Defendant respectfully requests this Honorable Court permit individual voir dire of each juror to protect the Court staff, attorneys, and jury pool from possible Covid-19 exposure.

Defendant,
by counsel,

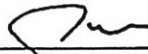


Paul J. Harris
W. Va. Bar # 4673
32 Fifteenth Street
Wheeling, WV 26003
304.232.5300

CERTIFICATE OF SERVICE

I certify a true and exact copy of *Motion for Individual Voir Dire* was filed and served via facsimile only, this 1st day of July, 2020, as follows:

Marshall County Prosecuting Attorney's Office
600 7th Street
Moundsville, WV 26041
(304) 843-0320—fax



Paul J. Harris

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

v.

Case No. 19-M25M-01223

MICHAEL JOSEPH MARONEY

MAGISTRATE REQUEST FOR VOLUNTARY RECUSAL

As the magistrate assigned to the above-styled case, the undersigned hereby requests approval by the supervising circuit judge of voluntary recusal from presiding in this case and reassignment of the case to another magistrate.

The undersigned believes recusal is required for the following reason(s):

I had been employed by the Marshall County Prosecutors Office when the criminal investigation began.

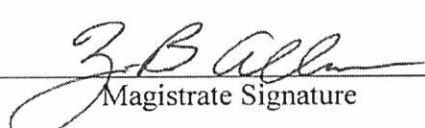
Based upon that fact, I believe it is my responsibility to disqualify myself in any proceeding in which my impartiality may be reasonably questioned.

This case (*check one*) ☐ does ☒ does not involve an expedited proceeding (i.e., one requiring a final hearing to be held within 10 days of filing).

My assistant shall forthwith give notice to the parties in this case by providing a copy of this request.

09/23/2019

Date


Magistrate Signature

Notice to Parties: Contact the magistrate court to see whether the requested action has been granted or denied and whether a change has been made in the previously scheduled hearing date.

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

Case No. 19-M25M-01223

☐ State of West Virginia or ☐ Plaintiff

Plaintiff (Full Name)

v.

Michael J Maroney
Defendant (Full Name)

JURY CANCELLATION

Mag. Ct. Administrative Rule 4, Trial Ct. Rule 7.04

To the Magistrate Clerk of Marshall County:

The jury trial scheduled for the 29th day of July, 2020, in this action has been cancelled and a jury panel will not be needed. Please immediately notify the circuit clerk.

07/13/2020 11:16 AM
(Date) (Time)

Wendy Burbhart
Magistrate/Magistrate Assistant

To the Circuit Clerk of Marshall County:

The previously requested jury trial has been cancelled and the jury panel will not be needed.

07/13/2020 11:16 AM
(Date) (Time)

Heather M. D.
Magistrate Clerk

TX Result Report

P 1
07/13/2020 11:49
Serial No. A79M011034358
TC: 104477

Addressee	Start Time	Time	Prints	Result	Note
Circuit Clerk	07-13 11:48	00:00:26	001/001	OK	

Note TMR:Timer TX, POL:Polling, ORG:Original Size Setting, FME:Frame Erase TX,
DPS:Page Separation TX, MIX:Nixed Original TX, CALL:Manual TX, CSAC:CSAC,
FWD:Forward, PC:PC-FAX, BND:Double-Sided Binding Direction, SP:Special Original,
FCODE:F-code, RIX:Re-TX, RLV:Relay, MEX:Confidential, BUL:Bulletin, SIP:SIP Fax,
IPADR:IP Address Fax, I-FAX:Internet Fax

Result OK: Communication OK, S-OK: Stop Communication, PW-OFF: Power Switch OFF,
TEL: RX from TEL, NG: Other Error, CONT: Continue, No Ans: No Answer,
Refuse: Receipt Refused, Busy: Busy, M-Full:Memory Full, LOVR:Receiving length over,
PQVR:Receiving page over, FIL:File Error, DC:Decode Error, MDN:MDN Response Error,
DSN:DSN Response Error, PRINT:Compulsory Memory Document Print,
DEL:Compulsory Memory Document Delete, SEND:Compulsory Memory Document send.

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIACase No. 19-M25M-01223
☐ State of West Virginia or ☐ Plaintiff

Plaintiff (Full Name)

v.

Michael J Maroney

Defendant (Full Name)

JURY CANCELLATION

*Mag. Ct. Administrative Rule 4, Trial Ct. Rule 7.04*To the Magistrate Clerk of Marshall County:

The jury trial scheduled for the 29th day of July, 2020, in this action has been cancelled and a jury panel will not be needed. Please immediately notify the circuit clerk.

07/13/2020 11:16 AM
(Date) (Time)

Wendy Burkhart
Magistrate/Magistrate Assistant

To the Circuit Clerk of Marshall County:

The previously requested jury trial has been cancelled and the jury panel will not be needed.

07/13/2020 11:16 AM
(Date) (Time)

Heidi M. D.
Magistrate Clerk

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

Case No. 19-M25M-01223

☒ State of West Virginia or ☐ Plaintiff

Plaintiff (Full Name)

v.

Michael J Maroney
Defendant (Full Name)

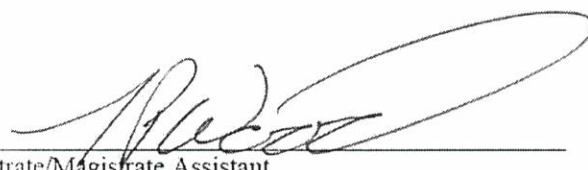
JURY CANCELLATION

Mag. Ct. Administrative Rule 4, Trial Ct. Rule 7.04

To the Magistrate Clerk of Marshall County:

The jury trial scheduled for the 13th day of December, 2019, in this action has been cancelled and a jury panel will not be needed. Please immediately notify the circuit clerk.

12/06/2019 11:05 AM
(Date) (Time)



Magistrate/Magistrate Assistant

To the Circuit Clerk of Marshall County:

The previously requested jury trial has been cancelled and the jury panel will not be needed.

12/06/2019 11:05 AM
(Date) (Time)

Magistrate Clerk

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

Case No. 19-M25M-01223

☒ State of West Virginia or ☐ Plaintiff

Plaintiff (Full Name)

v.

Michael J Maroney
Defendant (Full Name)

JURY CANCELLATION

Mag. Ct. Administrative Rule 4, Trial Ct. Rule 7.04

To the Magistrate Clerk of Marshall County:

The jury trial scheduled for the 14th day of April, 2020, in this action has been cancelled and a jury panel will not be needed. Please immediately notify the circuit clerk.

04/01/2020 5:24 PM
(Date) (Time)




Magistrate/Magistrate Assistant

To the Circuit Clerk of Marshall County:

The previously requested jury trial has been cancelled and the jury panel will not be needed.

4-2-20 958 AM
(Date) (Time)



Magistrate Clerk

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

v.

Case No.: 19-M25M-01223

MICHAEL JOSEPH MARONEY,

Defendant.

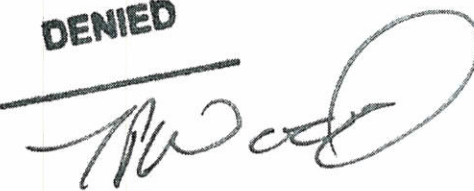
DEFENDANT'S OBJECTION TO STATE'S MOTION TO CONTINUE

COMES NOW, Defendant, Michael Joseph Maroney, by counsel, and objects to the State's motion to continue the trial based on "newly discovered evidence." It is requested that counsel for the State call Defendant's counsel to determine whether the "newly discovered evidence" is significant enough to warrant a continuance.

Defendant,
Michael Joseph Maroney,
by counsel,



Paul J. Harris
W.Va. Bar # 4673
32 Fifteenth Street
Wheeling, WV 26003
304.232.5300

DENIED
7/13/2020

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

v.

Case No.: 19-M25M-01223

MICHAEL JOSEPH MARONEY,

Defendant.

DEFENDANT'S NOTICE OF WAIVER OF PERSONAL APPEARANCE

COMES NOW, Michael Joseph Maroney, by counsel, and waives his personal appearance at the upcoming pretrial hearing on February 28, 2020. Defendant is currently serving in the West Virginia Legislature. Defendant knowingly and voluntarily waives his constitutional right to be present at this hearing, but will appear at any scheduled trial.

Defendant,
Michael Joseph Maroney,
by counsel,



Paul J. Harris
W.Va. Bar # 4673
32 Fifteenth Street
Wheeling, WV 26003
304.232.5300

CERTIFICATE OF SERVICE

I hereby certify a true and exact copy of this *Defendant's Notice of Waiver of Personal Appearance* was served via facsimile only this 27th day of February, 2020 as follows:

Marshall County Prosecuting Attorney's Office
600-7th Street
Moundsville, WV 26041
(304) 843-0320 – fax



Paul J. Harris

HARRIS LAW OFFICES
32 FIFTEENTH STREET
WHEELING, WV 26003
T. 304.232.5300
F. 304.232.5301

FACSIMILE TRANSMITTAL SHEET

TO:

Marshall County Prosecutor's Office
Marshall County Magistrate Clerk

FROM:

Paul J. Harris, Esq.

