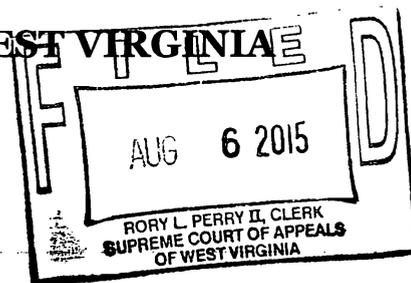


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 15-0067



SAMUEL ANSTEY,
Petitioner,

V.

DAVID BALLARD,
Warden,
Mount Olive Correctional Complex,
Respondent.

Appeal from a final order
of the Circuit Court of Fayette County
(14-C-134)

PETITIONER'S REPLY BRIEF

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ARGUMENT

Mr. Anstey is entitled to a new trial based on newly discovered evidence or, at the very least, to an omnibus post-conviction habeas corpus hearing to examine the new scientific evidence.

Since Mr. Anstey's 1994 trial, "there has been a revolution in fire science. It is a revolution that has toppled old orthodoxies, and cast into doubt longstanding assumptions regarding fire scene analysis. . . . [T]he scope of change in this field of human scientific endeavor has been global, sweeping and breathtaking." *Han Tak Lee v. Tennis*, Civil No. 4:08-CV-1972, 2014 WL 3894306, at *3 (M.D. Pa. June 13, 2014).

New scientific standards for fire investigation debunk the expert testimony presented at Mr. Anstey's trial, which relied on investigation techniques based on "seriously flawed" and "scientifically unsound" "mythology." (A.R. 2563, Goodson Aff. at ¶ 11.) That is possible because "extraordinary developments in fire science" have revealed that "the application of this prior, discredited art to fire scene investigations could lead to erroneous conclusions regarding fire origin from arson experts at a rate which was greater than one would have achieved through random guessing." *Han Tak Lee*, 2014 WL at *3.

Experts versed in these new scientific standards examined the evidence in Mr. Anstey's case; they concluded that the investigation techniques the State's experts used have been thoroughly discredited, and did not conclude that arson caused the fire in the trailer Ms. Anstey shared with his grandmother. (See A.R. 2547, Hurst Aff. at ¶¶ 11, 33; A.R. 2570, Goodson Aff. at ¶ 30; see also Pet. Br. at 21–25.)

Because of this revolution in fire science, there is no longer any reason to believe Mr. Anstey committed murder by arson.

I. RESPONDENT HAS NOT SHOWN WHY MR. ANSTEY IS NOT ENTITLED TO A NEW TRIAL

Despite the dramatic revolution in fire science that undermines all the evidence of arson—that is, *all the evidence that any crime ever occurred*—presented at Mr. Anstey’s trial, Respondent argues that Mr. Anstey should not have a new trial. In support of his conclusion that Mr. Anstey should not have a new trial, Respondent makes three main arguments. None are persuasive.

First, Respondent argues that the sole purpose of Mr. Anstey’s new evidence is impeachment. Mr. Anstey’s new evidence does not merely impeach the State’s expert witnesses. Mr. Anstey’s new evidence completely undermines the basis of their conclusions and shows that their testimony would be inadmissible today—going well beyond impeachment. Even if Mr. Anstey’s new evidence is impeachment evidence in some sense, it is the sort of impeachment evidence that warrants a new trial under this Court’s holding in *State v. Stewart*, 161 W. Va. 127, 239 S.E.2d 777 (1977).

Second, Respondent argues that Mr. Anstey’s newly discovered evidence would not produce a different result at a new trial. In making this argument, Respondent ignores the new evidence’s impact: showing that there is no reason to believe that arson occurred.

Third, Respondent argues that the Circuit Court properly dismissed Mr. Anstey’s argument that the evidence presented against him would not survive *Daubert/Wilt* scrutiny. In making this argument, Respondent makes exactly the same mistake as the Circuit Court. Respondent argues that *Daubert/Wilt* does not apply because the State’s experts who testified at Mr. Anstey’s trial did not rely on science. He ignores the fact that *since Mr. Anstey’s trial* fire investigation has *become scientific*, and the important point

that the experts who testified at Mr. Anstey's trial would not withstand *Daubert/Wilt* scrutiny today *precisely because they did not rely on science*.

A. The newly discovered evidence is not solely for impeachment.

First, the newly discovered evidence that Mr. Anstey presented is not solely for impeachment because it completely undermines the basis of the State's experts' testimony. Even if the Court finds that is impeachment evidence, it is the sort of impeachment evidence that warrants a new trial.

