

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

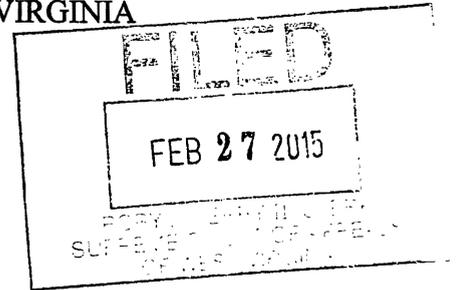
STATE OF WEST VIRGINIA

Petitioner,

v.

WILLIAM N. FYKES

Respondent.



Supreme Court No. 13-0421

Circuit Court No. 12-F-128 &
(Cabell) 12-F-444

PETITIONER'S BRIEF

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ASSIGNMENT OF ERROR

- I. The trial court committed reversible error by refusing to provide jurors with additional instruction, despite counsel's objection, when jurors signaled they did not comprehend the court's instruction and were struggling with the critical element of intent.
- II. The prosecutor committed plain error by questioning Mr. Fykes about his post arrest silence in a case that rested on credibility.

STATEMENT OF THE CASE

William Fykes ("Mr. Fykes") was arrested on January 1, 2012, on multiple counts of first degree robbery, kidnapping, and malicious wounding resulting from an incident at the Stonewall nightclub in Huntington, WV. *A.R. 45*. No one, including Mr. Fykes, disputes the incident occurred. The major disagreement is whether the incident was a real robbery. *A.R. 972, 974*. Mr. Fykes contends it was planned, and, therefore, he lacked the requisite intent. During trial, Mr. Fykes admitted to being a drug dealer. Dealing drugs is how he came to know Eric Gorczyca ("Gorczyca"), Keith Combs ("Combs"), and Joey Campigotto ("Campigotto"). Gorczyca, the D.J. at Stonewall, and Combs, the owner of Stonewall, had been life-partners for ten (10) years, at the time of this incident. *A.R. 638*. Campigotto was the manager at Stonewall.

Gorczyca had a big cocaine habit. Mr. Fykes sold Gorczyca \$1,400.00 worth of cocaine within the first six days of meeting Gorczyca *A.R. 958-959*. The drug deals between Mr. Fykes and Gorczyca always occurred at Stonewall, before the club opened for the evening. *A.R. 959-961, 964-965, 968*. Combs was in the bar when some transactions occurred, and, in fact, Combs paid Mr. Fykes for Gorczyca's cocaine on one occasion. *A.R. 961, 965-966*. Campigotto usually opened the door for Mr. Fykes and directed Mr. Fykes to the upstairs lounge where he would

find Gorczyca waiting. It was during one of these drug transactions, that Gorczyca brought up the desire to pay someone to rob the Stonewall. *A.R. 969-970.*

Gorczyca asked Mr. Fykes to find someone willing to rob the Stonewall in exchange for \$5,000. *A.R. 969-970.* At that time, Mr. Fykes replied that he did not know anyone that would rob the bar. *A.R. 970.* That night, Mr. Fykes sent Gorczyca a text asking to meet the following day. The next day, Mr. Fykes asked Gorczyca if he was serious about the robbery. When Gorczyca stated he was serious, Mr. Fykes agreed to stage the robbery. *A.R. 971.* The two men proceeded to create a detailed plan to rob the Stonewall in the early hours of New Year's Day. *A.R. 971-974.* Gorczyca explained the Stonewall had a big party planned for New Year's Eve and, therefore, there would be a large amount of cash. *A.R. 970.*

Mr. Fykes arrived at Stonewall on December 31, to carry out the robbery as planned, except that he showed up earlier than planned which caused him to encounter three individuals in the parking lot. *A.R. 974-975.* Mr. Fykes spoke to them while continuing through the door Gorczyca instructed him to use. *A.R. 975.* Mr. Fykes did not attempt to cover or distort his face. Once inside, Mr. Fykes put on a show to make the robbery look real as he was instructed to do by Gorczyca *A.R. 976.* Mr. Fykes ordered all three men to give him their wallets, keys, and cell phones.