COMPANY:

DATE:

02/27/2020

FAX NUMBER:

304-845-0320

TOTAL NO. OF PAGES, INCLUDING COVER:

3

304-845-1740

PHONE NUMBER:

SENDER'S REFERENCE NUMBER:

RE:

YOUR REFERENCE NUMBER:

State v. Maroney
Case No.: 19-M25M-01223

(URGENT (FOR REVIEW (PLEASE COMMENT (PLEASE REPLY (PLEASE RECYCLE

NOTES/COMMENTS:

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

v.

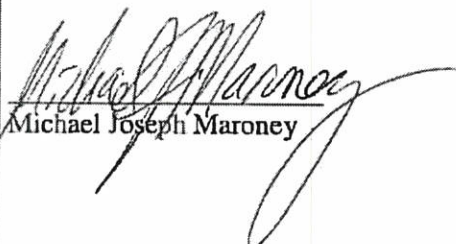
Case No.: 19-M25M-01223

MICHAEL JOSEPH MARONEY,

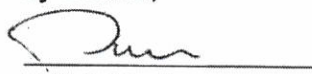
Defendant.

DEFENDANT'S NOTICE OF WAIVER OF PERSONAL APPEARANCE

COMES NOW, Michael Joseph Maroney, by counsel, and waives his personal appearance at the upcoming pretrial hearing on October 30, 2019. Defendant knowingly and voluntarily waives his constitutional right to be present at this hearing, but will appear at any scheduled trial.


Michael Joseph Maroney

Defendant,
Michael Joseph Maroney,
by counsel,


Paul J. Harris
W.Va. Bar # 4673
32 Fifteenth Street
Wheeling, WV 26003
304.232.5300

RECEIVED


2019 OCT 22 P 4 18

MARSHALL COUNTY

CERTIFICATE OF SERVICE

I hereby certify a true and exact copy of this *Defendant's Notice of Waiver of Personal Appearance* was served via facsimile only this 22nd day of October, 2019 as follows:

Marshall County Prosecuting Attorney's Office
600-7th Street
Moundsville, WV 26041
(304) 843-0320 – fax


Paul J. Harris

Broadcast Report

P 1
10/23/2019 08:43
Serial No. A79M011034358
TC: 61806

Addressee	Start Time	Time	Prints	Result	Note
Harris Law Office	10-23 08:40	00:00:45	001/001	OK	
Marshall Co Pros.	10-23 08:42	00:01:02	001/001	OK	

Note THM:Timer TX, POL:Polling, ORG:Original Size Setting, FME:Frame Erase TX,
DPS:Page Separation TX, RTX:Mixed Original TX, CALL:Manual TX, CSRC:CSRC,
FWD:Forward, PC:PC-FAX, BND:Double-Sided Binding Direction, SP:Special Original,
FCODE:F-code, RTX:Re-TX, RLV:Relay, MEX:Confidential, BUL:Bulletin, SIP:SIP Fax,
IPADR:IP Address Fax, I-FAX:Internet Fax

Result OK: Communication OK, S-OK: Stop Communication, PW-OFF: Power Switch OFF,
TEL: RX from TEL, NG: Other Error, Cont: Continue, No Ans: No Answer,
Refuse: Receipt Refused, Busy: Busy, M-Full:Memory Full, LOVR:Receiving length Over,
PDUR:Receiving page Over, FIL:File Error, DC:Decode Error, MDN:MDN Response Error,
DSN:DSN Response Error, PRINT:Compulsory Memory Document Print,
DEL:Compulsory Memory Document Delete, SEND:Compulsory Memory Document Send.

3042325301

Harris Law Office

04:03:53 p.m. 10-22-2019

1 / 2

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

v.

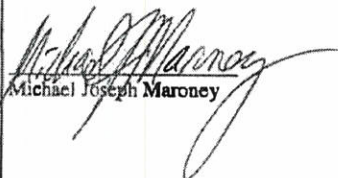
Case No.: 19-M25M-01223

MICHAEL JOSEPH MARONEY,

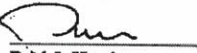
Defendant.

DEFENDANT'S NOTICE OF WAIVER OF PERSONAL APPEARANCE

COMES NOW, Michael Joseph Maroney, by counsel, and waives his personal appearance at the upcoming pretrial hearing on October 30, 2019. Defendant knowingly and voluntarily waives his constitutional right to be present at this hearing, but will appear at any scheduled trial.


Michael Joseph Maroney

Defendant,
Michael Joseph Maroney,
by counsel,


Paul J. Harris
W.Va. Bar # 4673
32 Fifteenth Street
Wheeling, WV 26003
304.232.5300

RECEIVED

2019 OCT 22 P 4:18

MARSHALL COUNTY

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,
Plaintiff,

v.

MICHAEL JOSEPH MARONEY,
Defendant.

Case No. 19-M25M-01223

**DEFENDANT'S MOTION IN LIMINE TO PROHIBIT THE INTRODUCTION OF
TEXT MESSAGES**

COMES NOW Defendant, by counsel, and moves the Court for an Order prohibiting the introduction of text messages as follows:

- 1) The State has no witness to authenticate the purported text messages in this case.
- 2) Every case involving the introduction of text messages requires a witness, either the sender or the recipient, to testify as to the authenticity of the text.
- 3) The Supreme Court of West Virginia has held:

The need for authentication arises in this context because an electronic communication, such as a Facebook message, an e-mail or a cell phone text message, could be generated by someone other than the named sender...Consequently, proving only that a message came from a particular account, without further authenticating evidence, has been held to be inadequate proof of ownership.

State of West Virginia v. Benny W., No. 18-0349 (W.Va., October 2019)(citing *State v. Eleck*, 130 Conn. App. 632 (2011)). The Court held that "social media text messages may be authenticated in numerous way including, for example, by a witness who was a party to sending or receiving the text messages, or through circumstantial evidence showing distinctive characteristics that link the sender to the text messages." *Id.*

4) A separate court has held:

Authentication is a prerequisite to admissibility. The detective's description of how he transcribed the text messages, together with his representation that the transcription was an accurate reproduction of the text messages on Appellant's cellular phone, is insufficient where the Commonwealth concedes that Appellant did not author all of the text messages on her phone. We held in *In the Interest of F.P., a Minor*, and courts of other jurisdictions concur, that authentication of electronic communications, like documents, requires more than mere confirmation that the number or address belonged to a particular person. Circumstantial evidence, which tends to corroborate the identity of the sender, is required.

Com. v. Koch, 39 A.3d 996, 1005 (2011). A copy of the case is attached hereto as Exhibit 1.

- 5) In *Koch*, the court found that it was an abuse of discretion to admit the text messages because there was no testimony presented from the sender or recipient, no contextual clues in the messages themselves tending to reveal the identity of the sender, and no evidence that the defendant identified the phone as hers. *Id.* The court found that there was no probative value in the fact that the police officer found the cell phone on a table close to the defendant.
- 6) Essentially, the sender or recipient of the text would be required to testify as to the authenticity of the text messages. It is believed, that the State has neither to authenticate the text messages.
- 7) If the text messages are permitted to be introduced in this case, the Court would essentially be creating new law.

WHEREFORE, Defendant respectfully requests this Honorable Court prohibit the introduction of text messages.

Defendant,
by counsel,



Paul J. Harris
W. Va. Bar # 4673
32 Fifteenth Street
Wheeling, WV 26003
304.232.5300

CERTIFICATE OF SERVICE

I certify a true and exact copy of *Motion in Limine to Prohibit the Introduction of Text Messages* was filed and served via facsimile only, this 1st day of July, 2020, as follows:

Marshall County Prosecuting Attorney's Office
600 7th Street
Moundsville, WV 26041
(304) 843-0320—fax



Paul J. Harris

2011 PA Super 201
39 A.3d 996

COMMONWEALTH of Pennsylvania,
Appellee

v.

Amy N. KOCH, Appellant.

Superior Court of Pennsylvania.

Submitted July 18, 2011. Filed Sept. 16,
2011. Reargument Denied Nov. 22, 2011.

[39 A.3d 999]

Michael O. Palermo, Jr., Carlisle, for
appellant.

Matthew P. Smith, Assistant District
Attorney, Carlisle, for Commonwealth,
appellee.

**BEFORE: BOWES, FREEDBERG, and
COLVILLE, JJ. OPINION BY BOWES,
J.:**

Amy N. Koch appeals the July 20, 2010
judgment of sentence of twenty-three months
probation imposed following her

[39 A.3d 1000]

conviction of possession with intent to deliver
("PWID") (marijuana) and possession of a
controlled substance (marijuana) as an
accomplice. After careful review, we reverse
and remand for a new trial.

The evidence revealed the following
course of events. A confidential informant
apprised police that Norman Koch, a/k/a
Matt Koch, was selling cocaine and that Koch
resided with his sister, Appellant herein, and
Dallas Conrad, her paramour, at an address
on Aeronca Street in North Middleton
Township. Based on that information, police
conducted two trash pulls at the residence,
which yielded two baggies, one containing
cocaine residue, the other marijuana residue.
N.T. Trial, 5/26-27/10, at 15. Detective

Timothy Lively applied for and obtained a
search warrant for Appellant's residence and
on March 25, 2009, at approximately 6:05
p.m., members of the Cumberland County
Drug Task Force executed the search warrant
on Appellant's home. The officers, after
identifying themselves and stating their
purpose, were granted access to the house. *Id.*
at 17. Present were Appellant, her brother
Norman Koch, and Dallas Conrad.

