

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 35691

ROBY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA,

Appellee

Appeal from a Final Order of the
Circuit Court of Wood County (08-F-91)

v.

DAVID WAYNE KAUFMAN,

Appellant.

BRIEF OF APPELLANT

DAVID WAYNE KAUFMAN

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COMES NOW the Appellant, David Wayne Kaufman, by counsel, George J. Cosenza, and respectfully presents his brief pursuant to the West Virginia Rules of Appellate Procedure.

ASSIGNMENT OF ERRORS

The trial court erred as a matter of law as follows:

1. THE CIRCUIT COURT OF WOOD COUNTY ERRED WHEN IT DENIED THE DEFENDANT'S MOTION TO EXCLUDE FROM EVIDENCE THE WRITTEN JOURNAL/DIARY OF THE VICTIM, MARTHA KAUFMAN.
2. THE CIRCUIT COURT OF WOOD COUNTY ERRED WHEN IT DENIED THE DEFENDANT'S MOTION TO EXCLUDE FROM EVIDENCE STATEMENTS MADE BY THE VICTIM, MARTHA KAUFMAN, TO HER CHILDREN AND OTHERS REGARDING THREATS AND INCIDENTS OF ABUSE BY THE DEFENDANT.
3. THE CIRCUIT COURT OF WOOD COUNTY ERRED BY ADMITTING ACTS OF VIOLENCE BY THE DEFENDANT AGAINST THE VICTIM, MARTHA KAUFMAN, PURSUANT TO WEST VIRGINIA RULES OF EVIDENCE §404(B).
4. THE CIRCUIT COURT OF WOOD COUNTY ERRED BY DENYING THE DEFENDANT'S MOTION FOR A NEW TRIAL ON THE GROUNDS THAT THE VERDICT OF GUILTY BY THE JURY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

STATEMENT OF THE CASE

The Petitioner, David Kaufman, often referred to Martha Kaufman as his "perfect wife." [Def. Ex. 40-45]. Their love affair began when Martha was still married to another man, Charles Lee Cooper. During the course of their courtship, Martha became pregnant. She gave birth to their daughter, Kristi, while she was still married to Mr. Cooper. On June 16, 1984, prior to their divorce,

Mr. Cooper took his own life by a self inflicted gunshot wound to the head. Two months later, Martha and David Kaufman were married and remained so until Martha's death on December 17, 2007.

David and Martha had many good years together. They had another child, Zach. They acted as any happily married couple; they played with their children, celebrated holidays and birthdays, and went on vacations. After a few years, the marriage started to unravel. Martha became increasingly depressed. They began pursuing different interests and started to go their separate ways. The marriage began to fall apart. For fifteen years prior to Martha's death, David and Martha didn't sleep in the same bed. They had separate bedrooms, but most of the time, Martha slept on the recliner downstairs in the living room. They had not been intimate for all those years. In the years before Martha's death, the couple was husband and wife in name only. They were, essentially, two people living in the same home. As a result of the marital problems of the Kaufman's, the family became increasingly dysfunctional. He grew distant from his daughter, Kristi. [T.R. 2/18/09, pp. 65, 71, 72, 107-111].

Martha's depression continued to grow worse over the years. She went to see counselors and Dr. James Spychalski. [T.R. 2/20/09, pp. 159-160]. She was prescribed medication for her condition, i.e., Paxil, Fenegrin and Xanax. [T.R. 2/20/09, p. 160]. Despite the course of treatment prescribed by her physician, Martha would discontinue the use of her medications from time to time. After her purse was seized by the police, they found nine (9) unfilled prescriptions. [Def. Ex. 26]. The Kaufman home disintegrated into a state of disrepair and disarray. [State Ex. 16]. In or around October, 2007, Martha attempted to commit suicide by taking an overdose of Xanax and sitting in

her car in the garage, while it was running, with the garage doors closed. She was discovered by her daughter, Kristi, before the carbon monoxide fumes could overcome her. [T.R. 2/18/09, pp. 69, 113].

Despite her depression, Martha could be a very controlling person in her interactions with her children and her husband. When she attempted suicide and told Kristi not to tell anyone, she complied (including getting help for her obviously troubled mother). When she told Kristi and Zach about different allegations of abuse by Mr. Kaufman, they remained silent per her instructions. The siblings didn't even share information between each other when prohibited to do so by their mother. [T.R. pp. 3-24, 43-88].

In May, 2007, the Petitioner met Susan Evans at his place of work. They became friends and soon after, began seeing each other. At that time, David began contemplating a divorce from Martha. He told Martha about his relationship with Susan. At the outset, Martha appeared to accept the affair, however, as time went on she became angry and resentful. [T.R. 2/18/09, pp. 72-73, 80].

In August of 2007, Martha told David that she had developed ovarian and breast cancer. Her story was fabricated. She requested that he not tell the children, and, David complied. David did tell his friends about Martha's condition and also confided in Susan. Martha told him that she was going to refuse treatment and let the disease run its course. The couple discussed their options. David decided not to pursue the divorce, so Martha could take advantage of the health insurance offered by the plant. As previously mentioned, in October, 2007, she attempted to commit suicide.

In November, 2007, the Nova Chemical plant, where David had worked most of his adult life, announced the plant was going to close. [Def. Ex. 36]. This was a devastating blow to the Kaufman family. Not only would this put pressure on a family already in financial crisis, but the

family would lose valuable benefits, including medical and life insurance (there were two life insurance policies on Martha Kaufman's life; one through the plant and one issued through State Farm, both in the amount of \$100,000.00). [T.R. pp. 135-144, 259-262].

When the plant announcement came, David and Martha knew their lives would be impacted significantly. Martha, knowing her benefits were going to terminate, approached David and told him she wanted to end her life. She said the cancer was terminal and this would be a way to provide for the children. She asked David to type up a statement that he would sign and promise that the proceeds from the life insurance policy would be shared with the children. David wrote statement and gave it to his wife. She planned on doing it on a number of occasions, but didn't follow through. Finally, she told David she would end her life on December 17, 2007. [Def. Ex. 26].

While Martha was making her plans, David was sharing the information with Susan. He told her about Martha's plans to commit suicide and her intention to do it on December 17th. Both David and Susan were skeptical. [T.R. pp. 163-171].