Mr. Fykes hit Combs with the gun. He also picked Gorczyca up and threw him to the ground and kicked him. The men told Mr. Fykes the money from the evening had been dropped at the bank. Mr. Fykes testified that when the men refused to give him the money he felt like they were playing their part to make it look good. *A.R. 977.* Combs eventually agreed to give Mr. Fykes the money. Once inside the office, Mr. Fykes instructed Combs to put the money in a

bag. He also instructed Combs to unplug the DVR and put it in a bag. Mr. Fykes then tied up all three men as planned and exited the bar. *A.R. 972.*

An officer on scene testified that Mr. Fykes walked out of the bar without any apparent haste. It was not until the officer attempted to grab Mr. Fykes that he took off running. Additionally, Mr. Fykes was in the Stonewall for at least one hour. While inside the Stonewall, Mr. Fykes turned his back to the men many times, and he allowed one of the men to leave the room while unattended. *A.R. 976-977.* Additionally, Defense counsel pointed out one of the “victims” appeared calm with his hands in his pockets during the robbery.

Defense counsel’s theme in opening, during the presentation of evidence, and in closing was this was a staged robbery. Therefore, Mr. Fykes did not have the necessary intent to kidnap, rob or commit a malicious wounding. During cross-examination of Mr. Fykes, the prosecutor asked Mr. Fykes the following questions regarding his post-arrest silence:

Pros: So this story you are telling me today, wouldn’t you agree that this is the first time you have told this story to anyone other than your lawyers?

Mr. Fykes: Well, nobody ever asked me for it. I mean I did not get an interview from a detective.

Pros: But this is the first time anybody else has heard it other than them?

Mr. Fykes: Right.

A.R. 993. Unfortunately, counsel did not object to this improper line of questioning by the prosecutor.

During deliberations, jurors’ sent the following question to the trial court: “[i]f we feel this is a conspiracy [sic] does it negate any of the charges?” *A.R. 4.* The court alerted the parties that jurors had a question. *A.R. 1069.* Without allowing any input from the parties, the court announced it could not answer the question, told the parties how it was going to respond to

jurors, and immediately ordered the bailiff to bring the jurors into the courtroom. *Id.* Once the jurors were in the courtroom, the court explained:

I cannot answer that for you, that is you are the finders of fact, you must decide based on the evidence that you have heard and the instructions of the Court as given on each of the verdicts that you must deliberate on. So I cannot answer that question for you. That is ultimately one of the ultimate questions in this case, and that is your role to decide that.

A.R. 1070. Immediately after jurors left the courtroom, counsel lodged an objection to how the court had handled the question from jurors. *A.R. 1070-1071.* Counsel argued that he believed the court was allowed to instruct jurors on the law. Counsel requested the court read the note again. Counsel then argued to the court that legally a conspiracy does negate the charges. Counsel further explained his point by stating if it's a conspiracy, there is no robbery, no kidnapping or malicious wounding. *A.R. 1071.* Despite this argument by counsel the court refused to answer the jurors' question.

A short time after being sent back to deliberate the jury returned with a verdict. On February 8, 2013, Mr. Fykes was found guilty of three (3) counts of kidnapping, three (3) counts of first degree robbery, and two (2) counts of malicious wounding. At sentencing, the trial court entered a finding of a firearm as to each charge and pronounced sentence, resulting in a combined term of 92 years plus two (2) life sentences in prison. *A.R. 1123.*¹ It is from this sentence that Mr. Fykes appeals.

¹ The trial court informed Mr. Fykes he would be eligible for parole in approximately 40 years. *A.R. 1123.*

SUMMARY OF THE ARGUMENT

“Ultimately, the responsibility to ensure in criminal cases that the jury is properly instructed rests with the trial court.” *State v. Lambert*, 173 W.Va. 60, 312 S.E.2d 31 (1984). *See State v. Dozier*, 163 W.Va. 192, 255 S.E.2d 552 (1979). Despite being given the opportunity to meet this responsibility during Mr. Fykes’s trial, the trial court refused to respond to a written jury question: “[i]f we feel this is a conspiracy [sic] does it negate any of the charges?” This question demonstrates jurors did not understand how to properly apply the critical element of intent which was a necessary element of each charge. *A.R.* 4. The trial court refused to answer this question over counsel’s objection. The trial court’s refusal to answer the jurors’ question was highly prejudicial to Mr. Fykes because the question demonstrated jurors were attempting to apply the law as instructed and were discussing Mr. Fykes’ defense.