Officer Richard Grove of the North
Middleton Police Department and assigned to
the task force testified that he was involved in
the search of the master bedroom. He found
two individual baggies of marijuana and
seven hundred dollars in a dresser drawer
containing male underwear and socks. On top
of another longer dresser located in the room,
he found a men's shoebox containing a bong,
two pipes for smoking marijuana, a grinder
used to separate stems and seeds from the
leaves, Phillies Blunts cigars, and sandwich
bags. In a basement freezer, other officers
recovered a small bag of marijuana and a
marijuana bud. *Id.* at 31. Scales containing
residue of marijuana were located on top of
the refrigerator, along with a marijuana pipe.

The task force also seized two cell
phones, one of which Appellant identified as
hers. The other phone was subsequently
identified as her brother's. The text messages
on Appellant's phone were transcribed, and
the Commonwealth offered, over objections
as to authenticity and hearsay, testimony and
a transcript of what it described as thirteen
drug-related text messages.

The jury returned a verdict of guilty as an
accomplice on the PWID charge, guilty as an
accomplice on the possession charge, and
acquitted Appellant of conspiracy to commit
possession with intent to deliver. Appellant's
timely post-trial motions raising weight and
sufficiency issues were denied. Post-sentence
motions also were denied. Appellant timely
appealed and complied with the trial court's
order to file a Pa.R.A.P. 1925(b) concise



statement of errors complained of on appeal. The trial court issued its opinion pursuant to Rule 1925(a), and the matter is ripe for our review.

Appellant raises two issues for our consideration:

1. Did the trial court err in admitting text messages and transcripts of text messages over the objection of defense counsel, where the text messages were not authenticated, the author of the text messages could not be ascertained and were ultimately offered for the truth of the matter asserted?

2. Whether the finder of fact erred in finding there was sufficient evidence to prove all the requisite elements of possession with intent to deliver a controlled substance and simple possession beyond a reasonable doubt, where the evidence presented was that of text messages whose sender

[39 A.3d 1001]

was unknowable and there was no other evidence that Appellant engaged in possessing drugs for delivery or the simple possession of drugs?

Appellant's brief at 7.

As Appellant's second issue challenging the sufficiency of the evidence, if meritorious, would result in discharge, we turn to that issue first. Furthermore, in conducting our analysis, we consider all of the evidence actually admitted at trial and do not review a diminished record. *Commonwealth v. Smith*, 523 Pa. 577, 568 A.2d 600, 603 (1989); *Commonwealth v. Dale*, 836 A.2d 150 (Pa.Super.2003). Consequently, our examination is unaffected by our subsequent resolution of the evidentiary issues raised by Appellant.

In reviewing a sufficiency of the evidence claim, we must determine whether the

evidence admitted at trial, as well as all reasonable inferences drawn therefrom, when viewed in the light most favorable to the verdict winner, are sufficient to support all elements of the offense. *Commonwealth v. Moreno*, 14 A.3d 133 (Pa.Super.2011). Additionally, we may not reweigh the evidence or substitute our own judgment for that of the fact finder. *Commonwealth v. Hartzell*, 988 A.2d 141 (Pa.Super.2009). The evidence may be entirely circumstantial as long as it links the accused to the crime beyond a reasonable doubt. *Moreno, supra* at 136.

In order to convict an accused of PWID under 35 P.S. § 780-113(a)(30), the Commonwealth must prove that he "both possessed the controlled substance and had an intent to deliver that substance." *Commonwealth v. Kirkland*, 831 A.2d 607, 611 (Pa.Super.2003). Pennsylvania courts interpreting § 780-113(a)(30), as it applies to PWID, have concluded that the Commonwealth must establish *mens rea* as to the possession element. *Commonwealth v. Mohamud*, 15 A.3d 80 (Pa.Super.2010). When determining whether a defendant had the requisite intent to deliver, relevant factors for consideration are "the manner in which the controlled substance was packaged, the behavior of the defendant, the presence of drug paraphernalia, and large sums of cash[.]" *Commonwealth v. Ratsamy*, 594 Pa. 176, 934 A.2d 1233, 1237-1238 (2007). Additionally, expert opinion testimony is also admissible "concerning whether the facts surrounding the possession of controlled substances are consistent with an intent to deliver rather than with an intent to possess it for personal use." *Id.* at 1238. We held in *Commonwealth v. Bull*, 422 Pa.Super. 67, 618 A.2d 1019, 1021 (1993), *aff'd*, 539 Pa. 150, 650 A.2d 874 (1994), *cert. denied*, 515 U.S. 1141, 115 S.Ct. 2577, 132 L.Ed.2d 827 (1995), that such expert testimony, coupled with the presence of drug paraphernalia, is sufficient to establish intent to deliver.

Appellant assails the sufficiency of evidence that she possessed the controlled substance with intent to deliver. Viewing the evidence in the light most favorable to the Commonwealth, the quantity of drugs recovered at her home, scales and packaging materials, the text messages, in addition to the expert testimony of Detective Lively, we find that the Commonwealth established PWID beyond a reasonable doubt. Officer Grove testified that he searched the master bedroom of the home and it contained both male and female clothing and mail addressed to Appellant and her paramour/co-defendant, Dallas Conrad. In a dresser drawer containing male underwear and socks, the officer located two baggies containing marijuana adjacent to approximately seven hundred dollars in cash. N.T. Trial, 5/26-27/10, at 21. A man's shoebox located on a longer dresser contained a bong, two pipes, a

[39 A.3d 1002]

grinder, sandwich bags, and the Phillies Blunts cigars. Search of the basement freezer yielded a small bag of marijuana and a marijuana bud. *Id.* at 31.

Detective Lively testified that he had been a member of the Cumberland County Drug Task Force since 2003 or 2004 and that he had training and experience in narcotics and drug-trafficking. *Id.* at 60. He participated in the search and personally recovered a pipe and electronic scales from the top of the refrigerator and two cellular phones. He continued that the purpose of searching for cellular phones is that "more often than not, [they] are used to communicate between dealers and users." *Id.* at 71. The detective stated that he seized an AT & T cell phone that Appellant identified as her phone and that he transcribed the text messages stored in the phone. He segregated those messages that were drug-related from those that were just general communications. *Id.* at 82. The detective related that thirteen of the text messages were drug-related and he

explained to the jury what each meant. He "located these texts back and forth with regard to what appeared to be the delivery or intent to deliver controlled substances." *Id.* at 99. He then opined, based on his experience with the way marijuana is delivered, as opposed to personal use, that the large amount of cash, the fact that there was more than one bag of marijuana, and scales saturated with marijuana residue, were indicative of drug sellers rather than users. He further suggested that the nice house, expensive furniture and electronics also were more characteristic of dealers. *Id.* at 98. He opined that the text messages, together with the pipes and bongs, also indicated possession. *Id.* at 101. We find such evidence sufficient to sustain convictions for PWID and possession, and no relief is due on this basis.

Appellant's remaining issue is a challenge to the admissibility of the text message evidence. Our standard of review of such a claim is as follows:

Admission of evidence is within the sound discretion of the trial court and will be reversed only upon a showing that the trial court clearly abused its discretion. Admissibility depends on relevance and probative value. Evidence is relevant if it logically tends to establish a material fact in the case, tends to make a fact at issue more or less probable or supports a reasonable inference or presumption regarding a material fact. *Commonwealth v. Drumheller*, 570 Pa. 117, 135, 808 A.2d 893, 904 (2002), certiorari denied, 539 U.S. 919, 123 S.Ct. 2284, 156 L.Ed.2d 137 (2003). See also *Commonwealth v. Lewis*, 2005 PA Super 341, 885 A.2d 51, 54 (Pa.Super.2005).

Commonwealth v. Levanduski, 907 A.2d 3, 13-14 (Pa.Super.2006).

Appellant alleges first that the trial court erred in admitting text messages into evidence that were not properly authenticated. Appellant insists there was no

evidence substantiating that she was the author of the text messages, nor evidence that drug-related texts were directed to her because Commonwealth witnesses conceded that another person was using Appellant's phone at least some of the time.

Pennsylvania Rule of Evidence 901 provides that authentication is required prior to admission of evidence. The proponent of the evidence must introduce sufficient evidence that the matter is what it purports to be. Pa.R.E. 901(a). Testimony of a witness with personal knowledge that a matter is what it is claimed to be can be sufficient. Pa.R.E. 901(b)(1). *See also* Comment, citing

[39 A.3d 1003]

Commonwealth v. Hudson, 489 Pa. 620, 414 A.2d 1381 (1980). Furthermore, electronic writings typically show their source, so they can be authenticated by contents in the same way that a communication by postal mail can be authenticated. Circumstantial evidence may suffice where the circumstances support a finding that the writing is genuine. *In the Interest of F.P., a Minor*, 878 A.2d 91 (Pa.Super.2005).