On December 17th, David had previously made plans to make Christmas cookies with his elderly mother, a tradition in the Kaufman family. At 12:30 p.m., Zach left the house to go to work. Kristi was not at home, having spent the night with her boyfriend. Shortly thereafter, David Kaufman left the home. At the time he departed, his wife Martha was sitting in her recliner in the living room. It was the last time he saw her alive. [Def. Ex. 36].

After David left home, he stopped at McDonald's to pick up lunch for his mother. The time, a little before 1:00 p.m., was documented by the security camera at McDonald's, which showed the Petitioner at the drive-thru picking up their food. [Def. Ex. 30]. He arrived at his mother's home at

approximately 1:00 p.m. But for a brief visit to a local grocery store, he stayed at his mother's home until 7:00 p.m. [T.R. 2/25/09, pp. 265-278]. While he was there, he was visited by his sisters, Charlotte Cowan and Peggy Ruble. [T.R. 2/25/09, pp. 316-325]. At approximately 7:00 p.m., David left his mother's house and went to his sister, Peggy's home and visited with her and her husband, Gary. [T.R. 2/25/09, pp. 316-325, 332-336]. He returned to his home at approximately 9:00 p.m.

When Dave arrived home, his daughter Kristi was there. When Kristi arrived home and saw her mother's car in the garage, but could not locate her mother, she became concerned. She searched the house, but did not find her mother. When David arrived home, she asked her father about the whereabouts of her mother. As he had discussed with Martha, David told Kristi that Martha went to Wal-Mart in Vienna and was going to meet Kristi after she got off work at Toys R Us, which was near the Wal-Mart store. This story was, of course, fabricated, but done out of respect for Martha's wishes and in accordance with the prior practice of the Kaufman family. David had no idea where Martha was, but suspected she may have gone forward with her plan. He searched the home, but, like Kristi, did not locate his wife's body. [T.R. 2/18/09, pp. 97-106].

Kristi became frantic. She called Wal-Mart asking about her mother and went to the store looking for her. She called the police. Eventually the search for Mrs. Kaufman led the police back to the Kaufman home. When the police arrived at his home, David Kaufman cooperated completely. He signed a consent to search his home and gave statements to the investigating officers. Eventually the police located Mrs. Kaufman's body in the closet of her bedroom, a room that had been previously searched by Kristi. She had died as a result of a gunshot wound to the left side of her head. The gun used to cause her death was found in her left hand.

The body was found by Deputy Murphy of the Wood County Sheriff's Department. As he descended the stairs to the living room, where Mr. Kaufman was with the other deputies, he motioned behind Mr. Kaufman's back that the body had been found. They did not tell Mr. Kaufman! For some unknown and irrational reason, they immediately suspected the Petitioner.

Per the deputy's request, Mr. Kaufman accompanied them to the Sheriff's office for questioning. They questioned him for six (6) hours, during which they revealed that his wife was dead. For the entire time that David Kaufman was interrogated, he consistently denied any involvement in his wife's death. Shortly after his interrogation was complete, David Kaufman was charged with his wife's murder. The charge came before any meaningful investigation was concluded. It came before any autopsy was done, any lab results were received or any witnesses were interviewed. [Def. Ex. 36].

As part of the investigation, various tests were performed by the West Virginia Crime Laboratory on a significant number of items seized from the crime scene and the Appellant. The State called David Miller, a forensic scientist with the crime lab, who specializes in blood identification and analysis. [T.R. 2/20/09, pp. 128-130]. He examined three (3) latex gloves found in the Kaufman home. No blood was found. [T.R. 2/20/09, p. 134]. He examined a black leather belt belonging to the Appellant and his Timex Indiglo watch. No blood was found. [T.R. 2/20/09, p. 136]. He examined a Duke Energy baseball cap, a pair of Hanes brand underwear, a black button up shirt, black tennis shoes and socks, a pair of blue jeans, an Ozark Trail checkered blue and white shirt, a piece of yellow cloth, an extension cord, a white handkerchief, a Towncraft shirt, a green, blue and red plaid shirt, a pair of Rustler blue jeans, a wooden shelf, a piece of drywall, an item of

luggage, and a purse all either belonging to or connected to the Appellant. No blood was found. [T.R. 2/20/09, pp. 137-156].

The State called Stephen King, a fingerprint expert from the crime laboratory. [T.R. 2/20/09, p. 178]. He examined the gun, which was found in Martha Kaufman's left hand and was used to cause her death. He found no fingerprints of the Appellant or anyone else on the gun or the magazine in the weapon. [T.R. 2/20/09, pp. 179-188]. He also was provided a pair of latex gloves and found no fingerprints. [T.R. 2/20/09, p. 191].

The State called Michelle Cook, a gunshot residue expert from the crime laboratory. [T.R. 2/20/09, p. 205]. She tested various items taken from the crime scene and the person of Martha Kaufman and the Appellant, the purpose of which was to determine if the evidence showed evidence of discharging or being in the vicinity of a discharged weapon. She tested a pair of latex gloves and found no gunshot residue to be present. [T.R. 2/20/09, p. 212]. A gunshot residue kit was used on the Appellant on the night Mrs. Kaufman's body was discovered. The analysis by Ms. Cook showed that there was no gunshot residue on the person of the Appellant. [T.R. 2/20/09, p. 212]. Ms. Cook tested the gunshot residue kit used on Mrs. Kaufman and found gunshot residue on her left hand, where the weapon was found and the hand the Appellant believes was used to fire the weapon used in his wife's suicide. [T.R. 2/20/09, p. 213]. The expert also tested a pair of shoes, a black/brown insulated shirt, a baseball cap and a Timex watch, all of which belonged to the Appellant or were connected to him. No gunshot residue was found on any of these items. [T.R. 2/20/09, p. 215]. There was some material that was found on a blue plaid shirt, which was never tied to the Appellant that had some properties of gunshot residue, but also had properties of other items. When asked

whether the finding on the shirt was, in fact, gunshot residue, Ms. Cook testified, '[n]o, there's no way I can say that. There possibly could be, because they do have similar composition, but there is no way I could say that for sure. [T.R. 2/20/09, p. 226]. This finding could be the result of a person working on an automobile, which the Appellant did from time to time. [T.R. 2/23/09, p.921].

