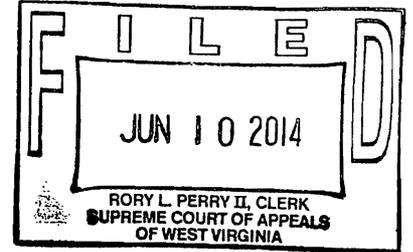


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
CHARLESTON, WEST VIRGINIA

DOCKET NUMBER 14-0339



ROBERT L. LEWIS,

Petitioner,

v.

STATE OF WEST VIRGINIA

Respondent.

PETITION FOR APPEAL

Matthew A. Victor
WV Bar ID No. 5647
VICTOR VICTOR & HELGOE LLP
P.O. Box 5160
Charleston, WV 25361
Tel. (304) 346-5638 or (304) 346-3655
E-mail: vvhlaw@suddenlinkmail.com
Counsel for Petitioner Robert L. Lewis

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I.

ASSIGNMENT OF ERROR

1. The trial court erred in imposing upon the Petitioner consecutive sentences for the same transaction in violation of the principles of double jeopardy;
2. Since the trial court erred in failing to instruct the jury on an element of Abduction with Intent to Defile, the Petitioner was convicted of the offense whose element was not contained in jury instructions;
3. The West Virginia Code § 61-2-14(a) (1984), Abduction with Intent to Defile, is unconstitutional, due to the semantic vagueness of the term “intent to defile;”
4. There was insufficient evidence to convict the Petitioner on the Burglary charge due to legal impossibility;
5. The trial court committed reversible error in improperly enhancing the Petitioner’s recidivist sentence;
6. There was insufficient evidence at the Petitioner’s trial to convict the Petitioner of Second Degree Sexual Assault;
7. At the Petitioner’s recidivist trial, the trial court erred in admitting in the evidence an out-of-state conviction secured in violation of the Petitioner’s constitutional rights;
8. The cumulative error in the proceedings before the trial Court deprived the Petitioner of a due-process-guaranteed fair trial.

II.

STATEMENT OF THE CASE

The Petitioner, Robert Lee Lewis (hereinafter “the Petitioner”), seeks an appeal from his November 5, 2009, jury trial conviction for Burglary, Abduction with Intent to Defile, and Second Degree Sexual Assault, his March 28, 2014, recidivist sentence of twenty-five (25) to fifty-one (51) years following the Petitioner’s recidivist trial and the re-sentencing hearing in 2014. Appendix Record (hereinafter, “AR”) 251-253.

The State of West Virginia alleged that on March 26, 2009, the Petitioner broke into the residence of his former girlfriend, Lisa L. Freeman (hereinafter, “Freeman”) at 406 Russell Street, Apartment 6, Charleston, West Virginia, removed her from said residence, and brought her to 1001 Grant Street, Charleston, West Virginia, where the Petitioner sexually assaulted Freeman. AR 5-7, 18. The Petitioner was arrested shortly thereafter.

After a jury trial, the Petitioner was convicted of Second Degree Sexual Assault, Burglary, Abduction with Intent to Defile on November 5, 2009. At the commencement of the trial, the Petitioner pled to Domestic Battery. On the day of the sentencing hearing, January 6, 2010, the State of West Virginia filed a recidivist information alleging conviction for voluntary manslaughter on April 28, 1994, in Pittsylvania County, Virginia. AR 177.

Following the recidivist trial, the Petitioner was sentenced to consecutive sentences of one (1) to fifteen (15) years in prison on Burglary, three (3) to ten (10) years in prison on Abduction with Intent to Defile and twenty (20) to twenty-five (25) years on the Second Degree Sexual Assault which resulted from the trial Court’s doubling the minimum of the Second Degree Sexual Assault (ten (10) to twenty-five (25) years in prison) following the

jury's finding of the Petitioner's recidivism. The battery sentence of one (1) year was ordered to be served concurrently with the felony charges.

Following the Petitioner's recidivist sentence, the latter demanded several times of his trial counsel to prosecute the Petitioner's direct criminal appeal to this Court. The trial counsel, however, failed to do so. The Petitioner's successful habeas corpus petition to the trial court resulted in the Petitioner resentencing on March 27, 2014. The Order, resentencing the Petitioner to the same sentences as imposed upon him originally following the recidivist trial in 2010, was entered in the Circuit Court's docket the following day.

This appeal follows.

III.

