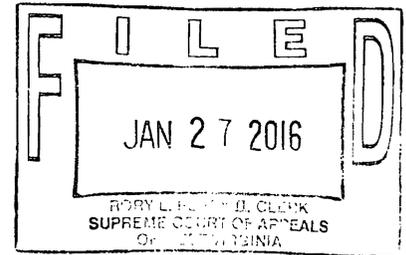


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO. 15-0641



**STATE OF WEST VIRGINIA,
Plaintiff Below, Respondent,**

v.

Appeal from a final order of
the Circuit Court of Hardy
County (14-F-41)

**SUMMER MCDANIEL,
Defendant Below, Petitioner.**

PETITIONER'S REPLY BRIEF

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II. The Prosecuting Attorney in the underlying criminal action abandoned his quasi judicial role by impermissibly commenting about the fact that the co-defendant had plead earlier that day, by commenting about statements in the community, by commenting to the jury about his wife’s opinion as to the guilt or innocence of the accused, and by arguing facts outside of evidence. 6

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STATEMENT OF THE CASE

On July 9, 2014, the infant child was born at Penrose-St. Francis Hospital in Colorado Springs, Colorado. (A.R. Volume 1, Page 17). Although the Petitioner did not receive prenatal care, the infant child was born healthy and did not have any complications. (A.R. Volume 4, Page 32-45). Even though the Petitioner and infant tested positive for methamphetamines, the infant did not experience any withdraws, while the infant was at the hospital for four day. Id. at page 50; 52 The infant was then discharged into the Petitioner's care, with a referral to Child Welfare Services in the State of Colorado. (A.R. Volume 4; Page 43). At birth, the infant weighed approximately six pounds and fifteen ounces. Id. at Page 43. However, the pediatrician testified that it was common for infants to lose weight after birth. Id. The pediatrician testified that he would expect an infant to weigh approximately eight pounds after twenty-six days. Id. at page 48. Once Child Welfare Services received the referral, a worker met with the Petitioner. (A.R. Volume 4, Page 61). At that time, the worker met with the Petitioner and discussed the allegations. Id. at Pages 61-64. The worker also served the Petitioner with a preliminary protective proceeding, which is the State of Colorado's first hearing. Id. However, the Petitioner retained physical custody of the infant, and the State of Colorado retained legal custody of the infant. Id. All in all, the Prosecuting Attorney called three witnesses from the State of Colorado to testify about the medical records, toxicology reports, and lack of prenatal care regarding the infant and the Petitioner. Id. Additionally, the worker testified that the children were clean, were clothed, and were fed; the basic necessities were being provided. Id. at Page 74.

Soon after the Petitioner met with the worker from Child Welfare Services, the co-defendant and the Petitioner left the State of Colorado, with all of the children ranging in age

from newborn to twelve. (See generally, A.R. Volume 4). Some twenty-six days after the infant's birth, the Petitioner and the co-defendant come to the State of West Virginia. (See generally Volume 4). The Petitioner stopped at her grandfather's and aunt's house to receive some money, blankets, and other supplies. (See Volume 5, Page 56-62 and 62-69, and Volume 7: Interview of Raven). The Petitioner then went to a store and bought food items and other necessities. (Volume 4, Page 85-102; and Volume 7: Interview of Raven). The co-defendant and the Petitioner then stay at various campsites in the George Washington National Forest in Hardy County, West Virginia. Id. At the campsites, the children eat hot dogs and roast smores. Id. Additionally, the children take showers in the provisions provided at the campsites. Id. The children sleep in a tent, and the Petitioner and the co-defendant sleep in the vehicle with the infant. Id. During the early morning hours, the co-defendant wakes-up and finds one of the younger children sleeping in the vehicle with the co-defendant, the Petitioner, and the infant. (A.R. Volume 5). At that time the co-defendant discovered the infant had died. (A.R. Volume 5). The co-defendant then tells the Petitioner. (A.R. Volume 5). After the Petitioner says her goodbyes, the co-defendant then takes the infant into the woods and buries the infant in a shallow grave, with a large rock as a marker. (A.R. Volume 5). The co-defendant then tells the two oldest children and shows the oldest children the grave. (A.R. Volume 5 and Volume 7: Interview of Raven). The next morning the co-defendant and the Petitioner leave Hardy County, West Virginia. (A. R. Volume 4, Page 106-108).