1. The newly discovered evidence completely undermines the basis of the State's experts' testimony and renders it inadmissible.

Respondent argues that the sole object of the new evidence is to impeach the State's expert witnesses' trial testimony. Mr. Anstey's new evidence is the dramatic revolution in fire investigation science, and the affidavits of experts versed in new, scientific fire investigation techniques. This evidence goes beyond impeachment. It shows that the State's experts' testimony is so unreliable that it would be inadmissible today. *See, e.g., Fireman's Fund Ins. Co. v. Canon U.S.A., Inc.*, 394 F.3d 1054, 1058 (8th Cir. 2005) (holding that expert testimony was properly excluded because it did not reliably apply NFPA 921 methodology); *see also* A.R. 2551, Hurst Aff. at ¶¶ 20, 23, 26, 27, 30, 33; A.R. 2563, Goodson Aff. at ¶¶ 11–16, 30.

a. Fire expert testimony that does not comply with NFPA 921 is inadmissible.

To advance his argument that Mr. Anstey's new evidence is impeachment evidence, Respondent argues that failure to comply with NFPA 921 does not render a purported fire expert's testimony inadmissible. Respondent cites two federal cases in support. (*See* Resp. Br. at 8.) Neither of these cases, however, supports his argument, and there are numerous

cases to the contrary.

One of the cases Respondent cites actually supports Mr. Anstey's argument that a fire expert's testimony is only admissible if it follows NFPA 921 methodology. In *Jackson v. McQuiggin*, No. 10–12426, 2012 WL 5410993 (E.D. Mich. Nov. 6, 2012), the court explained that the expert's testimony was admissible because “[his] methodology appeared reasonable and *was by and large in keeping with the guidelines recommended by NFPA 921.*” *Id.* at *6 (emphasis added). The court added that the expert “maintained that he based his fire investigation methodology on the National Fire Protection Association 921 (NFPA 921), a nationally recognized guideline for fire investigation.” *Id.*¹ While the court did indicate that it tolerated slight deviations from NFPA 921 methodology, saying that it would not require testimony to be “a carbon copy of NFPA 921,” the fact remains that it admitted the expert's testimony because it sufficiently followed NFPA 921 methodology. *Id.*

Moreover, the language Respondent quoted about an issue going to the weight rather than the admissibility of the testimony was *not about whether the expert followed NFPA 921*. Rather, it was about the discrepancy between the expert's conclusions and *crime lab results (not NFPA methodology)*. *Jackson*, 2012 WL at *6. Whether this particular discrepancy goes to the weight or admissibility of evidence has no bearing in the requirement that expert testimony must follow NFPA 921 methodology, or on Mr. Anstey's case.

¹ This determination occurs in the district court's discussion of whether admitting the testimony was fundamentally unfair. For procedural reasons, the district court actually does not rule on the admissibility of the evidence under *Daubert* and the Michigan Rules of Evidence. See *Jackson*, 2012 WL 5410993 at *6.

Jackson, therefore, holds that expert testimony is admissible if it sufficiently follows NFPA 921 methodology, and supports Mr. Anstey's argument that the State's experts' testimony would be inadmissible today because their investigation utterly failed to follow NPFA 921.

The other case Respondent cites, *Schlesinger v. United States*, 898 F. Supp. 489 (E.D.N.Y. 2012), finds that the defendant's counsel was not ineffective for failing to raise a *Daubert* challenge to fire expert testimony. Notably, the main issue in *Schlesinger* was counsel's failure to challenge experts' use of *negative corpus* when investigating a 1998 fire. But, as the court notes, the NFPA 921 did not explicitly reject *negative corpus* until the 2011 version. *See Schlesinger*, 898 F. Supp. 2d at 492; *see also* Paul Bieber, *Anatomy of a Wrongful Arson Conviction* at 9, <http://thearsonproject.org/anatomy/> ("Recent editions of NFPA 921 have rejected *negative corpus* as a clear violation of the scientific method.")² That is, Mr. Schlesinger argued that his trial counsel should have challenged an investigation method that NFPA 921 would not explicitly reject until years after his trial and decades after the fire.³ This flaw in Mr. Schlesinger's argument was one reason the court dismissed his argument. *See Schlesinger*, 898 F. Supp. 2d at 491–92.

