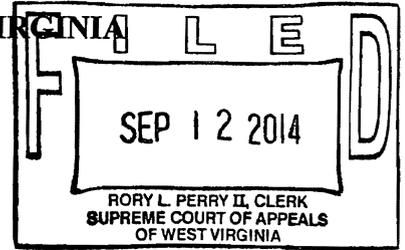


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
CHARLESTON, KANAWHA COUNTY



STATE OF WEST VIRGINIA ex rel.
RALPH A. LORENZETTI, JR.,
Prosecuting Attorney for Jefferson County,
Petitioner,

v.

Supreme Court Docket No.: 14-0904
(Jefferson County Case No. 13-F-73)

THE HONORABLE DAVID H. SANDERS,
Judge of the Twenty-Third Judicial Circuit, and
ELIZABETH SHANTON,
Respondents.

FROM THE CIRCUIT COURT OF
JEFFERSON COUNTY, WEST VIRGINIA

PETITION FOR WRIT OF PROHIBITION

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West Virginia Code § 12-3-10a
West Virginia Code § 12-3-10b
West Virginia Code § 62-9-1

QUESTION PRESENTED

Did the Circuit Court exceeded its legitimate power in dismissing Counts 2 through 54 of the Indictment each of which charged the defendant with separate violations of West Virginia Code § 12-3-10b which statute criminalizes the Fraudulent or Unauthorized Use of a State Purchasing Card?

STATEMENT OF THE CASE

THE PRE-TRIAL HEARING IN THIS MATTER IS SCHEDULED TO COMMENCE ON MONDAY, SEPTEMBER 15, 2014, AND THE TRIAL OF THIS MATTER IS SCHEDULED TO COMMENCE ON TUESDAY, SEPTEMBER 30, 2014.

This is a felony fraud case where the victim is the State of West Virginia and the defendant a former employee of a State institution, Shepherd University. The Respondent Defendant was charged in a 54-count indictment with one count of Fraudulent Schemes, a violation of West Virginia Code § 61-3-24d, and with fifty-three counts of Fraudulent or Unauthorized Use of a State-Issued Purchase Card, all violations of West Virginia Code §12-3-10b. Appendix Record (hereinafter "A.R") 1 – 54.

As an employee of Shepherd University the Respondent Defendant was responsible for student programming including hospitality meals, events and giveaways. Respondent Defendant was provided a state-issued Purchase Card in accordance with West Virginia Code § 12-3-10a, and the Code of State Rules and policies and procedures promulgated pursuant to that statute. Respondent Defendant used her state issued purchase card to make purchases which sometimes totaled more than \$15,000 in one billing cycle, many of which purchases were improperly documented, either without receipts, with receipts which were not itemized¹, or for items which were not for official state purchases. Following many months of her belated and insufficient record keeping, the Respondent Defendant was investigated by the Commission on Special Investigations and the Purchase Card Program Oversight division of the State Auditor's Office, which investigation ultimately led to indictment of the Respondent Defendant in April 2013.

¹ The indictment alleges in twenty counts that the defendant failed to provide an itemized or legible itemized receipt as is required by Section 7.1 of the Purchasing Card Policies and Procedures. Counts 2, 4, 5, 6, 7, 8, 15, 16, 23, 24, 25, 33, 34, 35, 42, 43, 44, 47, 48 and 53.

In March and April of 2014 the Respondent Defendant filed three separate motions to dismiss the indictment for insufficiency, lack of jurisdiction and unconstitutionality². On May 23, 2014, the Petitioner filed a single comprehensive response including exhibits³ to those motions. A.R. 114 – 204. Three months later, on August 27, 2014, the Circuit Court held a conference call with counsel for the State and Defendant and requested that the parties provide additional factual information regarding the charges pending, and the investigation thereof. On September 4, 2014, counsel for the State filed, “State’s Responses to Factual Inquiries of the Court”. A.R. 205 – 208. The following day the Court issued a 5-page order dismissing all 53 counts of Fraudulent or Unauthorized Use of a Purchase Card, leaving only the charge of Fraudulent Schemes. A.R. 209 – 213. It is from that Order that this Petition was brought. The Petitioner respectfully moves this Honorable Court to grant this Petition and issue a writ prohibiting the Respondent Judge from enforcing his order and remanding the matter to the Respondent Judge for trial on all 54 counts of the Indictment which was returned as a true bill by the Jefferson County Grand Jury.