The State called Angela Gill, a DNA expert from the crime laboratory. [T.R. 2/20/09, p. 250]. She tested scrapings, which had been taken from under the fingernails of Mrs. Kaufman. [T.R. 2/20/09, pp. 261-263]. The scrapings are taken to determine whether there may have been a struggle or fight prior to Mrs. Kaufman's death. [T.R.2/20/09, p. 274]. The result of the testing on the fingernail scrapings showed DNA only consistent with that belonging to Mrs. Kaufman. [T.R. 2/20/09, p. 263]. She tested a shoe box lid from the crime scene and failed to get any results. [T.R. 2/20/09, pp. 264-265]. Ms. Gill tested an extension cord, which the State maintained the Appellant used to strangle Mrs. Kaufman, on or around the Thanksgiving prior to her death. She found DNA on the cord, which could have been contributed by two or more people, one of which could have been Mrs. Kaufman. The Appellant was excluded as a donor of any of the DNA found. [T.R. 2/20/09, pp. 266-272].

On December 18, 2007, an autopsy of Mrs. Kaufman's body was performed by the Dr. Zia Sabet of the West Virginia Medical Examiner's Office. Commensurate with the autopsy, an initial death certificate was prepared that concluded that the cause of Mrs. Kaufman's death was a contact gunshot wound to the head that occurred "late p.m", meaning from four to eight o'clock p.m., while David was with his mother and sisters. The death certificate also indicated that the medical examiner could not determine whether this was a homicide. The death certificate was later changed by Dr.

Sabet after he had the opportunity to talk with law enforcement. [T.R. 2/19/09, pp. 248-294].

In May, 2008, Dr. Sabet amended the death certificate and stated that the time of death was “early p.m.”, i.e., between one and four o’ clock p.m. The autopsy found no drugs in Mrs. Kaufman’s system, showing she was not taking her anti-depression medications and that she was not drugged allowing Mr. Kaufman to place her in the closet, where she was found. [T.R. 2/19/09, pp. 248-294].

A luminol test was performed in the closet where Mrs. Kaufman’s body was found to determine if an attempt was made to clean up blood or other trace evidence. The test was negative. The investigators seized the Petitioner’s computer, because there was information that Mr. Kaufman had information about how to commit a crime and cover it up. A complete scan was done by the Ohio State Bureau of Criminal Investigation, which has a section dedicated to computer crimes. No incriminating evidence was found. [T.R. 2/19/09, pp. 133-165].

SUMMARY OF ARGUMENT

The Appellant’s argument addresses the Court’s ruling to allow a diary kept by the victim into evidence and various hearsay statements of the victim about prior abuse suffered at the hands of the Appellant. The Appellant asserts that these evidentiary rulings violate the Appellant’s rights under the Sixth Amendment of the United States and West Virginia Constitutions and the West Virginia Rules of Evidence.

The Appellant also asserts that his conviction is against the manifest weight of the evidence.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Oral argument in this matter is necessary pursuant to Rule 19(a) on the following grounds:

- (1) The case involves assignment of error in the application of settled law;
- (2) The case claims an unsustainable exercise of discretion where the law governing that discretion is settled;
- (3) The case involves a claim of insufficient evidence or a result against the weight of the evidence;
- (4) The case involves a narrow issue of law.

The Appellant does not believe this case is appropriate for a memorandum decision.

The Appellant does not believe that the time allocated for oral argument is sufficient and respectfully requests additional time based upon the significant record. The issues presented by the appeal in that based upon the significant record. The issues presented by the appeal are that the Appellant received a life sentence without the possibility of parole.

ARGUMENT

Because they are all to some degree related, the Petitioner shall address the assignment of error numbers 1, 2 and 3 as one argument.

1. THE CIRCUIT COURT OF WOOD COUNTY ERRED WHEN IT DENIED THE DEFENDANT'S MOTION TO EXCLUDE FROM EVIDENCE THE WRITTEN JOURNAL/DIARY OF THE VICTIM, MARTHA KAUFMAN.
2. THE CIRCUIT COURT OF WOOD COUNTY ERRED WHEN IT DENIED THE DEFENDANT'S MOTION TO EXCLUDE FROM EVIDENCE STATEMENTS MADE BY THE VICTIM, MARTHA KAUFMAN, TO HER CHILDREN AND

OTHERS REGARDING THREATS AND INCIDENTS OF ABUSE BY THE DEFENDANT.

3. THE CIRCUIT COURT OF WOOD COUNTY ERRED BY ADMITTING ACTS OF VIOLENCE BY THE DEFENDANT AGAINST THE VICTIM, MARTHA KAUFMAN, PURSUANT TO WEST VIRGINIA RULES OF EVIDENCE §404(B).

Shortly after the body of the victim, Martha Kaufman, was discovered in the closet of her bedroom, her daughter, Kristi Kaufman, entered the bedroom and retrieved a journal from the top drawer of Mrs. Kaufman's dresser. [State Ex.2-B] She had been aware of the journal prior to Mrs. Kaufman's death but had never read it. The journal contained information about physical and mental abuse meted out to the victim prior to her death.

In addition, Mrs. Kaufman had told her daughter, her daughter's boyfriend and her son that Mr. Kaufman had threatened her life, placed a gun to her head and attempted to strangle her with an electric cord. Of course, at the time of the trial, Mrs. Kaufman was unavailable and had never been cross-examined as to any of these statements. [T.R. 2/23/09, pp. 3-36, 43-134, T.R. 2/18/09, pp. 58-125].

The Appellant sought to exclude the journal and all of the incidents of violence related by the children and Mr. Schreckengost. The Court denied the Petitioner's motion and allowed the jury to consider all of the evidence with an instruction informing the jury that they could only consider the evidence for limited purposes. The Court ruled as follows:

THE COURT: First of all, beginning with the diary issue, the Court has already made a preliminary ruling, and I found a *Parle vs. Runnels* case from California very similar to the case before us in its facts and its analysis. Again, the cite for that is 187 F.3d 1030 by the Ninth Circuit Court of Appeals of the United States Court of Appeals.

Significant quote from that I quoted before was a non-testimonial diary of any unavailable declarant may be admitted into evidence over a confrontation clause objection if a close examination of the diary itself and circumstances surrounding its creation indicates that the diary contains particularized guarantees of trustworthiness.

This diary, like the one in the *Runnels* case, is not only the incidents of domestic violence that are alleged, but routine daily things occurring in Ms. Kaufman's life – discussing football games, her children, her thoughts and feelings, what certain friends and acquaintances are doing and events in her life, from the routine to the very unusual when you get to the incidents surrounding her husband.