² As *Schlesinger* explains, *negative corpus* is the determination that a fire was intentionally caused based on a lack of evidence for an accidental cause. *Schlesinger*, 898 F. Supp. 2d at 492. The 2011 NFPA 921 differentiates *negative corpus* from its process of elimination because *negative corpus* purports to prove something that is not supported by evidence; that is, the 2011 NPFA 921 explains that *negative corpus* is the process of eliminating known ignition sources and then claiming that this elimination is proof of an alternative ignition source for which there is in fact no evidence. *See* Nat'l Fire Prot. Ass'n, NPFA 921 (2011); *see also Schlesinger*, 898 F. Supp. 2d at 492.

³ The fact that NFPA 921 did not explicitly reject *negative corpus* until recently is also relevant to Mr. Anstey's argument that the new scientific standards for fire investigations did not exist at the time of his trial. Early versions of NFPA 921 continued to endorse some older methods of fire investigation. More recent versions of NFPA 921, however, advocate only scientifically supportable investigation techniques. NPFA 921 is now recognized as

Schlesinger, therefore, does not strongly support the argument that fire expert testimony that fails to comply with NFPA 921 is admissible. The *Schlesinger* court even noted that, “NFPA 921 is widely accepted as the standard guide in the field of fire investigation.” *Schlesinger*, 898 F. Supp. 2d at 504 (internal citations omitted).

Tellingly, a case not involving the serious flaw in Mr. Schlesinger’s argument held that it is ineffective assistance to fail to challenge fire expert testimony not in compliance with NFPA 921. In *United States v. Hebshie*, 754 F. Supp. 2d 89 (D. Mass. 2010), a habeas case dealing with a 2006 trial and contesting investigation methods that NFPA 921 had explicitly rejected by 2006, the court held that trial counsel was ineffective for failing to raise a *Daubert* challenge. *Id.* at 113.

There are, moreover, additional cases holding that failing to follow NFPA 921 renders fire expert testimony inadmissible. *See Fireman’s Fund Ins. Co.*, 394 F.3d at 1058 (holding that expert testimony was properly excluded because it did not reliably apply NFPA 921 methodology); *Werth v. Hill-Rom, Inc.*, 856 F. Supp. 2d 1051, 1060, 1063 (D. Minn. 2012) (holding expert testimony inadmissible for failure to apply NFPA 921 methodology); *American Family Ins. Group v. JVC Americas Corp.*, No. 00–27 DSD/JMM, 2001 WL 1618454, at *3–4 (D. Minn. Apr. 30, 2001) (holding expert testimony inadmissible for failure to apply NFPA 921 methodology).

The balance of authority indicates that failure to follow the methods and protocols set fourth in NFPA 921 does, in fact, render a purported fire expert’s testimony inadmissible.

scientific, and the standard of care for fire investigation. For further discussion of this issue, *see* Pet. Br. at 12–14.

b. NFPA 921 is the standard of care for fire investigation science.

To advance his argument that Mr. Anstey's new evidence is impeachment evidence, Respondent also argues that NFPA 921 is not compulsory. (*See* Resp. Br. at 7.) Whether or not NFPA is compulsory is irrelevant because NFPA 921 is the standard of care for fire investigation.

Mr. Anstey is not arguing that NFPA 921 is compulsory. He is arguing that since approximately the early 2000s NFPA 921 has been recognized as the standard of care, and that failure to follow this standard of care means that a purported fire expert's conclusions are legally inadmissible today. *See* Pet. Br. at 19–21.

After Mr. Anstey's trial, the United States Department of Justice and National Institute of Justice made clear that NFPA 921 is the standard of care. *See* United States Department of Justice, *Fire and Arson Scene Evidence: A Guide for Public Safety Personnel* 6 (2000), available at <https://www.ncjrs.gov/pdffiles1/nij/181584.pdf>.

State legislatures have passed resolutions explicitly stating that NFPA 921 is the standard of care (and that other investigation methods are faulty). *See Bunch v. Indiana*, 964 N.E.2d 274, 289 (2012) (explaining that the Oklahoma, Nebraska, and Arizona legislatures “recently passed resolutions supporting judicial review of cases in which faulty science is alleged to have contributed to an arson conviction.”). The Oklahoma resolution, for example, states, “[T]he National Fire Protection Association (NFPA) 921 publication has been generally accepted as the standard of care for fire investigation.” S. Res. 99, 52nd Leg., 2d Sess. (Okla. 2010), *quoted in Bunch*, 964 N.E.2d 289 n.7.⁴

⁴ The Nebraska resolution states, “[S]ince the turn of the century, NFPA 921 has been generally accepted as the standard of care for fire investigations.” Leg. Res. 411, 101st Leg., 2d Sess. (Neb. 2010), available at <http://nebraskalegislature.gov/FloorDocs/101/PDF/Intro/LR411.pdf>.