SUMMARY OF ARGUMENT

The Petitioner alleges that upon his on all charges rested upon insufficient factual foundation. In addition, the Petitioner's conviction on the Count of Abduction with Intent to Defile was based upon a constitutionally defective statute further flawed by an erroneous jury instruction. The Petitioner contends that his burglary conviction should be reversed due to the legal impossibility of "burglarizing" one's own residence.

Once convicted, the Petitioner was erroneously sentenced upon the charges of Second-Degree Sexual Assault and Abduction with Intent to Defile in violation of the principles of Double Jeopardy. Furthermore, following the Petitioner's conviction upon the three separate and distinct offenses, the trial court made a reversible error by enhancing the Petitioner's highest penalty offense in the absence of clear statutory pronouncement concerning the choice of the conviction to be enhanced and in violation

of Rule of Lenity. Finally, during the Petitioner's recidivist trial, the trial court erred in admitting in the evidence, the Petitioner's conviction from the State of Virginia which resulted from the violation of the Petitioner's constitutional rights and which admitted during the recidivist trial in violation of the evidentiary rules requiring appropriate authentication of the out-of-state documents.

IV.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The oral argument is necessary to address, at a minimum, two issues of the first impression: (1) the enhancement of the Petitioner's recidivist sentence where, after the multi-count conviction, the trial court enhanced the Petitioner's highest-penalty sentence in violation of the Eighth and Fourteenth Amendment to the United States constitution and the Rule of Lenity; and (2) the constitutionality of West Virginia Code § 61-2-14(a) (1984) "Abduction with Intent to Defile" in light of the semantic vagueness of the term "intent to defile." The Petitioner contends that oral argument on all issues is necessary to aid this Court in its decisional process.

V.

ARGUMENT

(1)

The Petitioner's convictions of, and sentences imposed upon him for, Abduction with Intent to Defile and Second Degree Sexual Assault cannot withstand the Constitutional Double Jeopardy analysis of State v. Davis, 180 W.Va. 357, 376 S.E.2d 563 (1988).

In Davis, the defendant was convicted of the offenses with intent to defile, first-degree sexual abuse and second-degree sexual assault. The trial court's imposition of three (3) consecutive sentences was challenged by the defendant upon double jeopardy grounds.

This Court applied the traditional double jeopardy Blockburger / Zaccagnini test (Blockburger v. United States, 284 U.S. 299 (1932); and State v. Zaccagnini, 172 W.Va. 491, 308 S.E.2d 131 (W.Va. 1983)) and, having considered statutory elements of the crimes charged, three separate and distinct offenses were present for double jeopardy purposes. However, the Davis Court held that "where the confinement or asportation of the victim, though technically sufficient to establish the offense of kidnapping, was merely incidental or ancillary to the commission of the sexual assault, double jeopardy precluded separate convictions and punishment for both offenses." Id., supra 180 W.Va. at 360, 376 S.E.2d at 566. The Court relied on its decisional precedent set in State v. Miller, 175 W.Va. 616, 336 S.E.2d 910 (1985):

"In interpreting and applying a generally worded kidnapping statute ... in a situation where another offense was committed, some reasonable limitations on the scope of kidnapping must be developed. The general rule is that a kidnapping has not been committed when it is incidental to another crime. In deciding whether the acts that technically constitute kidnapping were incidental to another crime, courts examine at length of time the victim was held or moved, the distance the victim was forced to move, the location and environment of the place the victim was detained, and the exposure of the victim to an increased risk of harm." Id., 175 W.Va. at 617, 336 S.E.2d at 911, Syllabus Point 2.

The Davis Court then found that the defendant's conviction and punishment for the crime of abduction with intent to defile violated the prohibition against double jeopardy. Id., 180 W.Va. at 361, 376 S.E.2d at 567. The Court reasoned that "the movement of the

victim ... was merely intended to facilitate the commission of the sexual assault In these circumstances, we must conclude that the “abduction” of the victim was merely incidental or ancillary to the commission of another offense.” Id. See also State ex rel. Gleason v. Janice, slip opinion, 2012 WL 3055666 (W.Va. June 7, 2012), where the Court found the attempted sexual assault in the second degree to be ancillary or incidental offense to the abduction with intent to defile and agreed with the lower court’s dismissal of the former at the conclusion of the proceedings in the Circuit Court.