Jurors asked this question after hearing the full charge read to them in open court and despite having a copy of the charge to refer to as they were deliberating, validating this Court’s assertion that “[w]ithout [adequate] instructions as to the law, the jury becomes mired in a factual morass, unable to draw the appropriate legal conclusions based on the facts.” *State v. Miller*, 194 W.Va. 3, 16, 459 S.E.2d 114, 127 n. 20 (1995). Therefore, the trial court committed reversible error by refusing to respond to the jurors’ written question because “[t]he jury must be clearly and properly advised of the law in order to render a true and lawful verdict.” *State v. Romine*, 166 W.Va. 135, 137, 272 S.E.2d 680, 681 (1980). The trial court’s failure to answer this critical question left jurors to speculate as to how to apply the law thereby denying Mr. Fykes the right to a fair trial and due process as guaranteed by both the United States Constitution and West Virginia Constitution. U.S. Const. amend. XIV; W.Va. Const.

art. III, §10.

During cross-examination of Mr. Fykes, the prosecutor improperly questioned Mr. Fykes regarding his post-arrest silence in an attempt to discredit him before the jury. This line of questioning by the prosecutor violated the fundamental rule that the State's use for impeachment purposes of a defendant's post-arrest silence, i.e., at the time of arrest and after he received *Miranda* warnings, violates due process and the privilege against self-incrimination. *Doyle v. Ohio*, 426 U.S. 610, 611, 96 S.Ct. 2240, 2241 (1976); *See* Syl. Pt. 1, *State v. Boyd*, 160 W.Va. 234, 233 S.E.2d 710 (1977) ("... it is reversible error for the prosecutor to cross-examine a defendant in regard to his pre-trial silence or to comment on the same to the jury.").

Because counsel failed to object to this line of questioning this issue must be reviewed under the plain error standard as announced by this court in *Syl. Pt. 7, State v. Miller*, 194 W.Va. 3, 459 S.E.2d 114 (1995). Mr. Fykes' case came down to a determination of credibility by the jury; therefore, the prosecutor's improper questioning of Mr. Fykes in front of the jury regarding his exercise of a fundamental right that is a basic constitutional guarantee satisfies the plain error standard. It is for these reasons Mr. Fykes respectfully requests this Court to reverse his conviction, and remand his case back to the circuit court for a new trial.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

A Rule 19 argument is necessary in this case as it presents assignments of error requiring the application of settled law; however, the decisional process would be aided in by oral argument.

ARGUMENT

- I. The trial court committed reversible error by refusing to provide jurors with additional instruction, despite counsel's objection, when jurors signaled they did not comprehend the court's instruction and were struggling with the critical element of intent.**

Standard of Review: "Generally, we review a trial court's refusal to give or the actual giving of a certain instruction under an abuse of discretion standard. Where, however, the question is whether the jury instructions failed to state the proper legal standard, this court's review is plenary." *State v. Bradshaw*, 193 W.Va. 519, 543, 457 S.E.2d 456, 480 (1995). *See State v. Guthrie*, 194, W.Va. 657,671, 461 S.E.2d 163, 177 (1995).

The review of Mr. Fykes' case will be *de novo* because the nature of his objection goes to the substance of the court's instruction. The jurors' note sent to the trial court during deliberations demonstrated jurors were confused on the critical element of intent, which was applicable to every offense on which jurors were deliberating. Moreover, the jurors' question specifically addressed the heart of Mr. Fykes' defense-- that this was a staged robbery. The court's refusal to answer the jurors' specific question denied them the opportunity to intelligently weigh the evidence and correctly apply the legal standards involved. Therefore, by refusing to reinstruct or to give further instruction on intent, the trial court allowed jurors to deliberate Mr. Fykes' fate without a proper understanding of the legal issues they were obligated to apply. The trial court also erred by failing to permit counsel to provide suggestions or remarks as to how the court should respond to the jurors' note. *See Rogers v. U.S.*, 422 U.S. 35, 39, 95 S.Ct. 2091, 2095 (1975) (The parties should be given an opportunity to be heard before the trial court responds to a question from jurors.).

Upon receipt of the note, the court summoned the parties, announced the contents of the question, and immediately informed the parties how it planned to proceed. At his first opportunity, counsel objected to the court's refusal to answer the jurors' question. Counsel

argued to the trial court that the question jurors posed was a question of law to which the court should respond. As this Court recognized, “[i]t is beyond question that such substantial confusion over the proper elements of the offense or offenses which the jury was considering materially affected the right of the appellant to full and fair consideration of [his] case and prejudices the fairness and integrity of trial.” *State v. Wyatt*, 198 W.Va. 530, 539, 482 S.E.2d 147, 156 (1996).