So I believe this fits within that very clearly, and I also found Ms. Kaufman's diary very convincing when reading it. And from the totality of the evidence shown, despite Mr. Kaufman's denial, the Court can find no reason why she would fabricate this evidence that, on its fact, appears very convincing. And there are corroboration of the diary through the state trooper, through the football scores and games, through her children's testimony, through Mr. Schreckengost's testimony.

So this diary was not a work of fiction, but appears to be a periodical rendering of her feelings and things that were occurring in her life. Therefore, I believe the – and I would note again that *Runnels* was decided after *Crawford vs. Washington* and even addresses the *Crawford vs. Washington* case and distinguishes it, saying that *Crawford vs. Washington* deals with testimonial evidence as opposed to non-testimonial. The Court does not believe that Ms. Kaufman intended this diary to be seen by anyone, that it was a private thing. It was not made in anticipation of any litigation.

There is other language in the *Runnels* case that puts that case on point with the case in front of us, so I believe the confrontation clause objection does not apply to the diary. I believe there's guarantees of trustworthiness in the diary so that it comes in under the hearsay exception of 803(24), the general hearsay exception. It is a statement offered as evidence of a material fact. The statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts and the general purposes of these rules and the interest of justice will be served, best be served by admission of this statement in evidence.

And to a lesser degree, and I know there are cases that go both ways on this, but it also, I believe, could come in under 803(3), that being the exception for then existing mental, emotional and physical condition. But I would mainly rely on 803(24).

It is also relevant under Rules 404 and 402 because it shows the history of the relationship and the months immediately before Ms. Kaufman's death. It shows her relationship with the Defendant. So it would go to intent and motive on the part of the Defendant. It is also particularly relevant in this case since there is going to be an issue as to whether Ms. Kaufman's death was caused by homicide or was suicide. The Defendant has raised the possibility of suicide as opposed to homicide, so I think it particularly becomes relevant to prove not the cause of death, but the manner of death.

Also applying the Rule 403 test, the balancing test, I believe this evidence is highly relevant. It is prejudicial, but I don't think unfairly prejudicial, because it shows the relationship of the parties, and actually the evidence, I guess, could cut both ways. There is some evidence that would be favorable to the Defendant and some that would be unfavorable. But there is a substantial prejudicial impact; however, I think it's fair in this case to show the entire story to show what the relationship was and what was occurring in the months immediately leading to Ms. Kaufman's death. Therefore, I think it is highly probative and so the probative value outweighs the prejudicial effect.

As to the 404(b) evidence, as stated in the notice, I think some of the evidence as to threats against Mrs. Kaufman are not really 404(b), because they show what was occurring, a history of alleged domestic violence, that this was building up to some catastrophic conclusion. So it is evidence in and of itself of motive and intent which would come in independently of 404(b), but in the interest of caution, I will also apply the 404(b) analysis especially to the incident regarding the extension cord around the neck and the threat with the gun. Although there is evidence both ways on that, I think the Court at this point can determine and be satisfied that there is a preponderance of evidence that these things occurred. Again, I relate back to the diary itself, which I believe was very convincing if you read that as a whole and take into account the entire diary, plus there is evidence from the children to corroborate what was in the diary. I don't believe there's any evidence to show that the declarant, Mrs. Kaufman, had a reason to fabricate any evidence. It appears that her intent was that the diary or the incidents would never be made public. They were certainly not made in anticipation of litigation. So I believe her testimony is convincing and the Court does not believe she had a motive to lie or fabricate this evidence.

Whereas, on the other hand, Mr. Kaufman, who has denied these incidents, does have an interest in the outcome of this case. That certainly should be considered. I do recognize there is a conflict in the evidence and the ultimate authority would be the jury to determine the credibility of Mr. Kaufman if he does choose to testify, or more generally, notwithstanding the evidence itself, to determine the credibility of the evidence; and Mr. Cosenza's already, in cross-examination of the State's witnesses,

attacked the credibility of this evidence and indicated that it could be for the purposes of putting Mr. Kaufman in a bad light. And certainly the jury will be able to consider those arguments that were made by Mr. Cosenza on behalf of Mr. Kaufman, and that would include whether he testified or not. I didn't mean by saying that to force Mr. Kaufman to testify, but I think the evidence can also be attacked through cross-examination of the witnesses, which has already been done. So I do believe that this evidence comes in before the jury.

And applying the balancing test, again, I've already indicated in my analysis there when I talk about the diary evidence, that it's relevant under Rule 401, 402 and the balancing test under Rule 403 would be the same as the diary evidence, that it is prejudicial, but not unfairly prejudicial, and it is very probative to show the relationship of Mr. and Mrs. Kaufman in the days leading to her death and would go to the issue, to the manner of her death. Would also show intent and motive on the part of the Defendant. So that is admissible evidence in that regard.

So, to summarize the 404(b) evidence, I think prior threats to the victim, prior acts against the victim are always relevant, but even if we apply 404(b), that they are also admissible as prior bad acts, particularly the extension cord and the threatening with the gun, and of course, the Court would give a cautionary instruction to the jury regarding that evidence.

So the motion to suppress the diary is denied and the motion to grant the 404(b) evidence is granted.

THE COURT: Okay. And then the – I'm not sure if I put this on the record, but I intended this to be a part of my ruling on the statements by the children and to Mr. Schreckengost from Ms. Kaufman, that they would come in under the West Virginia case of *State vs. Sutphin*. *State vs. Sutphin*, as far as the hearsay issue, they would come in under *State vs. Sutphin*, 195 W.Va. 551, 466 S.E.2d 402, and those are statements made by the decedent, Mrs. Kaufman, to others.

Obviously, then, Ms. Kaufman's not available for cross-examination. The people to whom the statements were made, the two children, as well as Mr. Schreckengost, are available for cross-examination. In fact, have been already vigorously cross-examined by Mr. Cosenza at the in-camera hearing.

