

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

STATE OF WEST VIRGINIA,

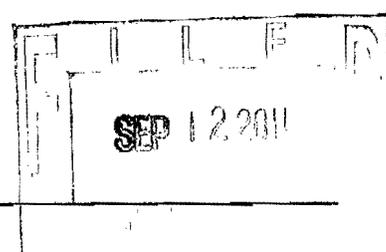
Plaintiff/Respondent,

vs:

Logan County Felony No. 09-F-76-P
Supreme Court Case No. 11-0622

JEFFREY R. FINLEY,

Defendant/Petitioner.



PETITIONER'S BRIEF

FROM THE CIRCUIT COURT OF
LOGAN COUNTY, WEST VIRGINIA

TO THE HONORABLE JUSTICES
OF THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA

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CONSTITUTIONAL PROVISIONS:

1. Amendment V to the United States Constitution - (Page 7)
2. Amendment VI to the United States Constitution - (Page 7)
3. Article III, Section 5 of the West Virginia Constitution - (Page 7)
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ASSIGNMENT OF ERROR

THE CIRCUIT COURT COMMITTED REVERSIBLE ERROR WHEN THE COURT PERMITTED THE STATE OF WEST VIRGINIA TO ADMIT INTO EVIDENCE A THIRD STATEMENT GIVEN BY THE PETITIONER AFTER THE PETITIONER HAD REQUESTED AN ATTORNEY AT THE CONCLUSION OF THE PETITIONER'S SECOND STATEMENT GIVEN ON THE SAME DAY.

STATEMENT OF THE CASE

I

This case involves a felony conviction of murder rendered against your Defendant/Petitioner, Jeffrey R. Finley, in the Circuit Court of Logan County, West Virginia, the Honorable Judge Roger L. Perry presiding. The Defendant/Petitioner, Jeffrey R. Finley, will at all times hereinafter in this Petitioner's Brief be referred to as the Petitioner. Petitioner was tried by jury and was sentenced to life without mercy.

II

On the early morning hours of Monday, August 11, 2008, the Petitioner's wife, Lynn Finley, was killed by a gunshot wound to her head which shooting did occur in the Town of West Logan, Logan County, West Virginia. At the time of the death of Lynn Finley, she was residing with her husband, your Petitioner, Jeffrey R. Finley, and was also residing with her step-daughter, Shanda Rae Finley, and her son, Isiah Finley. It should be noted that the child Isiah was the product of the marriage between the Petitioner and the victim.

III

That the Petitioner was questioned by the West Virginia State Police on the afternoon of Monday, August 11, 2008, wherein the Petitioner gave three different

statements concerning the death of Lynn Finley. The Petitioner does not contest the voluntariness of the first two statements but does question the voluntariness of the third statement. Based upon statements given by the Petitioner, the Petitioner was charged with First Degree Murder and was held without bail.

IV

By an Indictment returned on May 11, 2009, and filed with the Circuit Clerk on May 12, 2009, your Petitioner was charged with the First Degree Murder of his deceased wife, namely, Lynn Finley. On or about August 5, 2009, a Suppression Hearing was held before Judge Roger L. Perry. Testifying at this Suppression Hearing were Corporal Roger Johnson, Corporal Randy Frye and Sergeant Brian Brown. It is undisputed that the testimony of these three officers indicate that the Petitioner gave three statements on the afternoon of August 11, 2008, to the West Virginia State Police. The Petitioner did not testify at this Suppression Hearing. The Circuit Court ruled all three statements were voluntary and could be used by the State at Trial.

V

A Jury Trial was commenced in this matter on April 12, 2010, which concluded on April 16, 2010. At the conclusion of the Trial, the Jury found the Petitioner guilty of Murder in the First Degree (without mercy) and found that the Petitioner had used a firearm during the commission of his crime.

By Order entered on April 27, 2010, the Petitioner was Ordered incarcerated in the West Virginia State Penitentiary for the remainder of his natural life without any

possibility of parole. On or about May 26, 2010, a Notice of Intent to Appeal was filed by the Petitioner under the old rules of Appellate Procedure.

VI

Subsequent thereto, the Petitioner filed a Motion in writing for an extension of time within which to file his Petition for Appeal with the West Virginia Supreme Court of Appeals. By an Order entered by the West Virginia Supreme Court of Appeals on December 27, 2010, this case was remanded to the Circuit Court of Logan County to re-sentence the Petitioner for the purpose of filing an Appeal. By a Re-Sentencing Order entered on March 10, 2011, from a hearing held on March 3, 2011, your Petitioner was re-sentenced to life imprisonment without mercy. On or about April 11, 2011, the Petitioner filed a Notice of Appeal with the West Virginia Supreme Court of Appeals. On or about April 12, 2011, the West Virginia Supreme Court of Appeals issued a Scheduling Order in this matter. On or about July 7, 2011, your Petitioner filed with the Circuit Court of Logan County, West Virginia, a Motion to Extend the Time for the Perfection of an Appeal an Additional Sixty (60) Days, to-wit, September 12, 2011. By an Order entered on July 11, 2011, the time for the perfection of an Appeal was extended through September 12, 2011.