While attempting to pump gas at the Sheetz store in Morgantown, West Virginia, a caller reports the co-defendant as a suspicious person. (A.R. Volume 4, Page 106). When the officer arrives, the officer runs the license plate of the vehicle, which has been reported

stolen. (A.R. Volume 4, Page 107-110). The officer then pursues the vehicle onto the interstate. Id. Although the vehicle was traveling less than the posted speed limit, the co-defendant refused to pull the vehicle over. Id. Eventually, the vehicle is pulled over. Id. At that time, the co-defendant tells the officer that his infant son just passed away. Id. The officers then place the co-defendant into custody, detain the Petitioner, and detain the children. Id. While the co-defendant is being questioned regarding the license plates and his arrest warrant, the co-defendant reports to the officers about the death and burial of the infant. (A.R. Volume 5, Page 3-10). Although the Petitioner did not initially disclose the burial of the infant, the Petitioner then cooperated with the officers and assisted the co-defendant in locating the infant child, within forty-eight hours of the infant's passing. (A.R. Volume 5, Pages 19-55).

The officers also search the vehicle and find baby diapers, formula, a tent, and blankets among other items. (A.R. Volume 5, Pages 3-55). The co-defendant also reported to the officers that once the infant passed away he threw the majority of the baby items in the trash. (A.R. Volume 5, Pages 19-55).

After the co-defendant and Petitioner lead the officers to the infant's burial site, the infant's body was exhumed. (A.R. Volume 5, Page 19-55). The infant's body was then examined by the pathologist. (A.R. Volume 5, Page 80-94). The autopsy report stated that the cause of death was unknown. (A.R. Volume 5, Page 80-94). The autopsy report did not contain any findings of a controlled substance in the infant. Id. The pathologist also testified that the infant weighed approximately six pounds at the time of the examination, and it is common for a deceased body to lose weight after passing away. Id.

ARGUMENT

I. The State's Use of 404(b) Evidence to "Show the Complete Story" of Petitioner's Prior Neglect is Not a Permitted Use of Such Evidence Under 404(b) as the Stated Use is Too Broad, Allows the Jury to Consider the Evidence for Other Illegitimate Uses, and the Court's Basis for Allowing the Evidence Infers that the Evidence was Admitted for an Improper Purpose.

When offering evidence under Rule 404(b) of the West Virginia Rules of Evidence, the prosecution is required to identify the specific purpose for which the evidence is being offered and the jury must be instructed to limit its consideration of the evidence to only that purpose. State v. McGinnis, 193 W. Va. 147; 455 S.E. 2d 516 (W. Va. 1994). The trial court shall determine the admissibility of the evidence. Id. After an in-camera hearing and by the establishment of the preponderance of the evidence, the trial court must be convinced that the acts or conduct occurred and that the defendant committed the acts. Id. If a sufficient showing has been made, the trial court must then determine the relevance of the evidence under Rules 401 and 402 of the West Virginia Rules of Evidence and conduct the balancing required under Rule 403 of the West Virginia Rules of Evidence. Id. If the evidence is admitted, then the trial court should instruct the jury on the limited purpose for which such evidence has been admitted. Id.

Here, an in-camera hearing was held on January 13, 2015 and December 13, 2015 (See generally: A.R. Volume Three). At the January 13, 2015 hearing, the Trial Court simply admitted the 404(b) facts into evidence. Id. The Trial Court did not conduct a proper balancing test either on the record or in a supplemental order, which is a reversible error. The order stated that the purpose of the evidence was to show that the Petitioner neglected the child from before birth until the child's death. Id. This is an improper purpose as this goes to show that the charges that were contained in the indictment in Hardy County, West Virginia would have been

committed in the State of Colorado, and therefore, the State of West Virginia would lack jurisdiction.

Additionally, the prosecution's notice of intent stated that the proper purpose would be to show the complete story. This is also for an improper purpose. The statement to tell the complete story is too vague and would let the jury use the evidence for other improper purposes, such as to show that the child was neglected from before birth until death, or the Petitioner is a bad person because of all the acts that were committed in the State of Colorado, which was not linked to the child's death.

