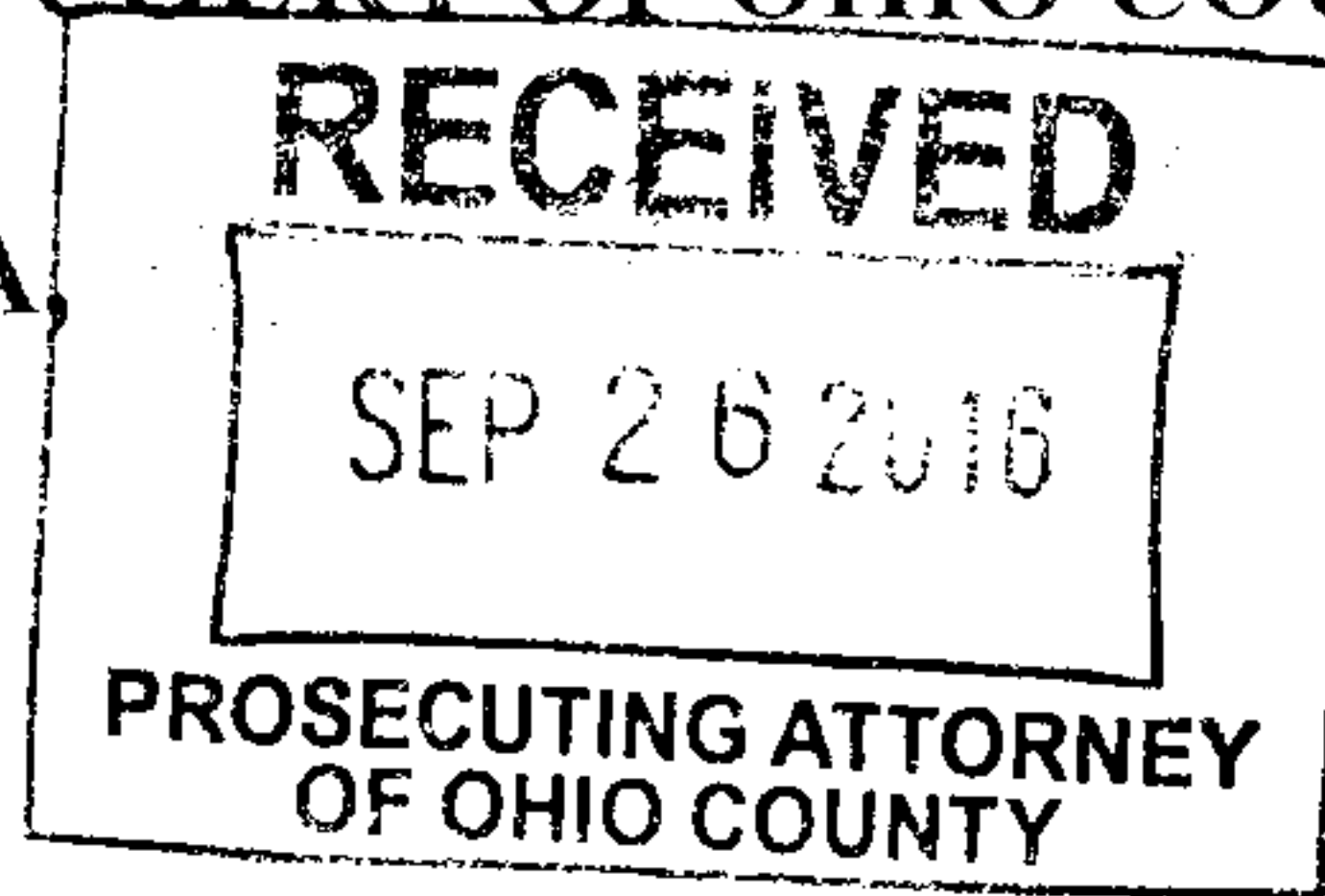


IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,
Plaintiff,

vs.