Parle v. Runnels, 387 F.3d 1030 (2004), was relied upon by the Circuit Court to deny the Appellant's objection to the admissibility of Martha Kaufman's diary as violative of the

Confrontation Clause of the United States and West Virginia Constitutions. In *Parle*, supra., the defendant was accused of stabbing his wife to death. At the time of his arrest, he admitted the killing, but changed his testimony at trial. The victim had kept a diary in the months prior to her death, which was admitted at trial. Mr. Parle was convicted of first degree murder. After his appeals were exhausted, he filed for a writ of habeas corpus which was granted by the United States District Court on the grounds that the California Court of Appeals unreasonably applied the precedent regarding the Confrontation Clause of the Sixth Amendment of the United States Constitution (as to the diary) and that the cumulative prejudicial effect of errors at the trial deprived Parle of a fair trial in violation of the Due Process Clause. The United States Court of Appeals, Ninth Circuit, disagreed with the holding of the District Court as to the issue of the Confrontation Clause, however, the trial was conducted prior to the United States Supreme Court's ruling in *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004). In addition, the petitioner (Parle) conceded the diary was not testimonial:

We need not decide here whether *Crawford* applies retroactively. Because the out-of-court statements in question were not testimonial, they are not subject to the new *Crawford* rule. In supplemental briefing, petitioner conceded that the diary was not testimonial, for it was not created "under circumstances which would lead an objective witness reasonably to believe that [it] would be available for use at a later trial." *Id.* at 1364; see *Leavitt v. Arave*, 383 F.3d 809, 830 n. 22 (9th Cir. 2004).

At the time petitioner's conviction became final, *Roberts* and its progeny, *Idaho v. Wright*, 497 U.S. 805, 110 S.Ct. 3139, 111 L.Ed.2d 638 (1990), governed the admissibility of hearsay evidence in a criminal case under the Confrontation Clause. *Roberts* held that a hearsay statement is presumptively inadmissible against a criminal defendant unless the declarant is unavailable and the statement bears "adequate indicia of reliability" – that is, the statement falls within a "firmly rooted hearsay exception" or contains "particularized guarantees of trustworthiness." *Roberts*, 448 U.S. 66, 100 S.Ct. 2531 (internal quotation marks omitted); see *Wright*, 497 U.S. at 815-16, 110

S.Ct. 3139.

The victim's diary did not fall within a "firmly rooted hearsay exception." The Trial Court admitted the diary pursuant to a specific California statute.

The Appellant maintains that all of the evidence admitted violates his rights under the Confrontation Clause of the United States Constitution and the West Virginia Constitution. The Sixth Amendment to the United States Constitution and Section 14 of Article III of the West Virginia Constitution guarantee an accused the right to confront and cross-examine witnesses. The Confrontation Clause contained in the Sixth Amendment provides: "In all criminal prosecutions, the accused shall...be confronted with the witnesses against him." Likewise, the Confrontation Clause contained in the West Virginia Constitution, Section 14 of Article III, provides that "In the trials of crimes and misdemeanors, the accused shall be confronted with the witnesses against him."

In *Crawford*, supra., the United States Supreme Court held that the testimonial character of a witness's statement separates it from other hearsay statements, and determines whether the statement is admissible at trial or not because of the Confrontation Clause. The Confrontation Clause is a rule of procedure, not a rule of evidence. "If there is one there that emerges from *Crawford*, it is that the Confrontation Clause confers a powerful and fundamental right that is no longer subsumed by the evidentiary rules governing the admission of hearsay statements". *United States v. Cromer*, 389 F.3d 662, 679 (6th Cir. 2004).

Crawford makes clear that only "testimonial statements" cause the declarant to be a "witness" subject to the constraints of the Confrontation Clause. Non-testimonial statements by an unavailable declarant, on the other hand, are not precluded from use the Confrontation Clause. While the Court

in *Crawford* did not clearly define the term “testimonial statements,” it did leave some clues as to the types of witness declarations which might fit the meaning of “testimonial statements:”

Various formulations of this core class of “testimonial” statements exist: *ex parte* in-court testimony or its functional equivalent—that is, material such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pretrial statements that declarants would reasonably expect to be used prosecutorially[;] extrajudicial statements...contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions[;] statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial. These formulations all share a common nucleus and then define the Clause’s coverage at various levels of abstraction around it. Regardless of the precise articulation, some statements qualify under any definition— for example, *ex parte* testimony at a preliminary hearing.

Statements taken by police officers in the course of interrogatories are also testimonial under even a narrow standard.

541 U.S. at 51-52, 124 S.Ct. 1354 (quotations and citations omitted).

There is no exhaustive list as to which statements are testimonial and which are not.

This Court recognized the foregoing principles set out in *Crawford* in its threshold decision on this issue in *State v. Mechling*, 219 W.Va. 366, 633 S.E.2d 311 (2006). In that case, this Court considered the admissibility of statements made by the victim of domestic violence to a neighbor and to police officers investigating the crime. Justice Starcher, writing for the Court after analysis of *Crawford* and its progeny stated the following:

We believe that the Court’s holdings in *Crawford* and in *Davis* regarding the meaning of “testimonial statements” may therefore be distilled down into the following three points. First, a testimonial statement is, generally, a statement that is made under circumstances which would lead an objective witness reasonably to believe that the statement could be available for use at a later trial. Second, a witness’s statement taken by a law enforcement officer in the course of an interrogation is testimonial when the circumstances objectively indicate that there is

no ongoing emergency, and that the primary purpose of the witness's statement is to establish or prove past events potentially relevant to later criminal prosecution. A witness's statement taken by a law enforcement officer in the course of an interrogation is non-testimonial when made under circumstances objectively indicating that the primary purpose of the statement is to enable police assistance to meet an ongoing emergency. And third, a court assessing whether a witness's out-of-court statement is "testimonial" should focus more upon the witness's statement, and less upon any interrogator's questions.

The Petitioner believes the journal of the victim and her statements to third parties regarding the actions of the Petitioner violate the principles set forth in *Crawford* and adopted by this Court in *Mechling*.

First, it is clear that these statements were not part of any police interrogation nor complaints made to the police to meet an ongoing emergency. The fact, however, does not, by itself, permit the admissibility of the statement. The real question in this case is whether the statements were made under circumstances which would lead an objective witness to reasonably believe that the statement would be available for use at a later trial.

