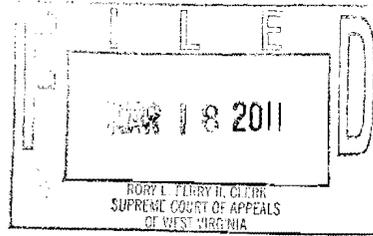

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 101179



STATE OF WEST VIRGINIA,

*Plaintiff Below,
Respondent,*

v.

RHONDA KAY STEWART,

*Defendant Below,
Petitioner.*

**RESPONSE OF THE STATE OF WEST VIRGINIA TO
THE BRIEF OF *AMICI CURIAE*—THE WEST VIRGINIA COALITION
AGAINST DOMESTIC VIOLENCE AND THE NATIONAL CLEARINGHOUSE
FOR THE DEFENSE OF BATTERED WOMEN—IN SUPPORT OF
RHONDA K. STEWART’S PETITION FOR REVERSAL OF
THE TRIAL COURT’S RULING**

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I.

ARGUMENT

The Respondent, the State of West Virginia, takes no exception to the general legal principle that is set forth in the Brief of *Amici Curiae* filed by the West Virginia Coalition Against Domestic Violence and the National Clearinghouse for the Defense of Battered Women, to-wit: that “jurors are entitled to hear about the impacts and effects of battering on defendants who are victims of domestic violence, including . . . cases that do not involve a self-defense claim.” (Br. of *Amici Curiae*, iv, Feb. 7, 2011.) That general legal principle is part of the

settled law of West Virginia, as recently enunciated in *State v. Harden*, 223 W. Va. 796, 679 S.E.2d 628 (2009).

However, it appears that the *Amici* (who possibly were under time pressure in drafting their belated brief and therefore were unable to carefully review the transcript of the Petitioner's trial) have applied this legal principle erroneously to the facts of the trial that occurred in the instant case.

Specifically, the *Amici* have substantially erred in asserting as a matter of fact that as a result of the trial judge's evidentiary rulings in the instant case, "the jurors in [the Petitioner's] case did not have the opportunity to hear [the Petitioner's] full story, which included her victimization by the decedent." (Br. of *Amici Curiae*, iv, Feb. 7, 2011.) Quite to the contrary of this assertion, the transcript of the Petitioner's trial shows unequivocally that the trial judge gave the Petitioner *carte blanche* to "tell her story" to the jury, and to fully describe her alleged victimization. (Trial Tr., 520, Dec. 16, 2009.) However, the Petitioner, who took the stand and testified in her own defense, chose not to do so.

A careful review of the trial transcript would also have brought to the attention of the *Amici* three other important facts about the Petitioner's trial that are omitted from the *Amici's* brief: (1) that the Petitioner never asked the trial judge to reconsider his preliminary pre-trial rulings *in limine*, despite the judge's invitation to do so; (2) that the Petitioner never tendered a copy of her expert's written opinion to the court or placed it in the record; and (3) that the Petitioner never proffered any factual testimony of her family members for the court's consideration. (*See generally*, Resp. Br. of the State of West Virginia, 7-9, 16-30, Feb. 7, 2011.)

In summary, it was the trial strategy and decisions of the Petitioner and her trial

counsel—and decidedly not the rulings of the trial judge—that were the sole cause of any alleged deficiency in what evidence the jury and the court heard in the instant case.

The *Amici* are accurate in pointing out that the trial judge in the instant case initially questioned the possible relevance of the Petitioner’s purported evidence of alleged “past incidents of domestic violence.” The trial judge stated during a colloquy with counsel, for example, that such evidence would likely be inadmissible if it was too remote in time. (Trial Tr. 71.) However, following that colloquy, the judge nevertheless allowed the Petitioner to testify about *all aspects* of any alleged past abuse, and how it allegedly affected the Petitioner—including how such alleged conduct supported the Petitioner’s defense of “homicide-as-an-accidental-result-of-an-attempted-suicide.” (Trial Tr. 520.) The Petitioner was completely free to tell the jury how her alleged past “victimization” had contributed to her alleged “attempted suicide,”—and this was testimony that would have had nothing to do with a claim of self-defense. The trial judge did not limit the Petitioner to testifying about alleged past abuse evidence only to prove self-defense. The Petitioner limited herself—by failing to provide any such evidence whatsoever.