However, the evidence was not admissible under the balancing test as the evidence's prejudicial value outweighed the probative value. First, the child was born a healthy child and lived for approximately twenty-six days after its birth. (A.R. Volume 4, Page 31-57). The fact that the Petitioner did not receive prenatal care was not a factor in the infant's passing, as the infant survived for twenty-six days and was released into the Petitioner's care. Id. Next, the fact that the Petitioner and the infant had methamphetamine in their system at birth was not relevant to prove that the child was abused or neglected some twenty-six days later when the infant passed away. When the infant was released from the hospital into the care of the Petitioner, the infant was not experiencing withdraws and did not experience withdraws during the four days the infant was in the hospital. (A.R. Volume 4, Page 31-57). In fact, the infant did not show any signs of withdraw after birth. Id. When the infant passed away twenty-six days later, the coroner's report did not show any results for any form of a controlled substance; the infant had a clean drug screening. (A.R. Volume 5, Page 90).

Furthermore, the Prosecuting Attorney presented the testimony of three witnesses from the State of Colorado, and three witnesses from Morgantown, West Virginia. The Prosecuting

Attorney overly relied on this information as these witnesses comprised six of the prosecution's twelve witnesses. Finally, the Prosecuting Attorney argued more about the Petitioner's prior conduct (404(b) evidence), then the evidence and facts that occurred in the State of West Virginia. (See A.R. Volume 4, Page 17-24, and Volume 5, Pages 134-137 and 147-153).

Therefore, because the Trial Court failed to conduct a proper balancing test and because the prejudicial effect of the 404(b) evidence was outweighed by its probative value, the medical records from the State of Colorado should have been excluded.

II. The Prosecuting Attorney in the Underlying Criminal Action Abandoned His Quasi Judicial Role by Impermissibly Commenting About the fact that the Co-Defendant had Plead Earlier that Day, by Commenting About Statements in the Community, by Commenting to the Jury about his Wife's Opinion as to the Guilt or Innocence of the Accused, and by Arguing Facts Outside of Evidence.

A prosecuting attorney occupies a quasi judicial position and is required to avoid the role of a partisan eager to convict. State v. Boyd, 160 W. Va. 234; 233 S.E. 2d 710 (1977). Furthermore, "it is an abuse of a [prosecutor's position] to make statements, in his argument, of fact outside the evidence . . . and to do so is error." State v. Moose, 110 W. Va. 476; 158 S. E. 715 (W. Va. 1931). A prosecutor cannot assert his personal opinion as to the justness of a cause, as to the credibility of a witness or as to the guilt or innocence of the accused. State v. Critzer, 167 W. Va. 388; 280 S. E. 2d 288 (W. Va. 1981); Rule 3.4 of the West Virginia Rules of Professional Conduct. Personal opinion or belief statements by a prosecuting attorney if calculated to prejudice the jury and inflame the passion of the jurors, is reversible error. State v. Graham, 119 W. Va. 85; 525 S.E. 2d 303 (W. Va. 1937).

To evaluate whether a prosecuting attorney has abandoned this, the prosecuting attorney's conduct should be evaluated under the following four part test: (1) the degree to which the prosecutor's remarks have a tendency to mislead the jury and to prejudice the

accused; (2) whether the remarks were isolated or extensive, (3) the strength of competent proof introduced to establish the guilty of the accused; and (4) whether the comments were deliberately placed before the jury to divert attention to extraneous matter. State v. Kendall, 219 W. Va. 686; 639 S.E. 2d 778 (2006).

Here, the Prosecuting Attorney abandoned his role of a quasi-judicial position and became a partisan eager to convict by repeatedly telling the jury that the co-defendant had plead to four of the five counts in the indictment earlier that morning, by arguing facts outside of evidence, such that the community was asking him what he was going to do with the “baby murders,” and by stating his wife knew the people in the community would convict the Petitioner. These statements are also impermissible because the statements touch on the community standard.

During opening statement, the Prosecuting Attorney deliberately told the jury that the co-defendant had already plead to four of the five counts; the same charges that the Petitioner was going to be tried on. (A.R. Volume Four, Page 17, Lines 5-9). The Prosecuting Attorney lead with this argument and repeated this fact again in opening statement. Id. Furthermore, in closing argument, the Prosecuting Attorney again repeated this statement to the jury that the co-defendant had plead guilty, and the Petitioner wanted a trial. The Prosecuting Attorney made these comments throughout opening statement and closing argument to divert the juries attention away from the evidence to other extraneous matters, such as implying the Petitioner’s guilt because the co-defendant plead. Furthermore, the fact that the co-defendant plead was not introduced into evidence, and the co-defendant did not testify.