While Detective Lively testified that the cellular phone from which the messages were recovered belonged to Appellant, he conceded that the author of the drug-related text messages could not be ascertained. He further acknowledged that some of the text messages referenced Appellant in the third person and thus, were clearly not written by her. N.T. Trial, 3/26/10, at 104. Furthermore, the text messages were not complete; it was evident that some had been deleted. *Id.* at 89.

The question of what is necessary to authenticate a text message appears to be an issue of first impression in Pennsylvania. Text messages are defined as "writings or other data transmitted electronically by cellular telephones" that constitute an electronic communication for purposes of the Wiretap

Act. *See Commonwealth v. Cruttenden*, 976 A.2d 1176, 1181 (Pa.Super.2009), *appeal granted*, 610 Pa. 454, 21 A.3d 680 (2011). In determining what is required to authenticate text messages, we look first to the treatment accorded other electronic communications.

In *In the Interest of F.P., a Minor, supra*, this Court examined the issue of whether instant message transcripts had been appropriately authenticated. The Commonwealth sought to introduce instant messages from screen name "Icp4Life30" to WHITEBOY Z. The victim identified himself as WHITEBOY Z and testified that he thought Icp4Life30 was the defendant. In that case, the victim testified about the events that occurred involving defendant. The defendant had threatened the victim via instant message, and when this was reported to the school counselor, there was a meeting between defendant and school officials. A mediation between both students was conducted by a school guidance counselor. The contents of the instant messages referred to these ongoing events and in one instance, the defendant referred to himself by his first name. Throughout, the defendant never denied sending the messages. We concluded that this circumstantial evidence sufficiently identified defendant as "Icp4Life30" and authenticated the instant message transcripts.

Importantly, in *In the Interest of F.P., a Minor, supra*, we rejected the argument that e-mails or text messages are inherently unreliable due to their relative anonymity and the difficulty in connecting them to their author. *Id.* at 95. We reasoned that the same uncertainties existed with written documents: "A signature can be forged; a letter can be typed on another's typewriter; distinct letterhead stationary can be copied or stolen." *Id.* Concluding that electronic communications, such as e-mail and instant messages, can be authenticated within the framework of Pa.R.E. 901 and our case law, we declined to create new rules governing the admissibility of such evidence. We held that



such evidence is to be evaluated on a case-by-case basis as any other document to determine whether there has been an adequate foundational showing of its relevance and authenticity.

Our approach and rationale in *In the Interest of F.P., a Minor*, was cited favorably by the Supreme Court of North Dakota in *State v. Thompson*, 777 N.W.2d 617, 624-627 (N.D.2010), a case of first impression involving the authenticity of text messages. That state's highest court performed an extensive review of other jurisdictions' authenticity requirements for

[39 A.3d 1004]

electronic communications generally and summarized its findings. In every case cited therein, authentication involved more than just confirmation that the number or address belonged to a particular person. Often it was important that there be evidence that the e-mails, instant messages, or text messages themselves contained factual information or references unique to the parties involved. See *Thompson*, *supra* and cases cited therein; e.g., *Dickens v. State*, 175 Md.App. 231, 927 A.2d 32, 36-38 (2007) (threatening text messages received by victim on cell phone were properly authenticated when circumstantial evidence provided adequate proof message was sent by defendant).

In *People v. Chromik*, 408 Ill.App.3d 1028, 349 Ill.Dec. 543, 946 N.E.2d 1039 (Ill.App.3 2011), an Illinois appellate court held that a transcription of text messages created by the school principal as read to him by the victim was authentic. While the transcription was not completely accurate, the dates and times of text messages sent from the defendant to the victim were consistent with phone company records. The victim also testified as to the contents of the text messages and the accuracy of the principal's transcription.

Similarly, in *State v. Taylor*, 178 N.C.App. 395, 632 S.E.2d 218 (2006), the court held that testimony from the network's strategic care specialist and the manager of a wireless store was sufficient to authenticate the transcription of the text messages sent to and from the victim's assigned cellular telephone number. The court held further that the text messages themselves contained sufficient circumstantial evidence tending to show the identity of the person who sent and received them.

Implicit in these decisions is the realization that e-mails and text messages are documents and subject to the same requirements for authenticity as non-electronic documents generally. A document may be authenticated by direct proof, such as the testimony of a witness who saw the author sign the document, acknowledgment of execution by the signer, admission of authenticity by an adverse party, or proof that the document or its signature is in the purported author's handwriting. See *McCormick on Evidence*, §§ 219-221 (E. Cleary 2d Ed.1972). A document also may be authenticated by circumstantial evidence, a practice which is "uniformly recognized as permissible." *Commonwealth v. Brooks*, 352 Pa.Super. 394, 508 A.2d 316 (1986), (citing, e.g., *Commonwealth v. Nolly*, 290 Pa. 271, 138 A. 836 (1927) (letters authenticated by contents: facts known only to sender and recipient); *Commonwealth v. Bassi*, 284 Pa. 81, 130 A. 311 (1925) (unsigned letter authenticated by defendant's nickname written on it, along with contents indicating knowledge of matters familiar to both defendant-sender and witness-recipient); and *McFarland v. McFarland*, 176 Pa.Super. 342, 107 A.2d 615, 616 (1954)).

As these cases illustrate, the difficulty that frequently arises in e-mail and text message cases is establishing authorship. Often more than one person uses an e-mail address and accounts can be accessed without permission. In the majority of courts to have

considered the question, the mere fact that an e-mail bears a particular e-mail address is inadequate to authenticate the identity of the author; typically, courts demand additional evidence.

Text messages are somewhat different in that they are intrinsic to the cell phones in which they are stored. While e-mails and instant messages can be sent and received from any computer or smart phone, text messages are sent from the cellular phone bearing the telephone number identified in the text message and

[39 A.3d 1005]

received on a phone associated with the number to which they are transmitted. The identifying information is contained in the text message on the cellular telephone. However, as with e-mail accounts, cellular telephones are not always exclusively used by the person to whom the phone number is assigned.

Such was the case herein. Detective Lively testified that he transcribed the text messages, together with identifying information, from the cellular phone belonging to Appellant. He acknowledged that he could not confirm that Appellant was the author of the text messages and that it was apparent that she did not write some of the messages. Regardless, the trial court found that the text messages were sufficiently authenticated to be admissible. The court reasoned that doubts as to the identity of the sender or recipient went to the weight of the evidence, rather than to its admissibility.

We disagree. Authentication is a prerequisite to admissibility. The detective's description of how he transcribed the text messages, together with his representation that the transcription was an accurate reproduction of the text messages on Appellant's cellular phone, is insufficient for purposes of authentication where the

Commonwealth concedes that Appellant did not author all of the text messages on her phone. We held in *In the Interest of F.P., a Minor*, and courts of other jurisdictions concur, that authentication of electronic communications, like documents, requires more than mere confirmation that the number or address belonged to a particular person. Circumstantial evidence, which tends to corroborate the identity of the sender, is required.

Glaringly absent in this case is any evidence tending to substantiate that Appellant wrote the drug-related text messages. No testimony was presented from persons who sent or received the text messages. There are no contextual clues in the drug-related text messages themselves tending to reveal the identity of the sender. In addition to evidence that Appellant identified the phone as hers, the trial court relied upon the fact that the cellular phone was found on the table in close proximity to Appellant. Trial Court Opinion, 11/30/10, at 13. However, we find Appellant's physical proximity to the telephone to be of no probative value in determining whether she authored text messages days and weeks before. On these facts, the admission of the text messages constituted an abuse of discretion.

Furthermore, we find merit in Appellant's position that the text messages constituted inadmissible hearsay. The Commonwealth argued at trial that the out-of-court statements were not offered for the truth of the matter asserted, and thus were not hearsay. Instead, they were offered to "prove the fact that these things were said on this phone." N.T. Trial, 5/25-26/10, at 75. Counsel for the Commonwealth elaborated: "I am not offering it to prove that on this date and time she actually delivered, you know, this marijuana or—I'm just showing that these statements were made on the phone that belonged to her and that—that these other types of statements then would constitute drug receipts, drug statements, and

orders." *Id.* Counsel explained further that Detective Lively made a list of what he determined were thirteen drug-related texts. *Id.* at 77. It was the Commonwealth's intention to have the detective explain the difference between the drug-related text messages and the non-drug-related texts to show that that Appellant's phone was used in drug transactions, making it more probable that when she possessed the marijuana, she did so with the intent to deliver as opposed to personal

[39 A.3d 1006]

use. *Id.* Based on this proffer, the trial court ruled the text message evidence admissible. For the reasons that follow, we conclude that the text messages constituted inadmissible hearsay.

Pennsylvania Rule of Evidence 801 defines hearsay as follows:

(a) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) Declarant. A "declarant" is a person who makes a statement.

(c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

Pa.R.E. 801. Additionally, Pa.R.E. 802 provides: "Hearsay is not admissible except as provided by these rules, by other rules prescribed by the Pennsylvania Supreme Court, or by statute." Pa.R.E. 802.

