

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF BEDFORD

COMMONWEALTH,)
)
 Plaintiff,)
)
 v.)
)
 WESLEY BRIAN EARNEST,)
)
 Defendant.)

MOTION TO SET ASIDE VERDICT
CR08008940-00, 01

COMES NOW the Defendant, WESLEY B. EARNEST, by counsel, and respectfully moves this Court to set aside the jury verdict as being based in whole or in part on exhibits which were not admitted into evidence, and in support therefore states:

1. In a pretrial motion, Defendant moved to exclude Jocelyn Earnest's journal from evidence, and the Court granted the motion on March 4, 2010.
2. Other journals were marked for identification during trial, but were never admitted into evidence with defense counsel expressing their opposition to the admission of these journals.
3. On April 5, 2010 a jury found the defendant guilty of 1st Degree Murder and use of a firearm in the commission of murder and recommended a sentence to the court.
4. On April 5, 2010 the court found the defendant guilty of 1st Degree Murder and use of a firearm in the commission of murder but did not issue a final order, nor did it sentence the defendant, deferring its decision until a sentencing hearing and the receipt of a pre-sentence report.

FILED IN THE CLERK'S OFFICE
BEDFORD COUNTY CIRCUIT COURT
The 14th day of July, 2010
Judith R. Reynolds
CLERK
DEP. CLERK

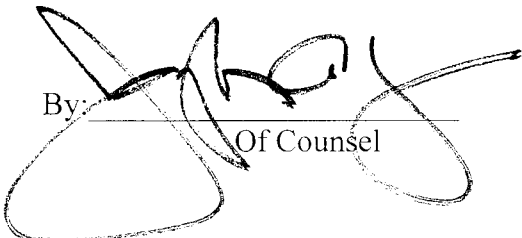
5. On April 11, 2010, a posting appeared in the News and Advance website, attached hereto as Exhibit A. The writer of this posting declares that he or she was a juror in this case and that, "We [the jurors] also were given Jocelyn's journals." The writer indicates that these journals were considered during deliberations.

6. This posting to the News and Advance indicates that this juror and the full panel of jurors considered improper evidence in reaching their verdict. An exhibit that has not been admitted into evidence by the trial judge is not "evidence" and may not be considered by the jury in deciding the merits of the case.

WHEREFORE, defendant, by counsel, respectfully asks that this court grant his motion to set aside the verdict on the grounds that it is contrary to the law and the evidence presented at trial, and the consideration of evidence which has been stricken or not admitted violates the defendant's right to a fair trial as guaranteed by the Constitutions of the United States and the State of Virginia and his right to counsel under the 6th Amendment. The Defendant, by counsel, further requests that all other petitions and orders subsequent to the jury's verdict and which are dependant or related to the jury's verdict be dismissed or vacated by this Court.

Respectfully Submitted,

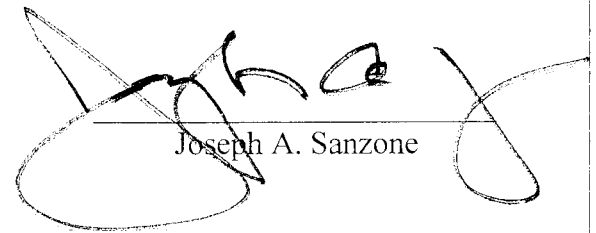
WESLEY BRIAN EARNEST

By: 
Of Counsel

Joseph A. Sanzone
VSB# 20577
Sanzone and Baker, P.C.
1106 Commerce Street
P O Box 1078
Lynchburg, VA 24505
(434) 846-4691

CERTIFICATE OF SERVICE

I, Joseph A. Sanzone, counsel for the defendant, Wesley B. Earnest, hereby certify that a copy of the foregoing Motion was hand-delivered to the Office of the Commonwealth's Attorney for the County of Bedford, P.O. Box 1071, Bedford, VA 24523 on the 14th day of July, 2010.



Joseph A. Sanzone

Joseph A. Sanzone
VSB# 20577
Sanzone and Baker, P.C.
1106 Commerce Street
P O Box 1078
Lynchburg, VA 24505
(434) 846-4691

Reader Reactions

1 2 > Voice your opinion by posting a comment.

Flag Comment Posted by bedfordresident on April 11, 2010 at 11:05 am

After reading some of the comments about this case, I had to respond. I was one of the jurors for this trial. I am still reading newspaper articles as we were not allowed to during the trial. I have not yet saw in any of the articles I have read that when the truck tires were purchased an address of "Silver Spoon Drive" was given as purchasers address. We also were given Jocelyn's journals. There was not a doubt in my mind that Wesley Earnest committed murder. I personally would have voted for death penalty if it had been a choice we had, but it was not. For anyone to try to say that we did not give Wesley Earnest a fair trial is absurd. I just hope it gave Jocelyn's family a little bit of closure to know that her murderer was found guilty and hopefully will spend the rest of his life in jail. None of us wanted to be a part of this trial, but once we were picked, we had to hear and see a lot of evidence that will be with us forever. Justice was done on April 5, 2010.