DALLAS MICHAEL ACOFF,
Defendant.



CASE NO. 16-F-43
Judge David J. Sims

ORDER

On the 19th day of September, 2016, came the State of West Virginia by Shawn R. Turak, Assistant Prosecuting Attorney, and as well came Defendant, Dallas Michael Acoff, in person, and by his counsel, Christopher A. Scheetz, Esq. and Martin P. Sheehan, Esq., for a pre-trial hearing in the above matter. The Court took a number of issues under advisement and makes the following rulings.

1) Defendant's Motion in Limine to exclude all evidence or opinions regarding "tool mark identification" shall be and is hereby denied on the basis that Defendant has failed to meet his burden to establish that such evidence is scientifically unreliable under the standards set forth in *Daubert* and *Wilt*. The State's expert employed a methodology that is recognized in the scientific community for rendering an opinion on "tool mark identification" and the State's expert correctly applied the methodology to render his opinion. Defendant subsequently filed on September 22, 2016, a "Motion to Re-open *Daubert* Hearing." Said Motion is also denied.

2) The State has met its burden under *State v. Payne*, 167 W.Va. 252, 280 S.E.2d 72 (1981) to admit flight evidence for the purpose of establishing guilty conscience or knowledge on the part of Defendant and the Court finds that the probative value of such evidence outweighs its possible prejudicial effect. The facts and circumstances under which Defendant fled in this matter indicate a guilty conscience or knowledge. Defendant fled under circumstances such that would indicate a desire to escape or avoid prosecution due to a guilty conscience or knowledge.

Furthermore, Defendant testimony offered no testimony or evidence to refute the State's contentions and failed to explain his flight or absence from the jurisdiction.

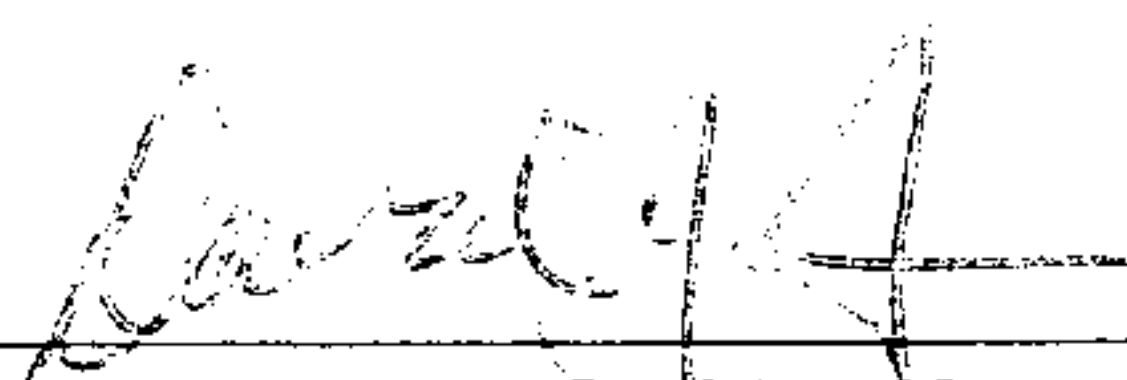
3) Defendant's Motion to Strike Allegations of Wanton Endangerment that Duplicate Discharge of a Firearm as Part of Murder and/or Malicious Wounding Allegations and to Strike all the Allegations of Wanton Endangerment as Separate Claims shall be and is hereby denied for the reason that in *State v. Wright*, 200 W. Va. 549, 490 S.E.2d 636 (1997), the Court recognized that "convictions of both wanton endangerment and malicious assault do not always constitute double jeopardy." *Id.* at 553, 490 S.E.2d at 640.

It is so **ORDERED**. It is further

ORDERED that the Clerk shall provide attested copies of this Order to counsel for the parties.

To which rulings the objections of the parties are hereby noted.

Enter this 23rd day of September, 2016.



JUDGE DAVID J. SIMS

A copy, Teste:



Circuit Clerk