The Commonwealth's position that the text messages were not offered for the truth of the matter is unsupported by the record. The only relevance of the text messages and precisely the reason the Commonwealth

sought to introduce them was because they demonstrated an intent to deliver. The relevance was not that statements were made, but the content of the statements. The evidentiary value of the text messages depended entirely on the truth of their content. See *Commonwealth v. Thornton*, 494 Pa. 260, 431 A.2d 248 (1981). In addition, not only was the evidence improperly admitted, it was then used by the Commonwealth as the basis for the detective's expert opinion testimony that it indicated a drug exchange, and that the transaction did occur. *Id.* at 87, 89. The mere existence of the text messages themselves was not enough to prove PWID. The jurors had to believe the actual text of the text messages, that is, the matters asserted therein, to grasp what the text messages were offered at trial to prove.

Nor is there any exception to the hearsay rule that would render these text messages admissible. Arguably, the text messages could have been admitted under the exception to the Pennsylvania hearsay rule for admissions of a party opponent. See Pa.R.E. 803(25). However, they are not party admissions because the Commonwealth was unable to prove that Appellant was the author. Thus, on the basis of hearsay as well, the admission of the text messages constituted an abuse of discretion.

The sole question remaining is whether this abuse of discretion warrants a new trial. A new trial is mandated where the error is not harmless beyond a reasonable doubt. As we explained in *Commonwealth v. Thornton*, *supra*, "[t]he doctrine of harmless error is a technique of appellate review designed to advance judicial economy by obviating the necessity for a retrial where the appellate court is convinced that a trial error was harmless beyond a reasonable doubt. Its purpose is premised on the well-settled proposition that '[a] defendant is entitled to a fair trial but not a perfect one.' " *Thornton*, *supra* at 251. Accord, *Commonwealth v. Drummond*, 775 A.2d 849, 853

(Pa.Super.2001). In *Commonwealth v. Moore*, 594 Pa. 619, 937 A.2d 1062 (2007), our highest court reaffirmed that an error may be considered harmless only when the Commonwealth proves beyond a reasonable doubt that the error could not have contributed to the verdict. Whenever there is a "reasonable possibility" that an error "could have contributed to the verdict," the error is not harmless. *Commonwealth v. Passmore*, 857 A.2d 697, 711 (Pa.Super.2004). "An error may be deemed harmless, *inter*

[39 A.3d 1007]

alia, where the properly admitted and uncontradicted evidence of guilt was so overwhelming and the prejudicial effect of the error was so insignificant by comparison that the error could not have contributed to the verdict." *Commonwealth v. Moore*, *supra* at 1073. Harmless error exists when the error did not prejudice the defendant or the prejudice was *de minimis* or the erroneously admitted evidence was merely cumulative of other untainted evidence, which was substantially similar to the erroneously admitted evidence. *Commonwealth v. Passmore*, *supra* at 711.

Our review of the certified record convinces us that the improper admission of the text message evidence could reasonably have contributed to the jury's verdict. This is not a case where the Commonwealth presented overwhelming properly admitted evidence regarding Appellant's involvement in drug transactions. The Commonwealth's case against Appellant rested on this evidence and evidence that drugs were found in the bedroom she shared and in common areas of her home. No controlled substance was found on the Appellant's person, and thus it was incumbent upon the prosecution to prove constructive possession of the controlled substance to justify conviction. *Commonwealth v. Smith*, 345 Pa.Super. 196, 497 A.2d 1371 (1985). *Commonwealth v. Stokes*, 294 Pa.Super. 529, 440 A.2d 591

(1982). Our Supreme Court held in *Commonwealth v. Reece*, 437 Pa. 422, 263 A.2d 463 (1970), that it is not a crime to live in a house where illegal activity occurs if one does not participate in such activity. Proof of constructive possession requires that one had both power to control and intent to exercise control over the narcotics. *Commonwealth v. Hoetzel*, 284 Pa.Super. 623, 426 A.2d 669 (1981). *But see Commonwealth v. Mudrick*, 510 Pa. 305, 507 A.2d 1212, 1214 (1986) ("even absent a marital relationship[,] constructive possession may be found in either or both actors if contraband is found in an area of joint control and equal access."). In order to prove possession with intent to deliver, the Commonwealth must prove beyond a reasonable doubt both that the defendant possessed the controlled substance and had the intent to deliver. *Commonwealth v. Carpenter*, 955 A.2d 411 (Pa.Super.2008). The text messages on Appellant's phone were a vital element of the Commonwealth's proof on both charges.

The prejudicial effect of the improperly admitted text message evidence was so pervasive in tending to show that Appellant took an active role in an illicit enterprise that it cannot be deemed harmless. Even with the improperly admitted evidence, the jury only found Appellant liable as an accomplice.¹ Accordingly, we conclude that the erroneous admission of the highly prejudicial electronic communications herein was not harmless error and a new trial is warranted.

Judgment of sentence reversed. Case remanded for new trial. Jurisdiction relinquished.

Notes:

¹ Retired Senior Judge assigned to the Superior Court.



1. One may conceivably be found guilty of PWID as an accomplice. In *Commonwealth v. Murphy*, 577 Pa. 275, 844 A.2d 1228 (2004), a state trooper, acting undercover, approached the defendant and asked him if he knew where he could buy drugs. The defendant signaled to another man, who eventually accepted the trooper's money in exchange for drugs. We upheld the defendant's conviction as an accessory, holding that in order to be an accessory to the offense of delivering drugs, one must have had the intent to actively aid in the delivery and then aid the deliverer.

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,
Plaintiff,

v.

MICHAEL JOSEPH MARONEY,
Defendant.

Case No. 19-M25M-01223

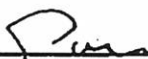
DEFENDANT'S MOTION IN LIMINE TO PROHIBIT SPECULATION

COMES NOW Defendant, by counsel, and moves the Court for an Order prohibiting any witness or attorney from speculation as follows:

- 1) It is believed that the State seeks to speculate as to many of the key issues in this case.
- 2) No DNA evidence was found linking Defendant to any crime.
- 3) Defendant is not on surveillance entering or exiting the purported house belonging to the alleged prostitute.
- 4) There is no audio surveillance or wire tap of Defendant's purported cell phone wherein his voice appears to purchase the services of any alleged prostitute.
- 5) There is no evidence that Defendant or the alleged prostitute ever met.
- 6) There is no evidence that the alleged prostitute knows Defendant.
- 7) There is no evidence that the cell phone in the State's possession actually belongs to Defendant in so far as it has not been produced for analysis.
- 8) Defendant is presumed innocent of all charges.

WHEREFORE, Defendant respectfully requests this Honorable Court prohibit any witness or attorney from speculation.

Defendant,
by counsel,




Paul J. Harris
W. Va. Bar # 4673
32 Fifteenth Street
Wheeling, WV 26003
304.232.5300

CERTIFICATE OF SERVICE

I certify a true and exact copy of *Motion in Limine to Prohibit Speculation* was filed and served via facsimile only, this 1st day of July, 2020, as follows:

Marshall County Prosecuting Attorney's Office
600 7th Street
Moundsville, WV 26041
(304) 843-0320—fax



Paul J. Harris

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,
Plaintiff,

v.

MICHAEL JOSEPH MARONEY,
Defendant.

Case No. 19-M25M-01223

**DEFENDANT'S MOTION FOR PRODUCTION OF COMPLETE TELEPHONE
NUMBERS AND NAMES OF PERSONS APPEARING IN DISCOVERY**

COMES NOW Defendant, by counsel, and moves the Court for an Order requiring the State to produce the full names and telephone numbers of persons appearing in the discovery of this matter as follows:

- 1) The State of West Virginia produced a list of partial telephone numbers and partial names of persons appearing during the investigation of the alleged crimes.
- 2) Defendant cannot discern from the list of partial telephone numbers and names the identity of persons who may have information crucial to Defendant's defense.

WHEREFORE, Defendant respectfully requests this Honorable Court require the State of West Virginia produce the entirety of the telephone numbers and names of persons appearing during discovery.

Defendant,
by counsel,



Paul J. Harris
W. Va. Bar # 4673
32 Fifteenth Street
Wheeling, WV 26003
304.232.5300

CERTIFICATE OF SERVICE

I certify a true and exact copy of *Motion for Production of Complete Telephone Numbers and Names of Persons Appearing in Discovery* was filed and served via facsimile only, this 1st day of July, 2020, as follows:

Marshall County Prosecuting Attorney's Office
600 7th Street
Moundsville, WV 26041
(304) 843-0320—fax



Paul J. Harris

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

Case No. 19-M25M-01223

☐ State of West Virginia or ☐ Plaintiff

Plaintiff (Full Name)

v.

Michael J Maroney
Defendant (Full Name)

BAILIFF CANCELLATION

Mag. Ct. Administrative Rule 3(a)

To the Magistrate Clerk of Marshall County:

The trial/hearing scheduled above is hereby cancelled. Please inform the sheriff that the services of the bailiff are no longer required.

07/13/2020 11:15 AM
Date Time

Wendy Burbhart
Magistrate/Magistrate Assistant

To the Sheriff of Marshall County:

The trial/hearing scheduled above has been cancelled. The requested bailiff is no longer required.