During the time that the alleged conduct was happening, Mr. and Mrs. Kaufman were having difficulties in their marriage. The evidence was that Mr. Kaufman, at some point, had sought the advice of a lawyer about a divorce and that he was having an extramarital affair. The journal is suspect because there is no indication as to when it was written and an examination of same would show that it may have been written in contemplation of Mrs. Kaufman's suicide. While not tantamount to a suicide note, the journal talks about her previous suicide attempt and could have been left as a declaration to paint Mr. Kaufman in an unfavorable light to his children and others even though the allegations may have been false. In her anger and disdain for the Petitioner, Mrs. Kaufman

could have written this journal in contemplation of her suicide and her hope that Mr. Kaufman would be blamed for her death and prosecuted for murder as is the current case.

Whatever the motivation for the journal and her statements to her children, it is impossible for the Petitioner to address these statements without having the ability to question Mrs. Kaufman and the authenticity of same. There is simply no way to know whether these statements are reliable enough to be admissible under any rule of law.

The undersigned is unable to find any case law where a journal was admitted into evidence since this area of law is still developing. There have been courts that have found that a victim's statement to a private individual is testimonial. In *In Re: E. H.* (Ill. Ct. App. 2005, 823 N.E.2d 1029), the Illinois Appeals Court found that statements made by a child victim of sexual assault to her grandmother describing the sexual abuse perpetrated by the Defendant were testimonial because the statements concerned the fault and identity of the perpetrator. In *In Re: T. T.* (Ill. Ct. App. 2004, 815 N.E.2d 789), the Illinois Court of Appeals found that statements made by a victim of sexual assault to a treating physician that identified the defendant as the perpetrator, were held to be testimonial. *Fratta v. Quarterman*, 072208 FED5, 07-70040, wherein the United States Court of Appeals for the Fifth Circuit held that a statement given by a witness involved in a scheme for murder for hire given to his girlfriend was considered testimonial.

In *State ex rel. Humphries v. McBride*, 220 W.Va. 362, 647 S.E.2d 798 (2007), the Court had a chance to address the issue of admissibility of hearsay statements regarding a Defendant's conduct and the Confrontation Clause in a trial that predated *Mechling*:

C. Violation of Humphries' Sixth Amendment Rights

The third and final issue upon which Humphries seeks relief and to which the State concedes error is the violation of Humphries' Sixth Amendment right to confront the witnesses against him. There were several instances throughout the trial when - often in Detch's own examination of a witness - hearsay testimony was elicited as to what certain people who were not available at trial had said regarding various material issues. The most troubling instances of such conduct involved co-defendants Gene Gaylor, Robert Brown, and Kitty Abshire Humphries, none of whom testified at Humphries' trial. For instance, in cross-examining Trooper Spradlin, Detch elicited testimony as to Kitty's assertion that she and Humphries had never discussed nor formed a plan to acquire a Las Vegas divorce for Kitty.

Spradlin also testified as to what Robert Brown had told him, which tended to corroborate the testimony of the State's star witness, Clayton Gaylor. At another point, while questioning Clayton Gaylor about a box he saw in Gene Gaylor's possession, Detch asked "How did you know it was a bomb?" Clayton Gaylor replied, "Because he said so." Another exchange involved both the direct and cross-examinations of Gene Gaylor's ex-wife who testified that Gene Gaylor had met with Humphries in or around November of 1975. When asked how she knew that it was Humphries that her ex-husband met with, she explained that Gene Gaylor told her that it was Humphries. These are but a few examples of the testimony elicited throughout the trial which would tend to constitute hearsay and to deprive Humphries of his right to confront the witnesses against him.

We have recognized that:

The mission of the Confrontation Clause found in the Sixth Amendment to the United States Constitution and Section 14 of Article III of the West Virginia Constitution is to advance a practical concern for the accuracy of the truth-determining process in criminal trials, and the touchstone is whether there has been a satisfactory basis for evaluating the truth of the prior statement. An essential purpose of the Confrontation Clause is to ensure an opportunity for cross-examination. In exercising this right, an accused may cross-examine a witness to reveal possible biases, prejudices, or motives. Syl. P. 1, *State v. Mason*, 194 W.Va. 221, 460 S.E.2d 36 (1995).

In Syllabus Point 2 of *State v. James Edward S.*, 184 W.Va. 408, 400 S.E.2d 834 (1990), this Court held that "[t]he two central requirements for admission of extrajudicial testimony under the Confrontation Clause contained in the Sixth

Amendment to the United States Constitution are: (1) demonstrating the unavailability of the witness to testify; and (2) proving the reliability of the witness's out-of-court statement." In light of subsequent rulings from the United States Supreme Court, we later held: (fn11)

We modify our holding in *James Edward S.*, 184 W.Va. 408, 400 S.E.2d 843 (1990), to comply with the United States Supreme Court's subsequent pronouncements regarding the application of its decision in *Ohio v. Roberts*, 448 U.S. 56, 100 S.Ct. 2531, 65 L.Ed.2d 597 (1980), to hold that the unavailability prong of the Confrontation Clause inquiry required by syllabus point one [sic] of *James Edward S.* is only invoked when the challenged extrajudicial statements were made in a prior judicial proceeding. Syl. Pt. 2, *State v. Kennedy*, 205 W.Va. 224, 517 S.E.2d 457 (1999).

The statements at issue here were not made in prior judicial proceedings, but rather, during the course of the investigation of the death of Abshire, so it matters not whether the witnesses were unavailable. The question becomes, then, whether the evidence offered bears an "adequate indicia of reliability." In Syllabus Point 5 of *James Edward S.*, supra, we held, "Even though the unavailability requirement has been met, the Confrontation Clause contained in the Sixth Amendment to the United States Constitution mandates the exclusion of evidence that does not bear adequate indicia of reliability. Reliability can usually be inferred when the evidence falls within a firmly rooted hearsay exception." We later clarified that "[f]or purposes of the Confrontation Clause found in the Sixth Amendment to the United States Constitution and Section 14 of Article III of the West Virginia Constitution, no independent inquiry into reliability is required when the evidence falls within a firmly rooted hearsay exception." Syl. Pt. 6, *State v. Mason*, 194 W.Va. 221, 460 S.E.2d 36 (1995).