SUMMARY OF ARGUMENT

The Circuit Court exceeded its legitimate power and jurisdiction by dismissing 53 counts of a 54 count indictment, denying the State of its opportunity to prosecute the Respondent Defendant, and by basing the dismissal on reasons which are clearly erroneous as a matter of

2 On March 24, 2014, the Respondent Defendant filed a motion to dismiss Counts 2 through 54 for insufficiency. A.R. 55 – 70. On April 3, 2014, the Respondent Defendant filed two separate motions to dismiss the indictment for lack of jurisdiction and for unconstitutionality. A.R. 71 – 82; 83 – 113.

3 The State attached the following exhibits to its response: Exhibit A: 155 CSR 7, “Department of Administration Purchasing Division and State Auditor: State Purchasing Card Program”, A.R. 157 - 160; Exhibit B: “Purchasing Card Policies and Procedures” promulgated by the West Virginia State Auditor’s Office, A.R. 161 – 183; Exhibit C: “Shepherd University P-Card – Internal Controls: July 2009”, A.R. 184 – 192; Exhibit D: “Shepherd University P-Card – Internal Controls: July 2012”, A.R. 193 – 201; Exhibit E: Senate Bill 267, passed March 8, 2014, effective ninety days from passage, A.R. 202 – 204.

law. The trial of this matter is scheduled for September 30, 2014, and no other adequate remedy exists for the petitioner.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Respondent affirmatively states that oral argument is not necessary unless the Court, in its discretion and pursuant to Rule 19, determines that oral argument is necessary and shall be held.

ARGUMENT

- I. The Circuit Court exceeded its legitimate power in dismissing Counts 2 through 54 of the Indictment, each of which charged the defendant with separate violations of West Virginia Code § 12-3-10b, which criminalizes the Fraudulent or Unauthorized Use of a State Purchasing Card.**
 - A. Prohibition is the appropriate remedy to challenge the dismissal of an indictment.**

The extraordinary writ of prohibition:

‘ . . . lies only to restrain inferior courts from proceeding in causes over which they have no jurisdiction, or, in which having jurisdiction, they are exceeding their legitimate powers and may not be used as a substitute for [a petition for appeal] or certiorari.’ Syllabus Point 1, *Crawford v. Taylor*, 138 W. Va. 207, 75 S.E.2d 370 (1953).”

Syllabus Point 1, *State ex rel. Bosley v. Willett*, 204 W. Va. 662, 515 S.E.2d 825 (1999). This Court has previously recognized that “prohibition is an appropriate method for the State to challenge the dismissal of an indictment.” *State ex rel. State v. Gustke*, 205 W.Va. 72, 516 S.E.2d 283 (1999). The *Gustke* court explained that it interpreted the State's argument to be that the circuit court abused its legitimate powers in dismissing the indictment. The Court wrote that the State was charged with demonstrating “that the court's action was so flagrant that it was

deprived of its right to prosecute the case or deprived of a valid conviction.” 205 W.Va. at 77, 516 S.E.2d at 288. The Court also reiterated its earlier holding that “ ‘[i]f a trial court improperly interferes with a State's right to prosecute, the court, in effect, exceeds its jurisdiction.’ *State ex rel. Forbes v. Canady*, 197 W.Va. 37, 42, 475 S.E.2d 37, 42 (1996).” *Id.*

Accordingly, the State seeks this writ to prohibit the Circuit Court from enforcing its September 5, 2014 order dismissing 53 counts of Jefferson County Indictment 13-F-73 on the basis that the Circuit Court exceeded its legitimate power.

B. Prohibition shall issue if there is no appellate remedy available or adequate, and if the abuse of power is so flagrant and violative of petitioner’s rights as to make a remedy by appeal inadequate.

Recently in *State ex rel. Harris v. Hatcher*, ___ W.Va. ___, 760 S.E.2d 847 (2014), this Court upheld its longstanding rule that:

Where prohibition is sought to restrain a trial court from the abuse of its legitimate powers, rather than to challenge its jurisdiction, [this] appellate court will review each case on its own particular facts to determine whether a remedy by appeal is both available and adequate, and only if the appellate court determines that the abuse of power is so flagrant and violative of petitioner’s rights as to make a remedy by appeal inadequate, will a writ of prohibition issue.” Syl. Pt. 2, *Woodall v. Laurita*, 156 W.Va. 707, 195 S.E.2d 717 (1973).

This Court applies five factors when determining whether to entertain and issue a writ of prohibition:

[i]n determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous

as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.