07/13/2020
Date

[Signature]
Magistrate Clerk

TX Result Report

P 1
07/13/2020 11:50
Serial No. A79M011034358
TC: 104478

Addressee	Start Time	Time	Prints	Result	Note
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DPS:Page Separation TX, MIX:Mix Original TX, CALL:Manual TX, CSAC:CSAC,
FWD:Forward, PC:PC-FAX, BND:Double-Sided Binding Direction, SP:Special Original,
CODE:Code, RTX:RTX, RLV:Relay, MBX:Confidential, BUL:Bulletin, SIP:SIP Fax,
IPADR:IP Address Fax, I-FAX:Internet Fax

Result OK: Communication OK, S-OK: Stop Communication, PW-OFF: Power Switch OFF,
TEL: RX from TEL, NB: Other Error, Cont: Continue, No Ans: No Answer,
Refuse: Receipt Refused, Busy: Busy, M-Full:Memory Full, LOUR:Receiving length over,
PDR:Receiving page over, FIL:File Error, DC:Decode Error, MDN:MDN Response Error,
DSN:DSN Response Error, PRINT:Compulsory Memory Document Print,
DEL:Compulsory Memory Document Delete, SEND:Compulsory Memory Document Send.

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

Case No. 19-M25M-01223

☐ State of West Virginia or ☐ Plaintiff

Plaintiff (Full Name)

v.

Michael J Maroney

Defendant (Full Name)

BAILIFF CANCELLATION

Mag. Cl. Administrative Rule 3(a)

To the Magistrate Clerk of Marshall County:

The trial/hearing scheduled above is hereby cancelled. Please inform the sheriff that the services of the bailiff are no longer required.

07/13/2020 11:15 AM
Date Time

Wendy Burkhardt
Magistrate/Magistrate Assistant

To the Sheriff of Marshall County:

The trial/hearing scheduled above has been cancelled. The requested bailiff is no longer required.

07/13/2020
Date

[Signature]
Magistrate Clerk

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

Case No. 19-M25M-01223

☒ State of West Virginia or ☐ Plaintiff

Plaintiff (Full Name)

v.

Michael J Maroney
Defendant (Full Name)

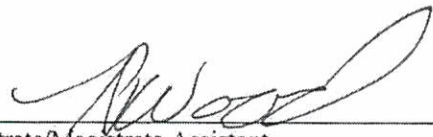
BAILIFF CANCELLATION

Mag. Ct. Administrative Rule 3(a)

To the Magistrate Clerk of Marshall County:

The trial/hearing scheduled above is hereby cancelled. Please inform the sheriff that the services of the bailiff are no longer required.

12/06/2019 11:06 AM
Date Time



Magistrate/Magistrate Assistant

To the Sheriff of Marshall County:

The trial/hearing scheduled above has been cancelled. The requested bailiff is no longer required.

12/06/2019
Date

Magistrate Clerk

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

Case No. 19-M25M-01223

☒ State of West Virginia or ☐ Plaintiff

Plaintiff (Full Name)

v.

Michael J Maroney

Defendant (Full Name)


BAILIFF CANCELLATION

Mag. Ct. Administrative Rule 3(a)

To the Magistrate Clerk of Marshall County:

The trial/hearing scheduled above is hereby cancelled. Please inform the sheriff that the services of the bailiff are no longer required.

04/01/2020 5:26 PM
Date Time

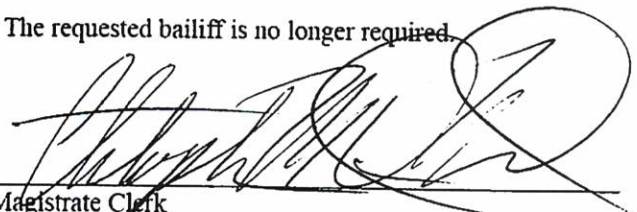


Magistrate/Magistrate Assistant

To the Sheriff of Marshall County:

The trial/hearing scheduled above has been cancelled. The requested bailiff is no longer required.

4-2-20
Date



Magistrate Clerk

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,
Plaintiff,

v.

MICHAEL JOSEPH MARONEY,
Defendant.

Case No. 19-M25M-01223

DEFENDANT'S MOTION TO CONTINUE

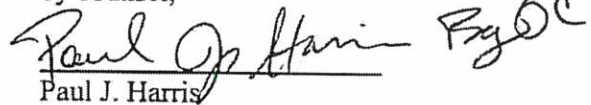
COMES NOW Defendant, by counsel, and moves for a continuance of the hearing currently scheduled for 2:00pm on Tuesday, October 1, 2019. Counsel for Dr. Maroney is currently in trial in the Circuit Court of Ohio County captioned Schultz v. Shaffer, 17-C-112. Counsel originally thought the trial would conclude in one day. However, now it appears that the trial will continue into October 1, 2019.

WHEREFORE, Defendant respectfully requests this Honorable Court grant a brief continuance of the hearing scheduled for October 1, 2019.

GRANTED



Defendant,
by counsel,

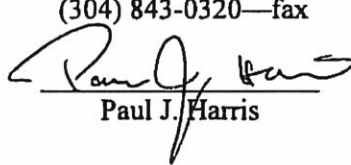


Paul J. Harris
W. Va. Bar # 4673
32 Fifteenth Street
Wheeling, WV 26003
304.232.5300

CERTIFICATE OF SERVICE

I certify a true and exact copy of *Motion to Continue* was filed and served via facsimile only, this 20th day of September 2019, as follows:

Marshall County Prosecuting Attorney's Office
600 7th Street
Moundsville, WV 26041
(304) 843-0320—fax


Paul J. Harris

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

☒ State of West Virginia or ☐ Plaintiff

State of West Virginia
Plaintiff (full name)

Case No. 19-MASM-01223

v.
Michael J. Maroney
Defendant (full name)

XXX-XX-

Social Security Number

/ /
Date of Birth

Address

Driver's License / Identification Number

City, State & Zip Code

Phone Number(s)

MOTION

Mag. Ct. Civil Procedure Rules 8, 9, 12; and Mag. Ct. Criminal Procedure Rules 12, 13

The ☒ State of West Virginia ☐ Plaintiff ☐ Defendant requests that this court

Continue Jury Trial of July 29, 2020

This motion is based upon the following grounds:

☐ Check if continuation sheet is included.

Newly Discovered Evidence.

7/9/2020
Date

[Signature]
Signature of Party Filing Motion/Attorney for the Party/Prosecutor

NOTICE TO PARTIES FILING MOTION: This motion must be filed with the court, and a copy must be served on the opposing party or the opposing party's attorney, by mail, hand delivery, or facsimile.

CERTIFICATE OF SERVICE

I, Rhonda L. Wade

, certify that I have served a copy

of the above motion on the opposing party, or the opposing party's attorney, if he or she is represented by counsel, on the 9th day of July, 2020. ☐ by first-class mail ☐ by hand delivery ☐ by facsimile upon name and address of the party or attorney served:

Paul Harris

[Signature]
Signature

Date

7/9/2020

NOTICE TO PARTIES: Contact the magistrate court to determine if the requested action has been denied, granted, or set for hearing.

RULING

The motion is ☐ Denied, ☒ Granted, ☐ Granted in the following manner:

Pre-Trial Scheduled for 7/22/2020 is also Continued.

☐ Set for hearing ☐ Hearing Date: / / and time : a.m./ p.m.

Date

7/13/2020

Magistrate

[Signature]

MCRMOTN: Motion (previously SCA-M1020)

Revision Date: 06/2012: -I- WVSCA Approved 06/2012: Docket Code(s): See List of Values (LOV)

Broadcast Report

P 1
07/13/2020 11:51
Serial No. A79M011034358
TC: 104482

Addressee	Start Time	Time	Prints	Result	Note
Marshall Co Pros.	07-13 11:48	00:00:36	001/001	OK	
Harris Law Office	07-13 11:50	00:00:42	001/001	OK	

Note THB:Timer TX, POL:Polling, ORG:Original Size Setting, FME:Frame Erase TX,
DSE:Page Separation TX, RIX:Mixed Original TX, CALL:Manual TX, CSAC:CSAC,
FWD:Forward, PC:PC-FAX, BND:Double-Sided Binding Direction, SP:Special Original,
FCODE:IF-Code, RTX:Re-TX, RLV:Relay, MBX:Confidential, BOL:Bulletin, SIP:SIP Fax,
IPADR:IP Address Fax, I-FAX:Internet Fax

Result OK: Communication OK, S-OK: Stop Communication, PW-OFF: Power Switch OFF,
TEL: RX from TEL, NG: Other Error, CONT: Continues, No Ans: No Answer,
Refuse: Receipt Refused, Busy: Busy, M-Full: Memory Full, LOVR:Receiving length Over,
POVR:Receiving page Over, FIL:File Error, DC:Decode Error, MDN:MDN Response Error,
DSN:DSN Response Error, PRINT:Compulsory Memory Document Print,
DEL:Compulsory Memory Document Delete, SEND:Compulsory Memory Document Send.