The court below found that the statements offered by Gene Gaylor, Brown, and Kitty through various witnesses at trial constituted statements "by co-conspirators during the course and in furtherance of the conspiracy," which, under Rule 801(d)(2)(E), are not hearsay. Therefore, the habeas court concluded that the trial court did not abuse its discretion in allowing the statements. However, as Humphries and the State point out, the most troublesome of the statements offered at trial were made *after* Abshire was dead and, accordingly, *after* the conspiracy had ended. The State asserts that the statements were made no in the furtherance of the conspiracy, but for self-serving purposes ranging from securing reward money to revenge to exculpating the co-conspirators themselves. We agree that there is no exception to the hearsay rule which would allow the statements at issue to come into evidence except through the testimony of those who made the statements.

Gene Gaylor, Brown, and Kitty did not testify at Humphries' trial, so Humphries had no opportunity to cross-examine them on the damning statements which were offered through other witnesses. Therefore, Humphries' Sixth Amendment right to confront the witnesses against him was violated, and the habeas court erred in not recognizing that right and in denying relief in habeas corpus. Moreover, "[f]ailure to observe a constitutional right constitutes reversible error unless it can be shown that the error was harmless beyond a reasonable doubt." Syl. Pt. 5, *State ex rel. Grob v. Blair*, 158 W.Va. 647, 214 S.E.2d 330 (1975).

In *Melendez-Diaz v. Massachusetts*, 557 U.S. ____, 129 S.Ct. 2527, 69 Mass App. 1114 (2009), the United States Supreme Court held that the admission into evidence of certificates of analysis from a state crime laboratory showing the results of a forensic analysis performed on drugs which were seized from the Defendant violated its holding in *Crawford* and reversed the defendant's conviction.

Finally, on this issue, there is the case of *Giles v. California*, 07-6053, 554 U.S. ____, 128 S.Ct. 2678 (2008), which the Appellant believes gives the Court significant direction in this matter.

The facts of the case are as follows:

On September 29, 2002, petitioner Dwayne Giles shot his ex-girlfriend, Brenda Avie, outside the garage of his grandmother's house. No witness saw the shooting, but Giles' niece heard what transpired from inside the house. She heard Giles and Avie speaking in conversational tones. Avie then yelled "Granny" several times and a series of gunshots sounded. Giles' niece and grandmother ran outside and saw Giles standing near Avie with a gun in his hand. Avie, who had not been carrying a weapon, had been shot six times. One wound was consistent with Avie's holding her hand up at the time she was shot, another was consistent with her having turned to her side, and a third was consistent with her having been shot while lying on the ground. Giles fled the scene after the shooting. He was apprehended by police about two weeks later and charged with murder.

At trial, Giles testified that he had acted in self-defense. Giles described Avie as jealous, and said he knew that she had once shot a man, that he had seen her threaten people with a knife, and that she had vandalized his home and car on prior occasions. He said that on the day of the shooting, Avie came to his grandmother's

house and threatened to kill him and his new girlfriend, who had been at the house earlier. He said that Avie had also threatened to kill his new girlfriend when Giles and Avie spoke on the phone earlier that day. Giles testified that after Avie threatened him at the house, he went into the garage and retrieved a gun, took the safety off, and started walking toward the back door of the house. He said that Avie charged at him, and that he was afraid she had something in her hand. According to Giles, he closed his eyes and fired several shots, but did not intend to kill Avie.

Prosecutors sought to introduce statements that Avie had made to a police officer responding to a domestic-violence report about three weeks before the shooting. Avie, who was crying when she spoke, told the officer that Giles had accused her of having an affair, and that after the two began to argue, Giles grabbed her by the shirt, lifted her off the floor, and began to choke her. According to Avie, when she broke free and fell to the floor, Giles punched her in the face and head, and after she broke free again, he opened a folding knife, held it about three feet away from her, and threatened to kill her if he found her cheating on him. Over Giles' objection, the trial court admitted these statements into evidence under a provision of California law that permits admission of out-of-court statements describing the infliction or threat of physical injury on a declarant when the declarant is unavailable to testify at trial and the prior statements are deemed trustworthy. Cal. Evid. Code Ann. §1370 (West Supp. 2008)

A jury convicted Giles of first-degree murder. He appealed. While his appeal was pending, the Supreme Court decided in *Crawford*, that the Confrontation Clause requires that a defendant have the opportunity to confront the witnesses who give testimony against him, except in cases where an exception to the confrontation right was recognized at the time of the founding. The California Court of Appeal held that the admission of Avie's unconfuted statements at Giles' trial did not violate the Confrontation Clause as construed by *Crawford* because *Crawford* recognized a doctrine of forfeiture by wrongdoing.

The Supreme Court held that the forfeiture rule could not countermand the Confrontation Clause of the Constitution and found the admission of the statements under the competing theory were improper.

Based on the foregoing, the admission of the journal and statements from Mrs. Kaufman were improper.

If the Court believes the foregoing analysis to be unpersuasive, the Appellant believes the evidence in question was not admissible under any exception to the hearsay rules contained in the West Virginia Rules of Evidence.

Rule 802 of the West Virginia Rules of Evidence states that hearsay is not admissible unless otherwise provided by said rules. Rule 803 of said rules provides that certain hearsay statements are not excluded regardless of whether the declarant is available to testify. One of those exceptions to the hearsay rule is regarding statements of existing mental, emotional or physical condition of a declarant. It is this rule under which the State of West Virginia believes that the foregoing statements of Martha Kaufman are admissible. Said rule specifically states the following:

A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but **not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.** [Emphasis added].

Former Supreme Court Justice Cleckley, in his treatise on West Virginia evidence, discusses the types of statements that are admissible under this exception to the hearsay rule. Professor Cleckley writes:

This exception to the hearsay rule permits the introduction into evidence of statements of the declarant's then existing state of mind, sensation, or physical condition. Included under the rule are statements of intent, plan, motive, design, mental feeling, pain and bodily health. Except for situations involving a declarant's will or other testamentary documents, this rule does not include a statement of memory or belief to prove the fact remembered or believed. Cleckley, Handbook on West Virginia Evidence, Section 8-3 (B)(3)(a), pp. 8-118.

Professor Cleckley goes on to cite an example of what would not be admissible under this exception to the hearsay rule. He states that:

A statement of a person, other than a *party*, cannot be used by the opposition or the Court when the statement would amount to an accusation that a party committed the act charged or that the act charged had been committed. Example: A is charged with murdering B by poisoning him. The prosecution may not show the absence of a suicidal frame on the part of B by introducing the statement by B, "I am afraid A is putting poison in my food or I am afraid someone is putting poison in my food".