Significantly, this Court reversed the conviction in *Wyatt*, using plain error doctrine, due to the trial court’s failure to ensure jurors had a clear understanding of the legal issues involved by properly and fully answering the jurors’ question. The situation in *Wyatt* is the same situation present in Mr. Fykes’ case. The only difference is, in the case at hand, counsel objected and gave the trial court the opportunity to remedy the situation prior to jurors rendering a verdict. The trial court’s refusal to answer the jurors’ question denied Mr. Fykes due process of law as guaranteed under both the Constitution of the United States and West Virginia. U.S. Const. amend. XIV; W.Va. Const. art. III, §10.

In *State v. McClure*, 163 W.Va. 33, 37, 253 S.E.2d 555, 558 (1979), this Court explained the rationale behind ensuring that jury instructions are clear and not confusing to jurors. Specifically “... the jury must be clearly and properly advised of the law in order for it to render a true and lawful verdict.” *Id.* Therefore in applying *McClure*, to the case at hand, once counsel objected and requested the trial court respond to the jurors’ question, the trial court was obligated to reinstruct the jury. Specifically, the *McClure* Court held: “that where it clearly and objectively appears in a criminal case from the statements of the jurors that the jury has failed to comprehend an instruction on a critical element of the crime or a constitutionally protected right, *the trial court must on request of defense counsel, reinstruct the jury.* *Id.* (emphasis added). *See*

State v. Lutz, 183 W.Va. 234, 235, 395 S.E.2d 478, 479 (1988) (“[I]t was reversible error for the judge to deny defendant’s motion orally to re-instruct the jury in light of the jury’s evident confusion over the law.”) The note from jurors indicated that despite being read the full charge and having a copy at hand to reference, jurors were still struggling with the critical element of intent. Therefore, according to this Court’s precedent, it was reversible error for the trial court to refuse to respond to the jurors’ question once counsel objected and requested that the Court respond. *A.R. 4*.

As this Court has explained, “[t]he purpose of instructing the jury is to focus its attention on the essential issues of the case and to inform it of the permissible ways in which these issues may be resolved.” *State v. Guthrie*, 194 W.Va. 657, 672, 461 S.E.2d 163, 178 (1995). The question jurors posed to the trial court demonstrated jurors were confused, and were conscientiously seeking assistance in order to properly apply the law in Mr. Fykes’s case. Jurors asked:

If we feel this is a conspiracy [sic] does it negate any of the charges?

A.R. 4. In fact, this question indicated jurors were discussing Mr. Fykes’ defense, and jurors were asking the court if the presence of a conspiracy negated the critical element of criminal intent. Without proper instruction on conspiracy and its negation of intent, jurors were left with no criteria or guidance to determine if criminal intent was negated. In an attempt to justify not responding to the question, the trial court stated:

“I don’t think I can [answer the question]. I think you both have submitted your instructions. They must rely on those instructions, and I cannot instruct them further on specific areas of the law that we have not previously dealt with.”

A.R. 1072. The flaw in the trial court's reasoning is that "[u]ltimately, the responsibility to ensure in criminal cases that the jury is properly instructed rests with the trial court." *State v. Lambert*, 173 W.Va. 60, 312 S.E.2d 31 (1984). See *State v. Dozier*, 163 W. Va. 192, 255 S.E.2d 552 (1979). Without further instruction, the jury did not understand the critical element of intent required for the crimes that it ultimately convicted Williams for committing. Although the court's instructions were correct statements of law, the jury's question indicates it did not understand those instructions and was "...mired in a factual morass, unable to draw the appropriate legal conclusions based on the facts." *State v. Miller*, 194 W.Va. 3, 16, 459 S.E.2d 114, 127 n. 20 (1995). Moreover,

it is not always sufficient for a judge to open up the charge book and read a generic statement of law to the jury, no matter how correct that statement may be in the abstract. This is particularly true where, as here, the judge is called upon to answer a well framed question following the initial charge. Quite often, the judge must tailor, mold and even sculpt the law in fashioning an answer to fit the question.