Since the early 2000s, “Many courts have recognized NFPA 921 as a peer reviewed and generally accepted standard in the fire investigation community.” *Tunnell v. Ford Motor Co.*, 330 F. Supp. 2d 707, 725 (W.D. Va. 2004). Indeed, “NFPA 921 . . . is *widely accepted as the standard guide* in the field of fire investigation.” *Hebshie*, 754 F. Supp. 2d at 110 n.39 (emphasis added).⁵ More recently, courts have even held that deviations from the NFPA 921 must be explained and justified—underscoring NFPA 921’s status as the standard of care, and the inadmissibility of testimony that does not comply with NFPA 921. *See Travelers Cas. Ins. Co. of Am. ex rel. Palumbo v. Volunteers of Am. Ky., Inc.*, No. 5:10–301–KKC, 2012 WL 3610250, at *2 (E.D. Ky. Aug. 21, 2012) (explaining that NFPA 921 requires deviations from its procedures to be justified and requires that the scientific method be used in every case); *Barr v. Farm Bureau Gen. Ins. Co.*, 806 N.W.2d 531, 460 (Mich. Ct. App. 2011) (similar).

The Arizona resolution similarly states, “[S]ince the turn of the century, NFPA 921 has been generally accepted as the standard of care for fire investigation.” H.R. Res. 2066, 49th Leg., 2d Sess. (Ariz. 2010), *available at* <http://www.azleg.gov/legtext/49leg/2r/bills/hcr2066h.htm>.

⁵ For additional examples of cases holding that NFPA 921 is the standard of care, *see, e.g., United Fire & Cas. Co. v. Whirlpool Corp.*, 704 F.3d 1338, 1341 (11th Cir. 2013) (describing NFPA 921 as “a peer reviewed fire investigation guide that is the industry standard for fire investigation”); *Indiana Ins. Co. v. Gen. Elec. Co.*, 326 F. Supp. 2d 844, 849–50 (N.D. Ohio 2004) (“NFPA–921 is a recognized guide for assessing the reliability of expert testimony in fire investigations.”); *McCoy v. Whirlpool Corp.*, 214 F.R.D. 646, 653 (D. Kan. 2003) (“The ‘gold standard’ for fire investigations is codified in NFPA 921, and its testing methodologies are well known in the fire investigation community and familiar to the courts.”); *Royal Ins. Co. of Am. v. Joseph Daniel Canst, Inc.*, 208 F. Supp. 2d 423, 426 (S.D.N.Y. 2002) (“The NFPA 921 sets forth professional standards for fire and explosion investigations.”); *Travelers Prop & Cas. Corp. v. Gen. Elec. Co.*, 150 F. Supp. 2d 360, 366 (D. Conn. 2001) (describing NFPA 921 as “a peer reviewed and generally accepted standard in the fire investigation community”); *People v. Watson*, No. 307741, 2013 WL 6508833 (Mich. Ct. App. Dec. 12, 2013); *People v. Jackson*, No. 272776, 2008 WL 2037805 (Mich. Ct. App. May 13, 2008).

Whether or not NFPA 921 is compulsory is irrelevant because NFPA 921 is now the standard of care that purported fire investigation experts must follow for their results to be admissible.

Therefore, Mr. Anstey's new evidence, which shows that the State's expert witnesses did not follow the standard of care and that their testimony would be inadmissible today, goes beyond impeachment. Respondent's argument that NFPA 921 is not compulsory is irrelevant, and his argument that evidence that does not comply with NFPA 921 is admissible is unsupported. Neither argument shows that Mr. Anstey's new evidence is solely for impeachment.

2. Even if the newly discovered evidence is impeachment evidence, it is the sort of impeachment evidence that warrants a new trial under *Stewart*.

Respondent argues that it is of no moment that impeachment evidence can sometimes be grounds for a new trial. (*See* Resp. Br. at 7.)

In making this argument, Respondent fails to acknowledge the importance of this Court's holding, in *Stewart*, that impeachment evidence warrants a new trial if the evidence goes to a key prosecution witness. *See State v. Stewart*, 161 W. Va. 127, 136, 239 S.E.2d 777, 783 (1977) (“[I]n cases involving after-discovered impeachment evidence where the impeachment goes to the key prosecution witness, then a new trial should be granted”).