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

☒ State of West Virginia or ☐ Plaintiff

State of West Virginia
Plaintiff (full name)

Case No. 19-MASM-01223

v.
Michael J. Maroney
Defendant (full name)

XXX-XX- / /
Social Security Number Date of Birth

Address

Driver's License / Identification Number

City, State & Zip Code

Phone Number(s)

MOTION

Mag. Ct. Cvtl Procedure Rules 8, 9, 12; and Mag. Ct. Criminal Procedure Rules 12, 13

The ☒ State of West Virginia ☐ Plaintiff ☐ Defendant requests that this court

Continue Jury Trial of July 29, 2020

This motion is based upon the following grounds:

☐ Check if continuation sheet is included.

Newly Discovered Evidence.

7/9/2020
Date

[Signature]
Signature of Party Filing Motion/Attorney for the Party/Prosecutor

NOTICE TO PARTIES FILING MOTION: This motion must be filed with the court, and a copy must be served on the opposing party or the opposing party's attorney, by mail, hand delivery, or facsimile.

CERTIFICATE OF SERVICE

I, Rhonda L. Wade, certify that I have served a copy of the above motion on the opposing party, or the opposing party's attorney, if he or she is represented by counsel, on the 9th day of July, 2020. ☐ by first-class mail ☐ by hand delivery ☐ by facsimile upon name and address of the party or attorney served:

Paul Harris

[Signature]
Signature

7/9/2020
Date

NOTICE TO PARTIES: Contact the magistrate court to determine if the requested action has been denied, granted, or set for hearing.

RULING

The motion is ☐ Denied, ☒ Granted, ☐ Granted in the following manner:

Pre-Trial Scheduled for 7/22/2020 is also
Continued.

☐ Set for hearing ☐ Hearing Date: / / and time : a.m./ p.m.

7/13/2020
Date

[Signature]
Magistrate

MCRMOTN: Motion (previously SCA-M1020)

Revision Date: 06/2012; -I- WVSCA Approved 06/2012; Docket Code(s): See List of Values (LOV)

Page 1

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

☒ State of West Virginia or ☐ Plaintiff

State of West Virginia
Plaintiff (full name)

Case No. 19-MASM-1223

v.

Michael J. Maroney
Defendant (full name)

XXX-XX- / /
Social Security Number Date of Birth

Address

Driver's License / Identification Number

City, State & Zip Code

Phone Number(s)

MOTION

Mag. Ct. Civil Procedure Rules 8, 9, 12; and Mag. Ct. Criminal Procedure Rules 12, 13

The ☒ State of West Virginia ☐ Plaintiff ☒ Defendant requests that this court
set this matter for trial with the following deadlines: Motions must
be filed by July 1, 2020 and responses to motions by July 15, 2020.

This motion is based upon the following grounds: ☐ Check if continuation sheet is included.
Trial is to be set for July 29, 2020, with a pre-trial hearing
on July 22, 2020. Motions to be argued at July 22, 2020 hearing.

6/15/2020
Date

[Signature]
Signature of Party Filing Motion/Attorney for the Party/Prosecutor

NOTICE TO PARTIES FILING MOTION: This motion must be filed with the court, and a copy must be served on the opposing party or the opposing party's attorney, by mail, hand delivery, or facsimile.

CERTIFICATE OF SERVICE

I, _____, certify that I have served a copy of the above motion on the opposing party, or the opposing party's attorney, if he or she is represented by counsel, on the _____ day of _____, 20____. ☐ by first-class mail ☐ by hand delivery ☐ by facsimile upon name and address of the party or attorney served:

Signature

Date

NOTICE TO PARTIES: Contact the magistrate court to determine if the requested action has been denied, granted, or set for hearing.

RULING

The motion is ☐ Denied. ☒ Granted. ☐ Granted in the following manner:

Joint Motion


☐ Set for hearing ☐ Hearing Date: _____ / _____ / _____ and time _____ : _____ ☐ a.m. / ☐ p.m.

6/15/2020
Date

[Signature]
Magistrate

MCRMOTN: Motion (previously SCA-M1020)

Page 1

Revision Date: 06/2012;  WVSCA Approved 06/2012; Docket Code(s): See List of Values (LOV)

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

WARRANT FOR ARREST

State of West Virginia

v.

Case No(s). 19-M25M-01223

Michael J. Maroney
509 Wheeling Avenue
Glen Dale, WV 26038

To Any Law Enforcement Officer:

WHEREAS this court has found probable cause to believe that the defendant, Michael J. Maroney did commit an offense or offenses in this County on or about

14th day of May, 2019, previous to the issuance of this warrant 1 count(s) 61-08-05(a): Houses of ill fame and assignation; penalties; jurisdiction of courts. (House)

14th day of May, 2019, previous to the issuance of this warrant 1 count(s) 61-08-05(b): Houses of ill fame and assignation; penalties; jurisdiction of courts. (Prostitution)

14th day of May, 2019, previous to the issuance of this warrant 1 count(s) 61-10-31: Conspiracy; construction of section; penalties

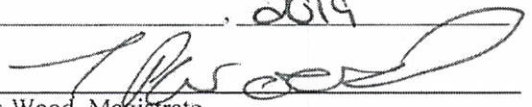
against the peace and dignity of the State.

Therefore, you are commanded in the name of the State of West Virginia to apprehend the above-named defendant and bring that person before any magistrate in this County, to be dealt with in relation to the charge(s) according to law.

This arrest warrant is to be executed in the following manner (*check one*):

- ☒ Forthwith
☐ Between the hours of 9 a.m. and 4 p.m., Monday through Friday
☐ Other (*as specified*):

Given under my hand this 07 day of August, 2019


Thomas Wood, Magistrate

Executed by: L.T.M. Maroney in MARSHALL County, W. Va.,
on 08-28-19
(Date)

TPW

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

vs.

19-M25M-01223

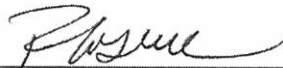
MICHAEL MARONEY,

Defendant.

STATE'S MOTION IN LIMINE

Now comes the State of West Virginia, by and through Prosecuting Attorney Rhonda L. Wade and files this following Motion in Limine to prevent defendant from introducing evidence that the charges against the defendant were "politically motivated. Said information is not supported by any evidence. If the defendant has evidence of the same, the State requests that a hearing be held prior to the seating of a jury pursuant to West Virginia Rule of Evidence 104(b), to determine whether such facts do exist.

Respectfully submitted,



Rhonda L. Wade
Marshall County Prosecuting Attorney

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

vs.

CASE NO. 19-M25M-1223

MICHAEL MARONEY,

Defendant.

STATE'S SUPPLEMENTAL DISCLOSURE

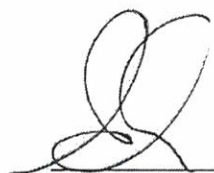
Now comes the State of West Virginia by and through counsel, Rhonda L. Wade, Prosecuting Attorney of Marshall County, and discloses the following information to the defendant, pursuant to Rule 16 of the West Virginia Rules of Criminal Procedure and Rules 32.02 and 32.03 of the West Virginia Trial Court Rules:

The file maintained by the State of West Virginia is available for inspection by counsel for the Defendant upon prior notice during the regular business hours of the Prosecutor's Office. The State reserves the right to supplement these disclosures as may be permitted by the Court and the Law of the State of West Virginia.

VI. Documents and Tangible Objects
T. C. R. 32.03(a)(4) and C. P. R.16(a)(1)(C)

1. One external hard-drive containing the contents of the Defendant's cellular telephone. Hand delivered to Defendant's counsel on September 11, 2020.

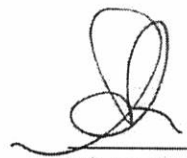
Respectfully Submitted By:

 #12015
for Rhonda L. Wade
Rhonda L. Wade
Prosecuting Attorney
Marshall County, West Virginia

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of the following:

State's Supplemental Disclosure was had upon the defendant, by mailing a true copy to the Defendant's counsel, Paul Harris, Esq., on this 24th day of September, 2020.

 #12015
for Rhonda L. Wade
Rhonda L. Wade
Prosecuting Attorney
Marshall County, West Virginia

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA
STATE OF WEST VIRGINIA,

Plaintiff,

vs.

19-
CASE NO. 18-M25M-1223

MICHAEL JOSEPH MARONEY,

Defendant.

**STATE'S NOTICE OF INTENT TO UTILIZE AND MOTION TO PERMIT
INTRODUCTION OF 404(b) EVIDENCE**

Now comes the State of West Virginia by and through counsel, Rhonda L. Wade, Prosecuting Attorney of Marshall County, West Virginia, and provides notice, as required by WVRE 404(b), of its intent to introduce evidence and testimony that may tend to disclose other crimes, wrongs and/or acts committed by the defendant herein. The State further moves the Court for entry of an Order permitting the introduction of such evidence at the trial of this action. In support of its Motion, the State represents as follows:

1. The defendant was charged via a criminal complaint filed by Glen Dale Police Officer Ezekiel Goddard with the misdemeanor offenses of Soliciting a Prostitute, House of Ill Fame and Conspiracy on the 27th day of August, 2019. The alleged offenses took place on or about May 14, 2019.
2. All charges arise from the events that occurred on or about May 14, 2019, wherein law enforcement officers executed a search warrant on the residence of Cortnie Clark and a subsequent search warrant of Ms.