The principles espoused by this Court in its decisional language cited above must be applied with equal force to the present proceedings. After all, the alleged “abduction” of Freeman was merely intended to facilitate the sexual assault upon her. The “abduction” was accomplished in a short amount of time and Freeman was moved only a short distance to the place of the alleged assault. The removal and transfer of Freeman from one location to another did not appear to expose her to any increased risk of harm beyond that inherent in the alleged sexual assault “or to decrease the possibility of detection or escape.” Gleason, supra, slip opinion, p. 6. It is clear that the “abduction” of Freeman was merely incidental or ancillary to the commission of the alleged sexual assault and not a crime in and of itself. For that reason alone, the Petitioner’s conviction of Abduction with Intent to Defile must be reversed.

(2)

Before a jury could return a verdict of guilty under West Virginia Code § 61-2-14(a), Abduction with Intent to Defile at the conclusion of the Petitioner’s trial, the State of West Virginia was required to prove beyond a reasonable doubt each of the following

elements: (1) that the Petitioner; (2) on March 26, 2009; (3) in Kanawha County, West Virginia; (4) took Freeman; (5) for a sexual purpose or motivation; (6) with intent to defile Freeman. However, the trial court did not instruct the jury as to the fifth element of the offense, i.e. “for a sexual purpose or motivation.” Instead, the jury was instructed that: (1) the Petitioner; (2) on March 26, 2009; (3) in Kanawha County, West Virginia; (4) did take away Freeman; (5) against her will; (6) and that the Petitioner did so with intent to defile Freeman.

The elements of the offense of Abduction with Intent to Defile include both “sexual purpose and motivation” and “intent to defile.” The trial court was required to include both of these elements in the jury instructions inasmuch as the statutory language so required. However, the trial court disregarded the legislative mandates and omitted, from the jury instructions in this case, the element of “sexual purpose and motivation.” See generally, State v. Hanna, 180 W.Va. 598, 378 S.E.2d 640 (1989). Since the omission from the jury instruction of any element which the prosecution must prove beyond a reasonable doubt requires reversal of a criminal defendant’s conviction, United States v. Gaudin, 515 U.S. 506 (1995), the Petitioner’s conviction must be reversed and his sentence must be set aside.

(3)

Moreover, the Abduction with Intent to Defile statute contains the semantically vague term “intent to defile.” The verb “to defile” means “to corrupt purity or perfection of; to debase; to make ceremonially unclean; to pollute; to sully; to dishonor.” Black’s Law Dictionary, 5th Edition, 1981, at 380. While “the term does not necessarily imply force or

ravishment, nor does it connote previous immaculateness,” *id.* (emphasis supplied), the term “to defile” has been consistently defined as “to debauch, deflower, or corrupt the chastity of a woman.” *Id.* See also, Webster’s Ninth New Collegiate Dictionary, 1983, at 333: “to defile ... to violate the chastity of, deflower.”

A reasonable interpretation of the word “defile” leads to the conclusion that the prohibition against violation of a woman’s chastity is the main purpose of the Abduction with Intent to Defile statute. After all, the statute does not call for “Abduction with Intent to Sexually Assault a Woman” or, for that matter, “Another person.” The statute in question does not call for “Abduction with Intent to Rape.” The drafters of the statute very precisely selected the word “to defile” and the meaning of this word should be interpreted in accordance with its intended legislative goal.

With respect to the Petitioner, the statute is impermissibly vague. It is not clear from the record what action the Petitioner undertook to “defile” Freeman. If “to defile” meant “to violate the chastity of, to deflower,” the statute has, simply, no application to the Petitioner. If “to defile” meant “to debase” and “to dishonor,” the record does not support the “debasement” or the “dishonoring” of Freeman by the Petitioner, since these terms do not reflect the Petitioner’s actions.

It is undisputed that Freeman and the Petitioner were sexually active – the Petitioner’s plea to domestic battery implies that much – and that her “defilement” was not possible. Therefore, no jury could have concluded that the Petitioner “defiled” Freeman as required by the statutory mandate or the language of the jury instructions. The Petitioner’s conviction on that count must be reversed.

(4)

The Petitioner and Freeman shared legal possession of Apartment 6 at 406 Russell Street, Charleston, West Virginia. As of the time of the alleged offenses the rental agreement involving the Petitioner, Freeman and the Landlord of the premises had still remained in force. Since the Petitioner and Freeman possessed the apartment in question under the legal principle of tenancy in common, the Petitioner had an equal right to possess the whole property and could not, as such, be convicted of “Burglary” which defines the entry onto the premises of “another.” Simply put, the Petitioner entered his own residence and did not burglarize the residence of “another.”