State v. Davis, 220 W.Va. 590, 596, 648 S.E.2d 354, 360 (2007) (internal citations omitted); See *Shafer v. South Carolina*, 532, U.S. 36, 44, 121 S.Ct. 1263, 1269 (2001) (A trial judge's duty is to give instructions sufficient to explain the law even when that requires giving supplemental instructions on issues not covered in original charge). The question jurors posed in Mr. Fykes' case required additional instruction from the trial court. While the court's initial charge to the jury included a correct statement of law as to every element of the offenses, the specific question posed by jurors required a specially crafted response in order to ensure the jury had a clear understanding of the law they were obligated to apply. That is exactly what counsel argued to the court as a basis for objecting to the court's decision not to answer the question. Counsel argued that legally a conspiracy does negate the charges and the court should instruct the jurors

on the law. Counsel further explained his point by stating if it is a conspiracy, there is no robbery, no kidnapping or malicious wounding. *A.R. 1071*. The trial court's failure to provide further instruction on this point was highly prejudicial to Mr. Fykes because the question indicates jurors were trying to get clarification on to how to properly apply the applicable legal standards and give credit to Mr. Fykes' defense.

In summary, the jurors' confusion was evident in the written question. While the trial court's initial instructions on intent were correct, the note demonstrated that jurors needed further instruction in order to properly understand the legal principles they were obligated to apply in Mr. Fykes' case. By refusing to respond to the jurors' question, the trial court forced jurors to speculate as to the proper application of the critical element of intent, thereby denying Mr. Fykes the right to due process and the right to a fair trial.

II. The prosecutor committed plain error by questioning Mr. Fykes about his post arrest silence in a case that rested on credibility.

Standard of Review: In *Syl. Pt. 7, State v. Miller*, 194 W.Va. 3, 459 S.E.2d 114(1995), this Court set out the elements of the plain error doctrine: "[t]o trigger application of the plain error doctrine, there must be (1) an error; (2) that is plain; (3) that affects substantial rights; and (4) seriously affects the fairness, integrity, or public reputation of the judicial proceedings." In Mr. Fykes' case this error has been established since 1976 when the United States Supreme Court issued *Doyle*. The questions the prosecutor asked Mr. Fykes discredited him for exercising a constitutional right in a case where credibility was a key issue, and, finally, it is well known this type of questioning should not occur but it continues to occur. This Court should reverse Mr. Fykes' case to signal this type of questioning cannot continue.

It is well-settled that the State's use for impeachment purposes of a defendant's post-arrest silence, i.e., at the time of arrest and after he received *Miranda* warnings, violates due process and the privilege against self-incrimination. *Doyle v. Ohio*, 426 U.S. 610, 611, 96 S.Ct. 2240, 2241 (1976). See *Syl. Pt. 1, State v. Boyd*, 160 W.Va. 234, 233 S.E.2d 710 (1977) ("... it is reversible error for the prosecutor to cross-examine a defendant in regard to

his pre-trial silence or to comment on the same to the jury."). That fundamental rule was violated in this case when the prosecutor cross-examined Mr. Fykes regarding his post-arrest silence. During cross-examination of Mr. Fykes, the prosecutor asked the following:

Pros: So this story you are telling me today, wouldn't you agree that this is the first time you have told this story to anyone other than your lawyers?

Mr. Fykes: Well, nobody ever asked me for it. I mean I did not get an interview from a detective.

Pros: But this is the first time anybody else has heard it other than them?

Mr. Fykes: Right.

A.R. 993.

Notability, Mr. Fykes was arrested immediately upon first contact with law enforcement personnel. Accordingly, this case did not present the investigation phase during which silence could be an evidentiary, rather than a constitutional, factor. Unfortunately, counsel did not object to this line of questioning by the prosecutor, making it necessary for this court to review this issue under the plain error doctrine. The prosecutor's questioning of Mr. Fykes regarding his exercise of a fundamental right that is a basic constitutional guarantee, in an attempt to discredit him before the jury, satisfies the plain error standard. By asking Mr. Fykes these questions, the prosecutor indicated to the jury that Mr. Fykes' testimony was not credible because he had not told the same story to the police.

The use of a defendant's post-arrest silence is unconstitutional because it penalizes a defendant for exercising his *Miranda* rights. As the United States Supreme Court noted in *Doyle* , 426 U.S. at 618, 96 S.Ct. at 2245, "it would be fundamentally unfair and a deprivation of due process to allow the arrested person's silence to be used to impeach an explanation subsequently offered at trial." (footnote omitted). That is what occurred here.