Syl. pt. 4, State ex rel. Hoover v. Berger, 199 W.Va. 12, 483 S.E.2d 12 (1996). *See also*: State ex rel. Games-Neely v. Sanders, 220 W.Va. 230, 232-233, 641 S.E.2d 153, 155-156 (2006).

An analysis of four of the five factors shows that the Petitioner meets each of those four factors. First, the State has no other adequate means of relief. The pre-trial hearing in this matter is scheduled to commence just ten days after the court's ruling on Monday, September 15, 2014, and the trial is scheduled to commence just over three weeks after the court's ruling, on Tuesday, September 30, 2014. A motion to reconsider the court's decision was filed on Friday, September 12, 2014. However, even were the court to rule on that motion, it would not occur until the pre-trial hearing. There is no other method to obtain the requested relief short of this petition for a writ of prohibition.

Second, the Petitioner would be damaged or prejudiced in a manner not correctable on appeal if a writ does not issue. The trial of this matter is currently scheduled to commence in just over two weeks from the date of this filing. If the trial were to proceed on only the single count remaining, the Respondent Defendant might be able to argue on appeal that she is protected by the Double Jeopardy clause from further prosecution on the counts which were dismissed by the Circuit Court on September 5, 2014. The Petitioner might thus be barred from ever prosecuting the Respondent Defendant.

Third, the lower court's ruling is clearly erroneous as a matter of law. For more than three months the lower court failed to rule on the Motions to Dismiss and Response thereto until receipt of responses to certain factual inquiries. The State filed its responses on September 4, 2014 and the Circuit Court ruled the following day. The Circuit Court clearly relied upon the factual responses, rather than the legal arguments presented by the parties. Further, as discussed more fully below, the Circuit Court's reasoning is flawed and clearly erroneous, based on the introductory paragraph of a Senate Bill rather than the actual language of the revised statute.

Additionally, the Court did not follow the applicable law in determining whether the indictment was sufficient. In Syllabus Points 2, 3, 4, and 6, of State v. Wallace, 205 W. Va. 155, 517 S.E.2d 20 (1999), this Court held the standards that a circuit court must follow in determining the sufficiency of a challenged indictment are:

2. Assessment of the facial sufficiency of an indictment is limited to its "four corners," and, because supplemental pleadings cannot cure an otherwise invalid indictment, courts are precluded from considering evidence from sources beyond the charging instrument.

3. "Generally, the sufficiency of an indictment is reviewed *de novo*. An indictment need only meet minimal constitutional standards, and the sufficiency of an indictment is determined by practical rather than technical considerations." Syl. pt. 2, *State v. Miller*, 197 W.Va. 588, 476 S.E.2d 535 (1996).

4. The requirements set forth in *W. Va. R.Crim. P. 7* were designed to eliminate technicalities in criminal pleading and are to be construed to secure simplicity in procedure.

[...]

6. An indictment is sufficient under Article III, § 14 of the *West Virginia Constitution* and *W. Va. R.Crim. P. 7(c)(1)* if it (1) states the elements of the offense charged; (2) puts a defendant on fair notice of the charge against which he or she must defend; and (3) enables a defendant to assert an acquittal or conviction in order to prevent being placed twice in jeopardy.

See also: State v. Legg, 218 W.Va. 519, 625 S.E.2d 281 (2005). This Court has also held that:

“ ‘An indictment [or information] for a statutory offense is sufficient if, in charging the offense, it substantially follows the language of the statute, fully informs the accused of the particular offense with which he is charged and enables the court to determine the statute on which the charge is based.’ Syl. pt. 3, *State v. Hall*, 172 W.Va. 138, 304 S.E.2d 43 (1983).” Syl. pt. 3, *State v. Wade*, 174 W.Va. 381, 327 S.E.2d 142 (1985).

Syllabus Point 3, *State v. Donald S.B.*, 184 W.Va. 187, 399 S.E.2d 898 (1990). In its order dismissing 53 counts of the Indictment the Court did not refer to any of these standards regarding the alleged sufficiency or insufficiency of the indictment.

However, each count of the indictment charging the Respondent Defendant with this offense substantially follows the language of W. Va. Code § 12-3-10b. Each count of the Indictment lists each of the elements of the offense and substantially follows the language of the statute (the Petitioner, unlawfully and feloniously, verified that she used a state purchase card to make a purchase of goods or services in a manner contrary to the provisions of law and/or for purchases which were not for official state purposes). Each count of the Indictment fully informs the accused that she is charged with the felony offense of Fraudulent or Unauthorized Use of a Purchasing Card, in violation of W. Va. Code § 12-3-10b. Further, there is sufficient specificity as to the date of each offense, and acts which constitute the offense in each count of the Indictment that the Petitioner is able to determine the exact conduct by which she is alleged to have violated West Virginia Code § 12-3-10b. The Indictment plainly conforms with the requirements of *State v. Wallace*, *supra*, and *State v. Donald S.B.*, *supra*.