The fact that Freeman secured a protective order against the Petitioner is of no consequence in the matter of the parties’ respective property rights. “No order entered pursuant to Article 27, Chapter 48, of the Code of West Virginia, may in any manner affect the title to any real property.” West Virginia Code § 48-27-506 (2001). Therefore, the Petitioner’s Burglary conviction must be reversed.

(5)

The Circuit Court, in sentencing the Petitioner on three (3) separate felonies following the recidivist trial, doubled the lower end of the sentence on the Second Degree Sexual Assault, but left intact the sentences imposed pursuant to the convictions on Burglary and Abduction with Intent to Defile. AR 239, 838-841. It is the Petitioner’s contention that, while the doubling of a sentence under the West Virginia Recidivist Statute § 61-11-18(a) has been approved by this Court, State v. Harris, 266 W.Va. 471, 702 S.E.2d 603 (2010), there is no legislative, decisional or regulatory justification for

doubling the highest individual sentence rather than the lowest in a multi-count conviction for the recidivism-triggering offenses. One can argue that the Recidivist Statute simply fails to address a factual scenario present in the case at bar and cannot be applied to the enhancements of sentences imposed upon the multi-count convictions. More appropriately, however, in the absence of any specific decisional mandate or legislative directive upholding the doubling, in a multi-count recidivism-triggering conviction case, of the highest individual sentence, the West Virginia Code § 61-11-18(a) is, at best, ambiguous and unclear as to which individual crime in the triggering multi-count conviction should serve as “the” sentence enhancing offense.

Once the determination of the statute’s ambiguity and lack of clarity has been made, the rule of lenity should apply against the imposition of such an unwelcome sentence. It is well established that “in construing an ambiguous criminal statute, the rule of lenity applies which requires that penal statutes must be strictly construed against the State and in favor of the defendant.” State ex rel. Morgan v. Trent, 195 W.Va. 257, 262, 465 S.E.2d 257, 262 (1995), cited in State v. Davis, 229 W.Va. 695, 699, 735 S.E.2d 570, 574 (2012). The rationale for the rule of lenity is “to preclude expansive judicial interpretations (that) may create penalties for offenses that were not intended. The rule of lenity serves to ensure both that there is fair warning of the boundaries of criminal conduct and that legislatures, not courts, define criminal liability.” Morgan, supra, 195 W.Va. at 262, 465 S.E.2d at 262, cited in Davis, supra, 229 W.Va. at 699, 735 S.E.2d at 574. See also, United States v. Cone, 714 F.3d 197 (4th Cir. 2013).

Therefore, instead of doubling of the bottom of ten (10) years in a ten-(10)-to-twenty-five-(25) year sentence for Second Degree Sexual Assault, amounting to twenty (20) to

twenty five (25) year sentence in addition to three (3) to ten (10) year prison sentence for Abduction with Intent to Defile and one (1) to fifteen (15) years for Burglary for the total of twenty four (24) to fifty (50) years in the penitentiary, the Petitioner should have been sentenced based upon the doubling of the most lenient Burglary sentence to two (2) to fifteen (15) years (doubling the bottom term of years of the Burglary statutory conviction of one (1) year, in addition to three (3) to ten (10) years for Abduction with Intent to Defile and ten (10) to twenty five (25) years for Second Degree Sexual Assault, for the total of fifteen (15) to fifty (50) years in prison.

The Circuit Court's action has had the enormous consequences affecting the Petitioner's liberty inasmuch the sentence imposed caused the Petitioner to be incarcerated for the total prison term of twenty four (24) to fifty (50) years with the eligibility for parole after not less than twenty-four (24) years. Had the trial court, as mentioned above, doubled the minimum Burglary sentence, the Petitioner's total sentence would make him eligible for parole after fifteen (15), rather than twenty four (24) years. And if the Trial Court doubled the Abduction with Intent to Defile sentence, the Petitioner's total sentence would have amounted to seventeen (17) to fifty (50) years, making him eligible for parole after seventeen (17) years, rather than twenty four (24). Because the sentencing court's arbitrary selection of the highest conviction sentence for recidivist enhancement amounted to constitutional error, the Petitioner is entitled to resentencing.