Clark's cellular phone, as well as the Defendant's cellular phone records.

3. On August 5, 2020, while on bond for the crimes alleged above, Patrolman Gary Myers of the Glen Dale Police Department observed a Ford F-250 truck with Pennsylvania registration ZNM3104 pull into Blaney Manor and observed a female, later identified as Brandy Anne Cecil walk north on Wheeling Avenue in the incorporated city limits of Glen Dale, Marshall County, West Virginia. A short time later, Patrolman Myers observed Brandy Anne Cecil exit the Defendant, Michael Joseph Maroney's residence at 509 Wheeling Avenue, Glen Dale, Marshall County, West Virginia.
4. Brandy Anne Cecil has been previously identified by law enforcement engaging in illegal prostitution, including advertising herself on various prostitution websites and her telephone number was located on the Defendant's cellular phone via search warrant through his cellular phone provider.
5. Patrolman Myers observed the Ford F-250 truck travel north on Wheeling Avenue and Glen Dale Police Communications advised that the registration plate did not return on any vehicle. Patrolman Myers initiated a traffic stop at the Circle K Gas Station in Glen Dale. Contact was made with Ms. Cecil who was identified through her valid WV Identification Card. Glen Dale Police Communications advised that

there was an active arrest warrant out of Belmont County, Ohio for Ms. Cecil. Ms. Cecil was arrested and read her Miranda Rights. She advised Patrolman Myers that she has known the Defendant for about a year and acknowledged she was at his residence. Ms. Cecil possessed two (2) crisp \$100.00 bills and admitted to engaging in prostitution. Located in her personal bag, was found two (2) sex toys.

6. Patrolman Myers obtained a search warrant for Ms. Cecil's cellular phone. Found on Ms. Cecil's phone was the Defendant's telephone number. Said number was listed as "\$\$McMechen"". Also found was a text message conversation between Ms. Cecil and the Defendant that included a text from the Defendant's phone which read, "bring a toy or two tonight".
7. The State of West Virginia respectfully contends the testimony Patrolman Myers and Brandy Anne Cecil is relevant and properly admissible during the trial on each of the counts charged in the Criminal Complaint. Specifically, the testimony and evidence introduced regarding the allegations contained in Patrolman Myers report of the August 5, 2020 incident are relevant to substantiate Defendant's absence of mistake or lack of accident in being involved in soliciting prostitution. Furthermore, it is evidence of his identification as the person involved in the solicitation of Cortnie Clark and the Defendant's intent and plan to solicit prostitutes.

WHEREFORE, the State of West Virginia prays that an evidentiary hearing be set as required, and that the Motion of the State be granted.

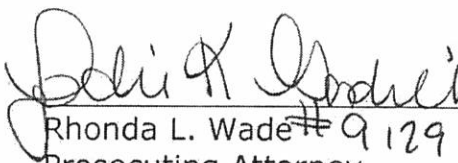
Respectfully submitted,

Respectfully submitted,
Jodie K. Wade #9129
For Rhonda L. Wade
Prosecuting Attorney
Marshall County, West Virginia

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of the following:

State's Notice of Intent to Utilize and Motion to Permit Introduction of 404(b) Evidence, was had upon the defendant, by mailing a true copy to the Defendant's counsel, Paul Harris, Esquire, on this 24th day of September, 2020.

for 
Rhonda L. Wade #9129
Prosecuting Attorney
Marshall County, West Virginia

REQUEST FOR APPOINTMENT OF SPECIAL PROSECUTOR

TO: WEST VIRGINIA PROSECUTING ATTORNEYS INSTITUTE
90 MacCORKLE AVENUE, SW, SUITE 202
SOUTH CHARLESTON, WEST VIRGINIA 25303

FROM: JUDGE JEFFREY D. CRAMER
JUDGE OF THE CIRCUIT COURT OF MARSHALL COUNTY, WV

RE: State v. Michael Maroney, Case No. 19-M25M-01223
COUNTY OF MARSHALL

Initial Request for Prosecuting Attorney Disqualification was made by:

 X Prosecuting Attorney moved Court to be disqualified
 Defendant/Defense Counsel
 Court disqualification Prosecuting Attorney Sua Sponte
 Other: _____

REASON FOR REQUEST:

See attached Request for Appointment of Special Prosecutor.

BRIEF SUMMARY AND STATUS OF CASE:

See above.

ESTIMATION OF TIME REQUIRED: 3-5 hours

REMARKS/COMMENTS: None

Date: 10-13-2020



JUDGE OF THE CIRCUIT COURT

REQUEST TO REMAIN CONFIDENTIAL YES X NO

State the facts that form the basis for Prosecutor disqualification:

Defendant has requested the removal of the Prosecutor's office on the basis that Assistant Prosecuting Attorney Canestraro supports defendant's political opponent, and on the basis that the Prosecutor may be called to testify. Any conflict with Assistant Prosecutor Canestraro would not "flow up" to the Prosecutor. The argument that the Prosecutor would be called as a witness on an issue involving a search warrant is completely without merit, as said issue is determined by the "four corners" of the document.

Further, the Marshall County Prosecutor's Office has not made this a "political case." Despite numerous telephone calls from media personnel statewide, the Prosecutor's office has never made any statements regarding the pending charges against defendant. Rather, defendant and his counsel have made this a political case by going to said media with allegations of impropriety.

This Request is filed to avoid the appearance of impropriety based upon the publicity generated by defendant and his counsel.

REQUEST FOR APPOINTMENT OF SPECIAL PROSECUTOR
INFORMATION SHEET

Information provided by:

 X Prosecuting Attorney

Criminal Case Style and No.: State v. Michael Maroney, Case No. 19-M25M-01223

County: Marshall

State the facts that form the basis for Prosecutor disqualification:

See attached.

Specify the Rule of Professional Conduct, ethics opinion, WV Supreme Court case cite, statute or other authority that forms the legal basis for disqualification of the Prosecutor:

To avoid the appearance of impropriety based upon the publicity generated by defendant and his counsel.

Summarize the facts of the underlying offense for which Special Prosecutor is requested:

See attached.

State the crime(s) involved:

Solicitation of a Prostitute, Conspiracy and House of Ill Fame

Prepared by: Rhonda L. Wade, Prosecuting Attorney

Signature: 

IN THE MAGISTRATE COURT OF MARSHALL COUNTY, WEST VIRGINIA
STATE OF WEST VIRGINIA,

Plaintiff,

vs.

19-M25M-01223

MICHAEL MARONEY,

Defendant.

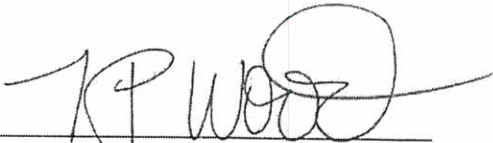
ORDER

The Court, sua sponte,

ORDERS that the Defendant, Michael Maroney, appear in person before the Court on **Monday the 19th day of October, 2020, at 9:45 a.m.**, for an **PRETRIAL HEARING** in the above-styled case.

The clerk of this Court shall issue copies of this ORDER to the Defendant, Michael Maroney, through counsel Paul Harris, Esq., and the Marshall County Prosecuting Attorney's Office.

Entered this 7th day of October, 2020



Thomas Wood, Magistrate

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA
STATE OF WEST VIRGINIA,

Plaintiff,

vs.

Case No. 19-M25M-01223

MICHAEL MARONEY,

Defendant.

ORDER OF DISQUALIFICATION

On this 16th day of July, 2020, came the State of West Virginia by Rhonda L. Wade, Prosecuting Attorney for Marshall County, West Virginia, and moved the Court that Prosecuting Attorney, Rhonda L. Wade, and her staff be disqualified from the above styled case and further moved the Court for the appointment of a Special Prosecutor and after full consideration of all matters presented to the Court by said Defendant Counsel, the Court is of the opinion to and does hereby grant and sustain said Motion for Request for Appointment of Special Prosecutor, in the investigation of this matter and any further cases arising from this matter.

It is accordingly **ADJUDGED** and **ORDERED** that the Office of the Prosecuting Attorney of Marshall County, West Virginia, is hereby disqualified from further proceedings or investigations herein and in order to facilitate the appointment of a Special Prosecutor, the Court will request that the West Virginia Prosecuting Attorney Institute appoint a Special Prosecutor, pursuant to the provisions of West Virginia Code § 7-4-6.

It is further **ORDERED** that the Clerk of this Court make, prepare and transmit a copy of this Order to the Office of the Prosecuting Attorney of Marshall County, West Virginia, which shall serve as notice of disqualification; and it is further **ORDERED** that the Clerk of this Court make, prepare and transmit an additional copy of this Order together with

the Request for Appointment of Special Prosecutor Form to: Philip Morrison,
Executive Director of the West Virginia Prosecuting Attorneys Institute, 1124
Smith Street, #4500, Charleston, WV 25301.

ENTERED: Oct. 13, 2020


Jeffrey D. Cramer Judge