In *State v. Boyd*, 160 W.Va. 234, 233 S.E.2d 710 (1977), the Court condemned a prosecutor's similar cross-examination and impeachment of a defendant. In *Boyd*, the prosecutor asked the defendant why he had not disclosed his self-defense story to the police at the jail. *Id.* at 236, 233 S.E.2d at 713. The *Boyd* Court held the cross-examination of the defendant about his pre-trial silence was reversible error. *Id.* at 240-41, 233 S.E.2d at 716. The prosecutor in Mr. Fykes' case behaved exactly as the prosecutor in *Boyd*, questioning Mr. Fykes on cross-examination in a way that would make the jurors question his veracity because he did not give a statement to the police.

This line of questioning was highly prejudicial; because Mr. Fykes' defense at trial was that the robbery was planned. Mr. Fykes' entire case turned on whose version of events was more believable to the jury. Mr. Fykes' credibility was crucial to the success of his case. Therefore, the prosecutor questioning Mr. Fykes' believability in front of the jury in this manner was unacceptable. The prosecutor realized that the most effective way to attack and/or destroy the believability of Mr. Fykes' story with the jury was to use his constitutional right to post-arrest silence against him by asking him why he did not tell this story to officers.

While constitutional errors, such as the prosecutor questioning Mr. Fykes about his post-arrest silence, are subject to harmless error review, "before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt." *Chapman v. California*, 386 U.S. 18, 24, 87 S.Ct. 824, 828 (1967); *See Syl. Pt. 11, State v. Guthrie*, 194, W.Va. 657,671, 461 S.E.2d 163, 177 (1995) ("An appellate court is obligated to see that the guarantee of a fair trial under Section 10 of Article III of the West Virginia Constitution is honored. Thus, only where there is a high probability that an error of due process

proportion did not contribute to the criminal conviction will an appellate court affirm. High probability requires that an appellate court possess a sure conviction that the error did not prejudice the defendant.”)

Because this improper and unconstitutional line of questioning directly influenced Mr. Fykes’ reliability with the jury, which was the primary issue the jury had to decide, there is a reasonable possibility it contributed to his conviction. *See* Syl. Pt. 20, *State v. Thomas*, 157 W.Va. 640, 203 S.E.2d 445 (1974). Indeed, the jurors question reveals much about the jurors’ deliberation. The jurors were contemplating the defense theory and credibility had to be the linchpin of that decisional process. The prosecutor’s actions in violating a basic constitutional prohibition demonstrates the prosecutor’s belief it would be prejudicial.² Therefore, this constitutional error was not harmless beyond a reasonable doubt. Syl. Pt. 5, *State v. Nathan S.*, No. 13-0767 2014 WL 6676550 (W.Va. Nov. 21, 2014)(*internal citations omitted*). Mr. Fykes was denied his state and federal privileges against self-incrimination and rights to due process of law due to this improper line of questioning by the prosecutor. U.S. Const. amend. V and XIV; W.Va. Const. art. III, §§5 and 10.

CONCLUSION

It is for all the above reasons, Mr. Fykes requests that this Court reverse his conviction and remand his case back to the Circuit Court of Cabell County for a new trial.

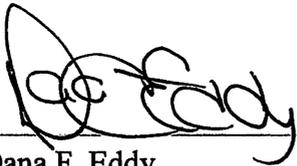
² Justice Ketchum has noted in the context of 404(b) evidence that prosecutors often seek convictions rather than justice. In his most recent dissenting opinion, Justice Ketchum wrote: “[f]ive years ago, I wrote about my chagrin to find, routinely, ‘prosecutors are using ‘bad acts’ evidence to prejudice defendants and to divert jurors’ attention from the evidence surrounding the charged crime.” *State v. Nathan S.*, 2014 WL 6676550 (W.Va.)(*internal citations omitted*). Appellant suggests that another area in which prosecutors tend to overstep is in the use of a defendants’ post-arrest silence. As Justice Ketchum stated, this type of improper behavior unnecessarily infects the fairness of a trial and the perception of fairness within our justice system. *Id.*

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Crystal L. Walden, counsel for Petitioner, William N. Fykes, do hereby certify that I have caused to be served upon the counsel of record in this matter a true and correct copy of the accompanying *Petitioner's Brief and complete copy of the Appendix record* to the following:

Shannon Kiser
West Virginia Attorney General Office
812 Quarrier Street, 6th Floor
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by depositing the same in the United States mail in a properly addressed, postage paid, envelope on the 27th day of February, 2015.



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