Almost three (3) decades ago, the West Virginia Supreme Court of Appeals countenanced restraint in imposing enhanced sentences under the West Virginia Recidivist Statute. In Turner v. Holland, 175 W.Va. 202, 332 S.E.2d 164 (1985), the

Court held that only one enhancement imposed upon “one of the present sentences” is permissible under West Virginia Code § 61-11-18. In Turner, the defendant was convicted of sexual abuse and burglary and sentenced to consecutive prison terms. While, unfortunately, the West Virginia Supreme Court of Appeals did not decide which underlying sentence was to be appended with a five-year recidivist enhancement, the Court twice cautioned the lower courts that penal statutes, such as the Recidivist Statute, must be strictly construed against the State. *Id.*, 175 W.Va. at 203, 332 S.E.2d at 166. The application of that sentencing restraint is now sought in this Petition. Otherwise, the Petitioner’s sentence is unconstitutionally excessive in violation of the Eighth Amendment to the United States Constitution and its West Virginia Constitutional counterpart.

(6)

The Petitioner contends that there was insufficient evidence to convict the Petitioner on Second Degree Sexual Assault. Considering the long-standing relationship between Freeman and the Petitioner, there is a reasonable doubt whether the Petitioner committed the act of forcible sexual intercourse with Freeman. Although the Petitioner, i.e. an appellant challenging the sufficiency of the evidence, takes on “a heavy burden,” State v. Guthrie, 194 W.Va. 657, 461 S.E.2d 163 (1995), the Petitioner believes that the facts surrounding the alleged sexual assault are insufficient for the jury to conclude that a forcible, violent sexual act was perpetrated upon Freeman. The Petitioner’s conviction on that count must be reversed.

(7)

In its Recidivist Information, the State alleged the Petitioner's conviction for voluntary manslaughter in Pittsylvania County, Virginia, on April 28, 1994. The Virginia record included an indictment for murder, a record of plea proceedings on April 28, 1994 and a sentencing order reflecting the proceedings held on July 24, 1994. The record does not indicate that the Virginia Court made inquiry of the Petitioner as to the nature of the charges against him or his waiver of his constitutional right to trial. There was no indication in the record as to whether the Petitioner made a knowing and voluntary waiver of those rights or entered a knowing and voluntary guilty plea.

The documentation from Pittsylvania County Court submitted in the present case does not demonstrate that a valid guilty plea was entered by the Petitioner in an underlying felony case. As the West Virginia Supreme Court of Appeals consistently held, "(w)hen a conviction rests upon a guilty plea, the record must affirmatively show that the plea was intelligently and voluntarily made with an awareness of the nature of the charge to which the plea is offered and the consequences of the plea." Syllabus Point 1, Riley v. Ziegler, 161 W.Va. 290, 241 S.E.2d 813 (1978). And in Pugh v. Leverette, 169 W.Va. 223, 286 S.E.2d 415 (1982), the West Virginia Supreme Court of Appeals reaffirmed its stance on the voluntariness of the guilty plea by a criminal defendant who must understand and appreciate the consequences of his decision to plead guilty to a criminal offense.

Whether a court record or court order demonstrates a valid guilty plea rises to the level of Constitutional question rather than procedural one. In Boykin v. Alabama, 395 U.S. 238 (1969), the High Court explained:

The question of an effective waiver of a federal constitutional right in a proceeding is of course governed by federal standards. Several federal constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial. First is the privilege against compulsory self-incrimination guaranteed by the Fifth Amendment and applicable to the States by reason of the Fourteenth Amendment. Second, is the right to trial by jury. Third is the right to confront one's accusers. We cannot presume a waiver of these three important federal rights from a silent record.

What is at stake for an accused facing death or imprisonment demands the utmost solicitude of which courts are capable in canvassing the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought, and forestalls the spin-off of collateral proceedings that seek to probe murky memories. 395 U.S. at 243-244 (citations omitted).

Boykin, supra, makes clear that regardless of whether a criminal defendant is represented by counsel, the trial court has an affirmative duty to ensure that a guilty plea is voluntary, intelligent and knowing, and that the waiver of the most cherished constitutional rights as enumerated above is scrupulously preserved on the record.

The Virginia documents offered as evidence in the case at bar do not meet any of the stringent requirements of the constitutional law, inasmuch as the Virginia Court Orders do not indicate that any inquiry was made of the Petitioner as to his Constitutional rights and their voluntary, intelligent, and knowing waiver by the Petitioner.

The West Virginia Supreme Court of Appeals unequivocally held that "(h)abitual criminal proceedings providing for enhanced or additional punishment ... are wholly statutory Being in derogation of the common law, such statutes are generally held to require a strict construction in favor of the prisoner." Syllabus Point 1, Justice v. Hedrick, 177 W.Va. 53, 54, 350 S.E.2d 565 (1986).