Again, the Prosecuting Attorney continues to reference the co-defendant throughout his argument by using the plural form of various pronouns: “they,” “them,” “these,”

“couple,” and “people”, and other words to like effect.

In addition, the Prosecuting Attorney continues to argue facts outside of the evidence and community standards by stating: “I walk around in the community and people say what are you going to do with these baby killers, what are you going to do with these baby killers.” (A.R. Volume Five, Page 150, Lines 6-11), and “I was talking to my wife about this case last night and she reminded me that Trooper Hartman when he testified here a day earlier that this crime barely occurred in Hardy County. “ (A.R. Volume Five, Page 151-152, Lines 24-8). “She said she was glad - - as horrific as this event was, she was glad it occurred here in Hardy County because she knew the people of Hardy County would do what was right, they would find this Defendant guilty of all charges.” (A.R. Volume Five, Pages 151-152, Lines 24-8). The Prosecuting Attorney continued by stating, “this case is going to tell a lot about the community we live in here today.” (A.R. Volume Five, Page 150, Lines 17-22). “Are we going to hold people accountable when they come here from meth heads from the State of Colorado come here, fail to give the child medical attention - - he needs medical attention, fails to call law enforcement when the baby dies.” (A.R. Volume Five, Page 150, Line 17-22). Furthermore, the Prosecuting Attorney’s wife is a teacher and is a well known individual.

In addition, the case at hand involved the death of a new born child. The fact this case involved the death of a child meant the passions of the jury was already inflamed because of the nature of the case, and the Prosecuting Attorney is held to a higher standard. Furthermore, the jury charge specifically instructs that the jury to disregard community standards. However, here, the Prosecuting Attorney is specifically telling the jury what the community standard and community opinion is regarding the Petitioner’s guilt or innocence, when the

community at large had not sat in the trial and heard the evidence and testimony presented to the jury. (A.R. Volume 5, Page 96-133).

Finally, the competent evidence presented at trial was not overwhelming. The evidence did not determine a cause of death for the child and did not show how involved the Petitioner was in concealing the child. Therefore, the Prosecuting Attorney abandoned his quasi judicial role and became a partisan eager to convict because he made extensive arguments based on facts outside of evidence and argued community standards.

III. The Color Photographs of the Deceased Infant Should have been Excluded from the View of the Jury because the Color Photographs were not Necessary to Show Concealment of the Infant Child, Provided no Evidentiary Value, were Gruesome in Nature as the Color Photographs Showed the Infant Child's Deformed Face, and were Introduced to Inflammate the Passion of the Jury.

When an objection is made to the admissibility of photographs on the basis of the gruesomeness of the photographs, the admissibility of the photographs must be made on a case by case basis pursuant to Rules 401 through 403 of the West Virginia Rules of Evidence. To be admitted into evidence a photograph must be proven relevant. Under Rule 401 of the West Virginia Rules of Evidence, evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action. If a photograph is relevant, whether a photograph should be admitted in evidence rests in the sound discretion of the trial court, and its ruling will be upheld unless there is a clear showing that its discretion has been abused. State v. Derr, 192 W. Va. 178; 451 S.E. 2d 744 (1994).

Here, the photographs provided no evidentiary value. The State introduced five enlarged photographs of the infant's corpse. (A.R. Volume 1, Pages 81-89 and Page 98). To show concealment of the infant's body, the State used the testimony of the officers and other numerous

photographs to show the grave marking and the excavation of the grave site. Those photographs are not gruesome, and their evidentiary value outweighed their prejudicial effect. However, the above identified photographs held no evidentiary value and were used to inflame the passions of the jury. The photographs were close-up photographs of the infant's face, which was distorted. Only one of the photographs showed that the infant had excreted body fluid. This photograph was a small photograph and was not a close-up of the infant's body. However, the other photographs were enlarged photographs, the photographs were colored, and were close-up photographs of the infant's face and neck, which were distorted. These photographs had no evidentiary value and should have been excluded because their prejudicial value outweighed their probative value.

IV. Trooper Hartman lacked the Necessary Scientific Knowledge to Testify Whether the White Substance that Was Found in the Vehicle was Baby Vomit Because This Testimony is not Suitable to Lay Witness Testimony.