All indictments in this State, if procured, found and returned in all other respects as provided by law, shall be sufficient if in the following form: State of West Virginia, County of, to wit: The grand jurors of the State of West Virginia, in and for the body of the county of, upon their oaths present that A....., on the day of, 19..., in the said county of, did

unlawfully (or unlawfully and feloniously, as the case may be) (here describe the offense in the language, purport or tenor of the statute as near as may be), against the peace and dignity of the State. Found upon the testimony of, duly sworn in open court to testify the truth and sent before the grand jury this the day of, 19...(Signed)
.....Prosecuting Attorney. Said indictment shall have legibly indorsed on the reverse side thereof the words "State of West Virginia versus Indictment for a (Felony or Misdemeanor, as the case may be)..... Foreman of the Grand Jury. Attest:, Prosecuting Attorney of, county, West Virginia." Of such indictment a true and complete record shall be made and kept by the clerk of the court in which the indictment is found and returned, and it shall be necessary to state thereon whether such indictment be for a felony or a misdemeanor.

West Virginia Code § 62-9-1. Nowhere does this statutory language require more to be a sufficient indictment than is found in the counts of the Indictment charging the Petitioner.

While in reviewing the sufficiency of an indictment a court is not to consider matters outside the four corners of the indictment, Wallace, *supra*, it is significant to note that a bill of particulars is the device for providing details to a defendant that are otherwise not included in a facially sufficient indictment. *See State v. Meadows*, 172 W.Va. 247, 304 S.E.2d 831 (1983). However, a bill of particulars is not merited in this matter based upon the specificity contained within each count of the Indictment itself.

Fifth, the lower tribunal's order raises new and important problems or issues of law of first impression in that West Virginia Code § 12-3-10b has not been the subject of any decisions of this court. The Circuit Court's interpretation of that statute is a novel matter of first impression that appears to improperly interpret a plainly worded law. "Where the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to

the rules of interpretation.’ Syllabus Point 2, *State v. Elder*, 152 W.Va. 571, 165 S.E.2d 108 (1968).” Syllabus Point 7, *State v. McGilton*, 229 W.Va. 554, 729 S.E.2d 876 (2012). Further,

“ ‘A statutory provision which is clear and unambiguous and plainly expresses the legislative intent will not be interpreted by the courts but will be given full force and effect.’ Syl. Pt. 2, *State v. Epperly*, 135 W.Va. 877, 65 S.E.2d 488 (1951).’ Syllabus Point 1, *State v. Jarvis*, 199 W.Va. 635, 487 S.E.2d 293 (1997).’

Syllabus Point 5, State v. McGilton, 229 W.Va. 554, 729 S.E.2d 876 (2012).

Senate Bill 267 which amended West Virginia Code § 12-3-10b contains an introductory paragraph describing the purpose of the bill, however, the Circuit Court used that descriptive paragraph as a basis for its finding that fraudulent or unauthorized use of a purchasing card was a continuing offense, despite the fact that the language actually adopted by the Legislature does not contain such a definition. The “general goal in construing a statute is to determine and give effect to legislative intent. Syl. Pt. 1, *Smith v. State Workmen’s Compensation Com’r*, 159 W.Va. 108, 219 S.E.2d 361 (1975).” *State v. McCraine*, 214 W.Va. 188, 588 S.E.2d (2003).

Revised West Virginia Code § 12-3-10b provides in its entirety:

- (a) It is unlawful for any person to use a state purchasing card, issued in accordance with the provisions of section ten-a of this article, to make any purchase of goods or services in a manner which is contrary to the provisions of section ten-a of this article or the rules promulgated pursuant to that section.
- (b) It is unlawful for any person to knowingly or intentionally possess with the intent to use a purchasing card without authorization pursuant to section ten-a of this article or the rules promulgated pursuant to that section.
- (c) Any person who violates the provisions of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than five years, or fined no more than \$5,000, or both fined and imprisoned.
- (d) A violation of this section may be prosecuted in the county in which the card was issued, unlawfully obtained, fraudulently used, used without authorization, or where any substantial or material element of the offense occurred.