The dramatic revolution in fire investigation science is precisely the kind of evidence that, while “coincidentally impeaching,”⁶ also “goes to the key prosecution

⁶ As Mr. Anstey explained in his Petitioner's Brief (*see* Pet. Br. at 26–27), a Maryland appellate court helpfully distinguished between “merely impeaching” evidence that does not warrant a new trial and “coincidentally impeaching” evidence that does warrant a new trial. *Ward v. State*, 108

witness,” is “directly exculpatory on the merits,” undermines the prosecution’s case, and warrants a new trial. *Stewart*, 161 W. Va. at 136, 239 S.E.2d at 783; *Ward v. State*, 108 A.3d 507, 520 (Md. Ct. Spec. App. 2015). Even if the new evidence does serve partly to impeach, it also it undermines the State’s expert witnesses in such a fundamental way that it necessitates a new trial.

Stewart’s holding, then, is far from irrelevant—it is a crucial piece of West Virginia’s newly discovered evidence law that shows why Mr. Anstey’s new evidence warrants a new trial even if it is impeachment evidence.

Therefore Mr. Anstey’s new evidence is not *solely* for impeachment. Even if it is impeachment evidence, it is coincidentally impeaching evidence, and still valid grounds for a new trial.

B. The newly discovered evidence would produce a different result at a new trial because it undermines the theory that arson occurred.

Second, Respondent argues that Mr. Anstey’s new evidence would not produce a different result at a new trial. In making this argument, he focuses exclusively on circumstantial evidence. (*See* Resp. Br. at 9–10.)

Mr. Anstey’s new evidence eliminates any reason to believe arson occurred. The new evidence eliminates any reason to believe the fire had two origin points. (*See* A.R. 2551, Hurst Aff. at ¶ 20.) The new evidence eliminates any reason to believe the toaster could have been rigged to start a fire. (*See* A.R. 2541, Huggins Aff. at ¶ 10, 12, 16.) The new evidence eliminates any reason to believe the hallway smoke detector had been disabled.

A.3d 507, 520 (Md. Ct. Spec. App. 2015). Coincidentally impeaching evidence, although it may serve partly to impeach, warrants a new trial because it is “directly exculpatory on the merits.” *Id.*

(See A.R. 2567–68, Goodson Aff. at ¶¶ 21–24.) It eliminates every piece of evidence supporting the hypothesis that the fire was intentionally set.

Without a shred of evidence that the fire was intentionally set, the circumstantial evidence would not have been sufficient to convict Mr. Anstey beyond a reasonable doubt of murder by arson. See *Hayseeds, Inc. v. State Farm Fire & Cas.*, 177 W. Va. 323, 326, 352 S.E.2d 73, 76 (1986) (circumstantial evidence is not sufficient to find that someone committed arson); W. Va. R. Crim. P. 3 (requiring evidence beyond a reasonable doubt for a conviction).

It is telling that in arguing that the new evidence would not produce a different result at a new trial, Respondent does not engage at all with the import of Mr. Anstey's new scientific evidence. There simply is no colorable argument that the arson investigation techniques the State relied on at Mr. Anstey's trial could withstand scientific scrutiny. Therefore, it is likely that the new evidence, which reveals the fundamental flaws in the State's investigation techniques, would produce a different result at a new trial.

C. Mr. Anstey was convicted based on evidence that would not withstand *Daubert/Wilt* scrutiny.

Third, addressing Mr. Anstey's argument that the evidence presented against him would not withstand *Daubert/Wilt* scrutiny, Respondent makes the same mistake that the Circuit Court made in its order. Like the Circuit Court, Respondent pointed out that the now-outdated arson investigation techniques used at Mr. Anstey's trial were not scientific, and thus not subject to *Daubert/Wilt* scrutiny. (See Resp. Br. at 10.) Mr. Anstey cannot emphasize enough his agreement that the arson investigation techniques the State's experts relied on at his trial were not scientific. (See Pet. Br. at 31.)

That is precisely the point. Mr. Anstey was convicted based on now-outdated, unscientific, myth-based evidence that purported to be forensic science. (A.R. 2563, Goodson Aff. at ¶ 11.) New, valid science disputes the unscientific evidence that convicted Mr. Anstey. *Id.* In fact, the unscientific evidence is now understood to be so fundamentally flawed that it would no longer be admissible. *See, e.g., Fireman’s Fund Ins. Co.*, 394 F.3d at 1058.