Under Rule 701 of the West Virginia Rules of Evidence regarding opinion testimony by a lay witness, if a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness's perception, (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702 of the West Virginia Rules of Evidence.

Here, Trooper Hartman could not give his opinion as to whether the white substance found in the vehicle was "baby vomit." Trooper Hartman was not experienced to know, by merely looking at the substance, whether the source of the substance was the infant child, another person, or another source all together. Additionally, Trooper Hartman was not qualified to state, by merely looking at the substance, whether the substance was vomit, was spilled, or

was something else all together. To determine the correct source of the substance, the substance needed to be tested. The tests would have determined the source of the substance, the identity of the substance, and would have clarified whether the substance was spilled or had been previously digested. The necessary tests would be scientific in nature. After looking at the photographs of the substance, a person cannot state with any degree of certainty whether the substance is vomit, whether the substance was spilled, or whether the substance came from the infant or some other person in the vehicle. Because Trooper Hartman was qualified to testify regarding the identity of the substance, this information should have been excluded from the evidence.

V. Petitioner is Entitled to the Affirmative Defense to Concealment of a Deceased Human Body Because She Affirmatively Disclosed the Fact that the Child had Passed Away Before Law Enforcement Knew that the Infant had Passed Away, Before Law Enforcement Began to Investigate the Matter, and Participated in the Search of the Infant Child's Burial Site to the Best of Her Ability.

Under 61-2-5(a) of the West Virginia Criminal Code, Concealment of a Deceased Human Body occurs when, “any person who . . . knowingly and willfully conceals, attempts to conceal or who otherwise aids and abets any person to conceal a deceased human body where death occurred as a result of criminal activity” However, “it shall be a complete defense in a prosecution . . . that the defendant affirmatively brought to the attention of law enforcement within forty-eight (48) hours of concealing the body and prior to being contacted regarding the death by law enforcement the existence and location of the concealed deceased human body.” Id.

Here, the Petitioner assisted law enforcement with locating the infant child, within the forty-eight hour time period. The Petitioner was taken into custody in Monongalia County, West Virginia because the license plate on the vehicle was reported stolen. While the Petitioner was in custody, the Petitioner was being questioned regarding other things other than the passing of the infant child. The officers did not know the infant had passed away or that the death was

unreported. After questioning the co-defendant about the stolen license, the co-defendant disclosed the death and concealment of the child. When the Petitioner learned that the officers knew about the death of the child, the Petitioner then assisted the co-defendant in locating the infant child. While the officers testified that the Petitioner's involvement in locating the child was limited, this is because the Petitioner did not bury the child, and the Petitioner's involvement in burying the child was limited. Therefore, the charge of concealment of a deceased human body should have been dismissed.

VI. The Prosecuting Attorney did not Properly Impeach T.R.S., and the Court Impermissibly Admitted Extrinsic Evidence for the Purposes of Impeachment that Otherwise Would Not Have Been Admissible.

Under Rule 607 of the West Virginia Rules of Evidence, "the credibility of a witness may be attacked by any party, including the party calling the witness." Under Rule 613 of the West Virginia Rules of Evidence, extrinsic evidence of a witness's prior inconsistent statement is admissible "only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it.

The three requirements must be satisfied before admission at trial of a prior inconsistent statement can be admitted. First, the statement must be inconsistent. State v. Blake, 197 W. Va. 787; 329 S. E. 2d 860 (W. Va. 1985). If the statement comes in the form of extrinsic evidence as opposed to oral, the area of impeachment must pertain to a matter of sufficient relevancy and notice and an opportunity to explain or deny must be met. Id. Finally, the jury must be instructed that the evidence is admissible only to impeach the witness and not as evidence of a material fact. Id.

Here, the Prosecuting Attorney stated on the record that he was calling R.S., the Petitioner's twelve year old son, as a witness for the sole purpose of impeaching the child. (A.R.

Volume Four, Page 82, Lines 4-8). While the rules state that any party may impeach a witness including the party calling a witness, the rules are unclear as to whether or not a party may call a witness for the sole purpose of impeaching the witness. However, the rules state that the purpose of impeaching a witness is to attack the credibility of a witness and not to introduce other facts into evidence.