The Legislature did not include any provision in the adopted version of West Virginia Code § 12-3-10b regarding whether the offense was continuing in nature. Likewise, the prior section of the Code which is referenced within West Virginia Code § 12-3-10b contains no reference to a violation of the statute being conduct of a continuing offense⁴. The intent of the statute is clear and unambiguous. The Legislature omitted any reference to the criminal conduct being continuing in character, thus the ordinary meaning of the language must be given to it: each offense is a separate offense, not a continuing offense. Regardless of the proposed intent of the

4 West Virginia Code § 12-3-10a provides in its entirety:

Notwithstanding the provisions of section ten of this article, payment of claims may be made through the use of the state Purchasing Card Program authorized by the provisions of this section. The Auditor, in cooperation with the Secretary of the Department of Administration, may establish a state Purchasing Card Program for the purpose of authorizing all spending units of state government to use a purchasing card as an alternative payment method. The Purchasing Card Program shall be conducted so that procedures and controls for the procurement and payment of goods and services are made more efficient. The program shall permit spending units to use a purchasing card to pay for goods and services. Notwithstanding any other provision of this code to the contrary, a purchasing card may be used to make any payment authorized by the Auditor, including regular routine payments and travel and emergency payments, and such payments shall be set at an amount to be determined by the Auditor. Purchasing cards may not be utilized for the purpose of obtaining cash advances, whether the advances are made in cash or by other negotiable instrument: *Provided*, That purchasing cards may be used for cash advances for travel purchases upon approval of the Auditor. Purchases of goods and services must be received either in advance of or simultaneously with the use of a state purchasing card for payment for those goods or services. The Auditor, by legislative rule, may eliminate the requirement for vendor invoices and provide a procedure for consolidating multiple vendor payments into one monthly payment to a charge card vendor. Selection of a charge card vendor to provide state purchase cards shall be accomplished by competitive bid. The Purchasing Division of the Department of Administration shall contract with the successful bidder for provision of state purchasing cards. Purchasing cards issued under the program shall be used for official state purchases only. The Auditor shall propose rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to govern the implementation of the purchase card program.

original drafter of such legislation, the Legislature's actions are clear: no language contained in the revised statute refers to the offense being continuing in character. Accordingly, applying the strictures of McGilton and Elder, *supra*, this Court should give the clear and unambiguous language of West Virginia Code § 12-3-10b its plain meaning without resorting to rules of interpretation, and prohibit the Circuit Court from its finding that continuing conduct constitutes but a single offense of the statute.

The case *sub judice* presents four of the five factors from State ex rel. Hoover v. Berger, *supra*, to determine whether to entertain and issue a writ of prohibition: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. All of these factors are sufficient reason to grant the Petition for Prohibition, but combined it is clear that the Circuit Court's action was so flagrant that it deprived the State of its right to prosecute the case.

By granting a writ of prohibition herein this Court would not affect the Respondent Defendant's right to speedy trial or her double jeopardy rights. In Gustke, *supra*, this court quoted its earlier holdings in Syllabus point 5, State v. Lewis, 188 W.Va. 85, 422 S.E.2d 807 (1992), and Syllabus Point 2, State ex rel. Sims v. Perry, 204 W.Va. 625, 515 S.E.2d 582 (1999):

“The State may seek a writ of prohibition in this Court in a criminal case where the trial court has exceeded or acted outside of its jurisdiction. Where the State claims that the trial court abused its legitimate powers, the State must demonstrate that the court's action was so flagrant that it was deprived of its right to prosecute the case or deprived of a valid conviction. In any event, the prohibition proceeding must offend neither the Double Jeopardy

Clause nor the defendant's right to a speedy trial. Furthermore, the application for a writ of prohibition must be promptly presented.”

205 W.Va. at 77, 516 S.E.2d at 288.

In State v. McGilton, the defendant was convicted of multiple offenses of malicious assault against the same victim, although the offenses were part of the same course of conduct, and this Court found that the convictions did not violate the double jeopardy clause of the United States of West Virginia Constitution, “as long as the facts demonstrate separate and distinct violations of the statute.” Syllabus Point 9, State v. McGilton, *supra*. McGilton stabbed his wife numerous times during an argument, including twice in the neck, multiple times in the back of her head, once in her ankle and once in the back of her leg. The indictment in counts 1 through 3 charged McGilton with “cutting or stabbing her with a knife in the throat area”, “cutting or stabbing her with a knife in the right neck area” and “cutting or stabbing her with a knife in the back of her head.”