If the Circuit Court and Respondent agree that Mr. Anstey was convicted based on unscientific evidence instead of the contemporary fire investigation techniques that withstand scientific scrutiny, they should agree that Mr. Anstey is entitled to a new trial.⁷

II. RESPONDENT HAS NOT SHOWN WHY MR. ANSTEY SHOULD NOT BE GRANTED A HEARING

Despite the new evidence that Mr. Anstey presented, Respondent argues that he should not even have an omnibus post-conviction habeas corpus hearing. (*See* Resp. Br. at 11–12.)

In arguing that Mr. Anstey should not have a hearing, Respondent asserts that the Court “properly took evidence” in regard to Mr. Anstey’s claim. (Resp. Br. at 12.) This assertion ignores the Circuit Court’s failure to include specific findings of fact explaining why a hearing is unnecessary, as required by Rule 9(a) of the Rules Governing Post-Conviction Habeas Corpus. *See* W. Va. Habeas R. 9(a). This assertion also ignores the legal standard. Mr. Anstey must show probable cause that he has satisfied the test for newly discovered evidence. *See* W. Va. Code, § 53-4A-1 (2014). By showing that the

⁷ In addition, as in his Petitioner’s Brief, Mr. Anstey maintains that if this Court finds that fire investigation science is technical rather than scientific evidence, they should still require West Virginia courts to play a gatekeeping function by adopting *Kumho Tire*. For further development of this argument, *see* Pet. Br. at 32–34.

investigation techniques used to convict him were flawed, unreliable, and inadmissible under current standards, Mr. Anstey has at least shown probable cause to believe that he has satisfied the requirements.

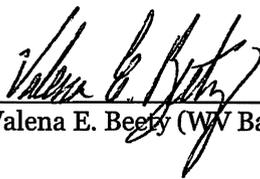
Respondent also glides over the complex, scientific nature of Mr. Anstey's newly discovered evidence. These issues warrant live testimony and judicial scrutiny. Specifically, the Circuit Court should hear a complete explanation of how fire investigation has evolved and the precise techniques that an investigator would have to use today to come to scientifically valid conclusions. The Circuit Court should also hear expert testimony about why there is no evidence that the fire had multiple origin points, no evidence that the toaster could be rigged to start a fire, and no evidence that the hallway smoke detector had been disabled. A hearing would allow for a complete discussion of these issues, which can only be summarized in written affidavits. A hearing would also allow the experts' conclusions to be tested by cross-examination.

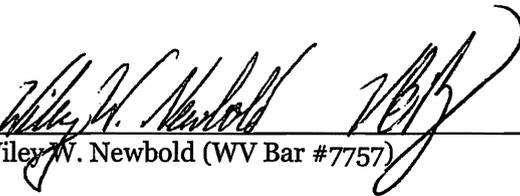
Finally, this Court should consider that West Virginia courts have not yet addressed how to handle the revolutionary developments in fire science that have taken place since Mr. Anstey's conviction. In his Brief, Respondent pointed out that Mr. Anstey did not cite any West Virginia cases discussing NFPA 921. (*See Resp. Br. at 7.*) That is because so far no West Virginia case has addressed the revolution in fire investigation science. Rather than supporting any of Respondent's arguments, the lack of West Virginia authority actually supports Mr. Anstey's argument that he is entitled to a hearing.

Therefore, at the very least, this Court should order the Circuit Court to hold a hearing to address Mr. Anstey's newly discovered evidence.

CONCLUSION

For the reasons above, Mr. Samuel Anstey respectfully requests that this Court reverse the Circuit Court's denial of his Petition for Writ of Habeas Corpus and grant the Petition, vacating his conviction and ordering a new trial. In the alternative, Mr. Anstey requests that this Court reverse the Circuit Court's denial of a hearing and order the Circuit Court to hold an omnibus evidentiary hearing on the issue presented herein.

Signed 
Valena E. Beety (WV Bar #11907)

Signed 
Wiley W. Newbold (WV Bar #7757)

Counsel of Record for Petitioner

CERTIFICATE OF SERVICE

I, Italia Patti, hereby certify that on 8/15/2015, a true and accurate copy of the foregoing **Petitioner's Reply Brief** was sent by mail to counsel of record for the Respondent at the following address:

Derek A. Knopp
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