While questioning R.S., the Prosecuting Attorney asked the child questions such as “do you remember,” “do you recall,” etc. To which, R.S. would respond that he did not remember. Furthermore, the answers that R.S. gave were not misstatements or lies; R.S. would often state “I do not remember,” “I think,” “I do not know,” etc. To which, the Prosecuting Attorney, then moved that the entire fifty to fifty five minute video of the child’s interview at the child advocacy center be played. During this interview, the record does not indicate that the child was aware that he was being interviewed or that the child was sworn. The video recording was introduced into evidence.

The problem arises because the video recording that was played contained more information than what the child was asked about and contained other information that otherwise may not have been admitted into evidence. Furthermore, the information that was shown could only be used to impeach the credibility of the witness. However, the information that was presented in the video was used by the jury as competent evidence. Furthermore, the record indicates that the State knew that the witness was not credible before even calling the witness.

Finally, the Petitioner argues that the impeachment method used by the State was improper. The Petitioner asserts that the witness was not lying or misstating the witness’ prior “statements,” but the witness was having difficulty in recalling the testimony, which occurred approximately six (6) months earlier. When the witness testified that he did not remember or was

not for sure, the State should have first attempted to refresh the witness's recollection and then proceeded to question the witness.

Therefore, it was improper for the State to introduce extrinsic evidence to impeach the witness and was improper for the State to call a witness for the sole purpose of impeaching the witness.

VII. While no Objection was Made by Defense Counsel Regarding the Possible Sentence Imposed by Law for the Charge of Concealment of a Human Body, the Petitioner Asserts that this was Plain Error and Further Argues Ineffective Assistance of Counsel.

This Court has held that "where a party does not make a clear, specific objection at trial to the charge that he challenges as erroneous, he forfeits his right to appeal unless the issue is so fundamental and prejudicial as to constitute 'plain error.'" State v. Davis, 648 S.E.2d 354, 220 W.Va. 590 (W. Va., 2007). In addition, "to trigger application of the plain error doctrine, there must be an error, that is plain, that affects substantial rights, and (4) seriously affects the fairness, integrity, or public reputation of the judicial proceedings." Davis, 648 S.E.2d 354, 220 W.Va. 590 (W.Va., 2007).

Here, the Respondent objects to this argument on the basis no objection was made during the trial of the matter. The Petitioner would contend that the failure of counsel to object to the improper instruction resulted in plain error. Again, the Trial Court informed the jury as to the possible sentence of concealment of a deceased human body. (A.R. Volume 5, Page 125, Lines 22-24). The Trial Court read the jury charge to the jury which stated that "to conceal a deceased human body where death occurred as a result of criminal activity is guilty of a felony and upon conviction shall be confined in the correctional facility for not less than one year nor more than five years and fined not less than \$1,000.00 nor more than \$5,000.00. Id. Additionally, the jury charge was given to the jury during deliberations. (A.R. Volume 5, Pages 152-156). While the

Petitioner was unable to find any specific case law that prohibits the Trial Court from informing the jury with regard to the possible penalties on a charge, the Petitioner was also unable to find any case that supports the inclusion of the possible penalty or the reading of the possible penalty to the jury. Therefore, the Petitioner would argue that this is prejudicial to the Petitioner and is or should be prohibited.

CONCLUSION

In conclusion, when 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, the defendant's conviction should be set aside, even though anyone of such errors standing alone may be harmless. State v. Plumley, 181 W. Va. 685 (W. Va. 1989). Here, the Petitioner asserts errors regarding Petitioner's Counsel's representation in this matter, the conduct of the Prosecuting Attorney, the Trial Court's decision in admitting numerous facts into evidence that otherwise if correctly excluded would not have resulted in the Petitioner's conviction, and the improper jury instructions. These errors penetrate the four essential components of a trial: effective representation, to be dealt with fairly by the prosecution, a right to a fair and impartial jury, and the right to a fair trial. Therefore, this case should be remanded for further proceedings.

Respectfully Submitted,


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CERTIFICATE OF SERVICE

I, Jonie E. Nelson, hereby certify that on this the 26 day of January, 2016, true and accurate copies of the foregoing Petitioner's Reply Brief were deposited in the U.S. Mail contained in postage-paid envelopes addressed to counsel for all other parties to this appeal as follows and to the Office of the Clerk Supreme Court of Appeals of West Virginia State Capitol Building, Room E-317 1900 Kanawha Blvd. East Charleston, WV 25305

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