In McGilton this Court cited to the early ruling in State v. Green, 207 W.Va. 530, 534 S.E.2d 395 (2000), where the Court addressed double jeopardy in the context of ten counts of uttering which “arose from the contemporaneous presentment of ten forged money orders”, and upheld those ten convictions. The Court found that the Blockburger analysis does not apply⁵ when there are multiple violations of the same statute.

This Court has also upheld three separate robberies resulting from a single episode that lasted approximately one minutes in State v. Myers, 229 W.Va. 238, 728 S.E.2d 122 (2012). The McGilton court noted that:

⁵ Petitioner concedes that in the State’s Response to the Defendant’s Motions to Dismiss that a Blockburger analysis was urged, however, McGilton, unequivocally states that a Blockburger analysis does not apply where there are multiple violations of the same statute charged.

While the facts of Myers involved three separate victims, it is analogous to [McGilton's] situation in that it involved three separate violations of the same statute, all occurring simultaneously, with the argument in both cases that the statute prohibited multiple punishments for conduct occurring during a single event. The Court in Myers found that the jury did not err in finding that the defendant had committed three separate acts by individually meeting the requirements for each crime even though the crimes occurred during a single transaction, and in spite of the fact that all of the crimes occurred within a matter of seconds.

229 W.Va. at 564 – 5, 729 S.E.2d 886 – 7. As this Court's holdings in Green and Myers demonstrate, multiple convictions are appropriate where a defendant performs separate acts that would support different violations of the same statute. Thus, it is clear that the Respondent Defendant's double jeopardy rights⁶ will not be affected by the issuance of this writ.

On September 4, 2014 the Respondent Defendant filed a motion to continue the trial and pre-trial hearing in this matter. Additionally the Defendant has twice previously moved to continue the pre-trial hearing and trial, on September 27, 2013 and May 15, 2014, both times waiving her right to a speedy trial.

Finally, this Petition for a Writ of Prohibition is being promptly presented, just five business days after the Circuit Court's order dismissing 53 counts of the indictment.

⁶ The Respondent Defendant's rights pursuant to the Double Jeopardy Clause to be protected from a second prosecution for the same offense after acquittal or conviction or imposition of multiple punishments for the same offense are not implicated here.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Petitioner requests that this Court find that the Respondent Judge is clearly erroneous and exceeds his legitimate power in ordering the dismissal of Counts 2 through 54. The Petitioner respectfully moves this Honorable Court to GRANT this Petition for the Writ of Prohibition and issue a writ prohibiting the Respondent Judge from enforcing that order and further remanding the matter for trial on all counts of the Indictment.

Respectfully submitted,
STATE OF WEST VIRGINIA, ex rel.
RALPH A LORENZETTI, JR.,

By counsel:



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VERIFICATION

STATE OF WEST VIRGINIA,

COUNTY OF JEFFERSON, TO-WIT:

I, Ralph A. Lorenzetti, Jr., Prosecuting Attorney in and for Jefferson County, named in the foregoing Petition for a Writ of Habeas Corpus, having been duly sworn, depose and say that the facts and allegations therein contained are true and correct, except insofar as they are therein stated to be upon information and belief, and insofar as they are therein stated to be upon information and belief, I believe them to be true.

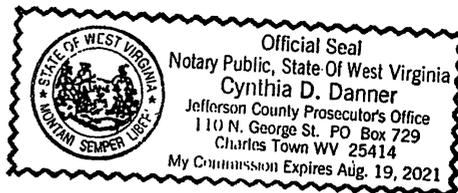

RALPH A. LORENZETTI, JR. 2244

Taken, subscribed and sworn to before me this 12th day of September, 2014.

My commission expires:


Notary Public

SEAL



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

STATE OF WEST VIRGINIA ex rel.
RALPH A. LORENZETTI, JR.,
Prosecuting Attorney for Jefferson County,
Petitioner,

v.

Supreme Court Docket No.: 14-_____
(Jefferson County Case No. 13-F-73)

THE HONORABLE DAVID H. SANDERS,
Judge of the Twenty-Third Judicial Circuit, and
ELIZABETH SHANTON,
Respondents.

CERTIFICATE OF SERVICE

I, Brandon C. H. Sims, do hereby certify that on the 12th day of September, 2014, that I have served a true copy of the foregoing *PETITION FOR WRIT OF PROHIBITION* upon counsel for the Respondent by electronic mail and first class United States Mail:

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