The Petitioner's recidivist conviction cannot be upheld upon the Virginia record before this Court, the record which can only be characterized as silent. Since there is no affirmative record, express or implied, that the Petitioner knowingly, intelligently and voluntarily waived his Constitutional rights during his 1994, criminal proceedings, the trial court erred in permitting the State of West Virginia to introduce these documents into the evidence during the Petitioner's recidivist trial.

Moreover, the Virginia records do not necessarily establish that the Petitioner was convicted of a prior felony. Whether the out-of-state conviction may serve as a predicate conviction for West Virginia recidivism depends upon the classification of the out-of-state criminal offense by West Virginia Courts. The Petitioner was convicted of Voluntary Manslaughter under Virginia Code § 18.2.-35, a Class Five (5) Felony. The elements of manslaughter are not codified and exist only in the Virginia common law. Before the Virginia Voluntary Manslaughter can serve as a predicate offense in West Virginia, a determination must be made as to whether the common law definitions and elements of voluntary manslaughter in Virginia would fit the definition of voluntary manslaughter (or, for that matter, any other offense) in West Virginia. Because West Virginia law controls, without such determination, the Virginia "voluntary manslaughter" offense cannot be used as a predicate offense to enhance the Petitioner's sentence under West Virginia recidivist law. See, West Virginia Code § 61-11-18; § 61-11-19.

(8)

Finally, it appears that the cumulative effect of the numerous errors cited herein rises to the level requiring the reversal of the Petitioner's conviction. As the West Virginia

Supreme Court held, “(w)here the record of a criminal trial shows that the cumulative effect of numerous errors committed during the trial prevented the defendant from receiving a fair trial, his conviction should be set aside, even though any one of such errors standing alone would be harmless error.” State v. Walker, 188 W.Va. 661, 425 S.E.2d 616 (W.Va. 1992).

The Petitioner’s case is closely analogous to Walker. Even if the Court were to hold that, arguably, each individual error was harmless, the Court must not ignore the cumulative effect of all errors upon the Petitioner’s rights to procedural and substantive due process.

As the United States Supreme Court held, in the context of a federal habeas corpus proceeding, when a judge is in grave doubt about whether trial error of constitutional dimensions and “substantial and injurious effect or influence in determining the jury’s verdict (occurred, then), that error is not harmless. And the Petitioner must win.” O’Neal v. McAnich, 513 U.S. 432, 436 (1995).

Following in the footsteps of Chapman v. California, 386 U.S. 18 (1967), the O’Neal Court clearly held that any error of Constitutional dimensions was harmless only if it was harmless beyond a reasonable doubt. The Court also upheld the Chapman principle that “‘constitutional error ... casts on someone other than the person prejudiced by it a burden to show that it was harmless.’ *Id.*” O’Neal, *supra*, at 438. The Respondent in the case at bar cannot shoulder the burden of demonstrating that the error (individually or cumulatively) was harmless.

Grave doubt lingers as to whether this Petitioner’s procedural and substantive rights have been affected. Kotteakos v. United States, 328 U.S. 750 (1946). This Court in

weighing the doubt which, in the Petitioner's opinion, pervades the pages of the existing record, should find that the cumulative error complained of was not harmless. Not only does the language of the United States Supreme Court opinions' dictate it – the basic sense of fairness and the Constitutional mandates of Due Process require that much from this Court.

VI.

CONCLUSION

For the foregoing reasons the Petitioner prays that this Court grant the Petitioner's Petition of Appeal and reverse his conviction. In the alternative, the Petitioner prays for a new trial or any further relief as the Court may deem fair, just, and appropriate.

Respectfully submitted,
Robert L. Lewis
By Counsel



Matthew A. Victor
VICTOR VICTOR & HELGOE LLP
P.O. Box 5160
Charleston, WV 25361
Tel. (304) 346-5638 or (304) 346-3655

CERTIFICATE OF SERVICE

I, Matthew A. Victor, counsel for the Petitioner, do hereby certify that on this 10th day of June, 2014, I served a true copy of the foregoing Petition for Appeal, by hand delivering the same to, and/or by faxing the same and/or, by placing the same in the United States Mail, postage prepaid, and addressed to:

Derek Knopp, Esquire
Assistant Attorney General
812 Quarrier Street, 6th Floor
Charleston, WV 25301



Matthew A. Victor
VICTOR VICTOR & HELGOE, LLP
P. O. Box 5160
Charleston, WV 25361
Tel. (304) 346-5638 or (304) 346-3655