
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 12-0301

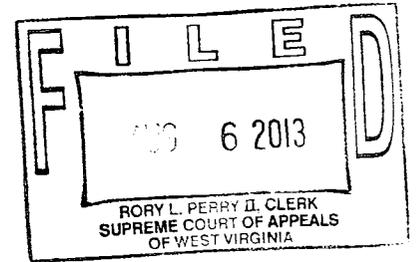
STATE OF WEST VIRGINIA,

*Plaintiff below,
Respondent,*

v.

BRYAN MAGGARD

*Defendant below,
Petitioner.*



NOTICE OF AUTHORITY

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STATE OF WEST VIRGINIA,

*Plaintiff below,
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NOTICE OF AUTHORITY

The State of West Virginia, by counsel, hereby provides this Notice of Authority to bring new authority to the Court's attention that impacts an assignment of error in this case. This case is set for oral argument on September 10, 2013.

In his Brief, Petitioner argues that the Circuit Court erred by refusing to strike a potential juror for cause because she was a Huntington city employee. (Pet'r's Br. 4, Assignment No. III.) Relying on this Court's decision in *State v. Phillips*, 194 W. Va. 596, 461 S.E.2d 75 (1995), Petitioner argues, in part, that his right to a fair trial was violated because he ultimately used a peremptory strike to remove this potential juror. (*Id.* at 20-21.)

This Court has since issued new authority on this point. On June 5, 2013, after the briefing in this case was complete, this Court issued its decision in *State v. Sutherland*, __ W. Va. __, __ S.E.2d __ (June 5, 2013). Syllabus point 3 of *Sutherland* holds the following:

A trial court's failure to remove a biased juror from a jury panel, as required by W. Va. Code § 62-3-3 (1949) (Repl. Vol. 2010), does not violate a criminal defendant's right to a trial by an impartial jury if the defendant removes the juror with a peremptory strike. In order to obtain a new trial for having used a peremptory strike to remove a biased juror from a jury panel, a criminal defendant

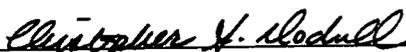
must show prejudice. The holding in Syllabus point 8 of *State v. Phillips*, 194 W.Va. 569, 461 S.E.2d 75 (1995), is expressly overruled.

Sutherland thus demands that Petitioner show more than use of a peremptory strike to remove this potential juror; he must show actual prejudice from his having to use a peremptory strike to remove this potential juror.

Respectfully submitted,

STATE OF WEST VIRGINIA,
Respondent,
By counsel,

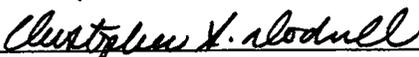
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CERTIFICATE OF SERVICE

I, Christopher S. Dodrill, Assistant Attorney General and counsel for the State of West Virginia, hereby verify that I have served a true copy of "Notice of Authority" upon counsel for the Petitioner by depositing said copy in the United States mail, with first-class postage prepaid, on this 6th day of August, 2013, addressed as follows:

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