The prosecution in the case at bar sought to admit into evidence the exact type of statements which Professor Cleckley maintains are prohibited by the rule. They are attempting to prove that the Petitioner committed physical violence upon Martha Kaufman by putting into evidence her statements that he committed such violence as contained in her journal and as related to her children. This is not what is contemplated by the exception to the hearsay rule and, of course, should be excluded from evidence.

The Court suggested that these statements might be admissible under the catch-all exception under Rule 803 which States as follows:

A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule if the Court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable effort; and (C) the general purpose of these rules and the interests of justice will be best served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes it known to the adverse party sufficiently in advance of the trial or hearing, to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

The Appellant believes the rule to be inapplicable.

The Court also relied upon this Court's ruling in *State v. Sutphin*, 195 W.Va. 551, 466 S.E.2d 402 (1995). In that case, the issues were the admissibility of certain statements made by a murder

victim prior to her death.

As to whether the statements of Martha Kaufman related to her children covering prior events of abuse by the Appellant qualified as excited utterances, the Circuit Court was required to go through the following analysis required by *Sutphin*, supra.

In order to qualify as an excited utterance under W.Va.R.Evid. 803(2): (1) the declarant must have experienced a startling event or condition; (2) the declarant must have reacted while under the stress or excitement of that event and not from reflection and fabrication; and (3) the statement must relate to the startling event or condition.

Within a W.Va.R.Evid. 803(2) analysis, to assist in answering whether a statement was made while under the stress or excitement of the event and not from reflection and fabrication, several factors must be considered, including (1) the lapse of time between the event and the declaration; (2) the age of the declarant; (3) the physical and mental state of the declarant; (4) the characteristics of the event; and (5) the subject matter of the statements.

Certainly the acts described by Mrs. Kaufman (which the Appellant maintains are false) would qualify as a startling event or condition. However, she did not react while under stress or excitement of that event. In fact, there was time for reflection and perhaps fabrication with regard to the claim that the Appellant held a gun to her head. It was not revealed until well after it occurred. When she told Mr. Schreckengost about it, she was calm, almost matter of fact. She told him not to discuss it with anyone else and he didn't feel any urgency to contact the police or seek protection for her.

As far as the claim about being strangled by the Appellant, it was not revealed until a considerable period of time had passed. The electrical cord admitted into evidence by the State and believed to have been used to strangle Mrs. Kaufman had only her DNA and an unknown person's DNA on it. During all these events, Mrs. Kaufman was in a fragile state of mind. She was distraught about her husband's affair and the loss of his job. She was suffering from depression and was not

taking her medication. She had attempted suicide. There was no history of any abuse or threats by the Appellant. During the time the Appellant was confronted by his wife and daughter, he sat meekly in his chair and never raised his voice in response.

4. THE CIRCUIT COURT OF WOOD COUNTY ERRED BY DENYING THE DEFENDANT'S MOTION FOR A NEW TRIAL ON THE GROUNDS THAT THE VERDICT OF GUILTY BY THE JURY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

The function of an appellate court when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, is sufficient to convince a reasonable person of the defendant's guilt beyond a reasonable doubt. Thus, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt.

A criminal Defendant challenging the sufficiency of the evidence to support a conviction takes on a heavy burden. An appellate court must review all the evidence, whether direct or circumstantial, in the light most favorable to the prosecution and must credit all inferences and credibility assessments that the jury might have drawn in favor of the prosecution. The evidence need not be inconsistent with every conclusion save that of guilt so long as the jury can find guilt beyond a reasonable doubt. Credibility determinations are for a jury and not an appellate court. Finally, a jury verdict should be set aside only when the record contains no evidence, regardless of how it is weighed, from which the jury could find guilt beyond a reasonable doubt. To the extent that our prior cases are inconsistent, they are expressly overruled. *State v. Guthrie*, 194 W.Va. 657, 461 S.E.2d 163 (1995).

Based upon the foregoing statement of facts, the evidence against Mr. Kaufman did not meet the above-cited standard and his conviction should be overturned.

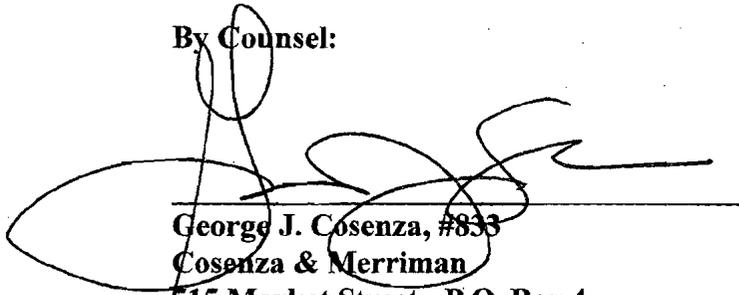
CONCLUSION

Based on the foregoing, the Appellant respectfully requests that his conviction of murder in the first degree, without the possibility of parole, be reversed.

Dated this 21 day of December, 2010.

DAVID WAYNE KAUFMAN,

By Counsel:



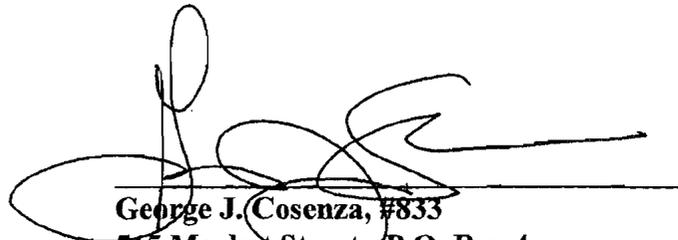
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CERTIFICATE OF SERVICE

The undersigned counsel for Appellant, **DAVID WAYNE KAUFMAN**, hereby certifies that he served the foregoing **BRIEF OF APPELLANT DAVID WAYNE KAUFMAN** upon the Appellee, **STATE OF WEST VIRGINIA**, by depositing a true copy thereof in the United States Mail, postage prepaid, addressed to the following, on this 22 day of December, 2010:

Jason Wharton
Wood County Prosecuting Attorney
317 Market Street
Parkersburg, WV 26101

Thomas W. Smith, Esquire
State Capitol, Room E-26
Charleston, WV 25305

A handwritten signature in black ink, appearing to read "George J. Cosenza", is written over a horizontal line. The signature is stylized and somewhat cursive.

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