Furthermore, it is certainly unnecessary (and would also be unwise) for this Court in the instant case to take up or adopt some of the more exotic suggestions in the Brief of the *Amici*. For example, the *Amici* suggest as a general principle that the expert opinion on battering is relevant as a “category of *social framework evidence* that *encapsulates . . . the social and psychological context* in which domestic violence occurs.” (Br. of *Amici Curiae*, 5, Feb. 7, 2011.) (Emphasis added.) The apparent premise of this somewhat opaque suggestion is that in homicide cases, expert opinion based upon an accused’s past life experiences—such as the

accused's past poverty, past deprivation, incidents of past abuse or neglect, etc.—is relevant to help juries understand the “social framework” in which the homicide occurs, when the jurors are determining the accused's “state of mind.” *Id.* (The *Amici* also argue that “a single threat may dictate a target's behavior for years” (Br. of *Amici*, 12, Feb. 7, 2011.) This approach could open the door to a whole new defense—“ancient threats!”).

The Respondent State of West Virginia suggests that the instant case is not one in which this Court should take up or adopt this novel suggestion of recognizing “social framework” evidence—especially because it was the Petitioner who chose not to present evidence of how alleged past abuse, remote in time, “encapsulated” her “psychological context” and contributed to the “social framework” that led to the Petitioner's killing her estranged husband.

As to the expert evidence (of unknown content) that the trial judge preliminarily ruled to be inadmissible in the instant case, it must be remembered that the Petitioner's expert specifically stated that he could not vouch for the accuracy or credibility of any of the Petitioner's statements to him about alleged past instances of abuse. (Trial Tr. 615, 627). Therefore, absent any testimony from the Petitioner that the jury could evaluate for its credibility, the jury had no foundation for even considering the expert's opinion on whether alleged past abuse had contributed to the Petitioner's being suicidal. Nevertheless, the trial judge did allow the Petitioner's expert to testify (with notable uncertainty) that the Petitioner was depressed and having suicidal feelings when she shot her husband. The jury quite properly did not hear, from the expert, hearsay statements about alleged past abuse that the Petitioner reportedly told the expert (that the expert said he could not say was credible)—and that the

Petitioner chose not to tell the jury herself. (*See generally*, Resp. Br. of the State of West Virginia, 11, 25, Feb. 7, 2011.)

II.

CONCLUSION

In summary, the *Amici* are correct in stating that in a West Virginia homicide case, evidence about alleged past instances of domestic violence against an accused may be relevant for a number of purposes; and, under some circumstances, it may be erroneous for a trial judge to exclude such evidence, if it is otherwise admissible.

However, in the instant case, the trial judge gave the Petitioner, who took the stand to testify in her own defense, *carte blanche* to present such evidence in her testimony. The Petitioner declined the opportunity to do so. Moreover, the Petitioner was seen by an entirely reliable eyewitness to deliberately blow her estranged husband's brains out while he lay helpless in an ICU bed—without a hint of accident. (Trial Tr. 411, 426-427, 642).

The Petitioner had a fair trial. The jury convicted her based upon lawful evidence and their verdict should not be reversed.

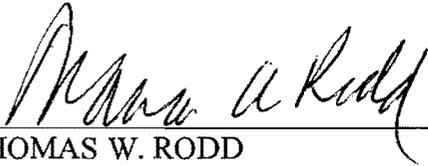
Respectfully submitted,

STATE OF WEST VIRGINIA,
Respondent,

By counsel,

A handwritten signature in black ink, appearing to read "J. M. Todd". The signature is written in a cursive, flowing style.

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

I, THOMAS W. RODD, Assistant Attorney General and counsel for the Respondent, do hereby verify that I have served true copies of the Response of the State of West Virginia to the Brief of *Amici Curiae*—the West Virginia Coalition Against Domestic Violence and the National Clearinghouse for the Defense of Battered Women—in Support of Rhonda K. Stewart’s Petition for Reversal of the Trial Court’s Ruling upon counsel for the Petitioner, and upon the *Amici Curiae*, by depositing said copies in the United States mail, with first-class postage prepaid, on this 18th day of March, 2011, addressed as follows:

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