SUMMARY OF ARGUMENT

The Petitioner submits that the third statement given to the West Virginia State Police on the afternoon of August 11, 2008, was not voluntary as this third statement was taken after the Petitioner exercised his right to Counsel. More specifically, on August

11, 2008, during a four-hour interrogation at the West Virginia State Police Barracks, the Petitioner gave a statement and then a second statement to the interrogating officers. During the taking of the second statement, the Petitioner requested that he have an attorney present. The interrogators discontinued the taking of the second statement but four minutes later resumed the taking of a statement from the Petitioner even after the Petitioner had requested an attorney.

Petitioner alleges that not only did he request an attorney, but during the four minute gap between the second and third statement, the Petitioner and his kid were threatened. The interrogating officers indicate that the Petitioner requested the taking of the third statement and the State contends that all three statements were voluntary.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Based upon Rule 18 of the Revised Rules of Appellate Procedure, Final Version, Petitioner submits that oral argument is unnecessary in this case as the facts and legal arguments are adequately presented in the briefs and record on Appeal and the decisional process would not be significantly aided by oral argument.

ARGUMENT

The Petitioner recognizes that a Trial Court's decision regarding the voluntariness of a confession will not be disturbed unless it is plainly wrong or clearly against the weight of the evidence. Syl. Pt. 3, State v. Vance, 162 W.Va. 467, 250 S.E.2d 146 (1978). However, the Petitioner is also mindful of the fact that the West Virginia Supreme Court of Appeals is constitutionally obligated to give plenary,

independent, and de novo review to the ultimate question of whether a particular confession is voluntary and whether the lower court applied the correct legal standard in making its determination. The holdings of prior West Virginia cases suggesting deference in this area continue, but that deference is limited to factual findings as opposed to legal conclusions.” Syl. Pt. 2, State v. Farley, 192 W.Va. 247, 452 S.E.2d 50 (1994). Consequently, the Petitioner argues that using this de novo review, it should be obvious to this Court that the Petitioner’s third statement, which is otherwise characterized herein as Petitioner’s Third Statement or confession, was not voluntary.

Petitioner’s argument that the third statement given by him is not voluntary is premised on the fact that on the afternoon of Monday, August 11, 2008, the Petitioner voluntarily appeared at the West Virginia State Police Detachment Headquarters located in Logan, West Virginia. At various times that afternoon, the Petitioner was interrogated by Corporal Roger Johnson, Corporal Randy L. Frye, Sergeant J.B. Frye and Sergeant Brian Brown. It is undisputed that the entire interrogation of the Petitioner lasted for approximately four (4) hours as the interrogation started at 12:40 p.m. and ended at approximately 5:03 p.m. See April 13, 2010, Tr. Pgs. 34-35.

During this four (4) hour interrogation, your Petitioner essentially gave three (3) statements. In the first statement, the Petitioner generally denied in culpability in this crime. In the second statement, the Petitioner implicates himself somewhat by placing himself at the scene of the crime. In the third statement, the Petitioner essentially confesses that he killed the victim.

A Suppression Hearing was previously held in this matter on August 5, 2009, where it is undisputed that essentially there were three (3) sessions on the afternoon of August 11, 2008. The first session lasted for approximately one hundred and eight (108) minutes. The second session lasted for two (2) minutes. It is the second session in which the Petitioner requested an attorney. More specifically, in said statement, the Petitioner states:

Finley: "Would it be smart for me to have a lawyer present?"

R. Frye: That's up to you. I mean you can do that, that is your option. You can do whatever you want to do.

Finley: Because I mean, if I'm going to be truthful then I want a lawyer present and I'll state the whole truth.

R. Frye: You can do what ever you want to do on, on that aspect, uh, you're more than welcome to have a lawyer present, um, but uh, there's some things that, on your prior statement that uh, that you made that may not, may not have been truthful. But it is your right to have a lawyer and if you wish to have a lawyer we'll, we'll terminate the interview at this time.

Finley: I want, I want a lawyer present.

R. Frye: Okay.

Finley: That way I can be told truthful an

R. Frye: Alright. Concluding this interview, same date, the time now is 4:50 p.m."

The third session of the statement begins at 4:54 p.m. where essentially the Petitioner confesses to the crime and makes very incriminating statements.

The Petitioner exercised his right in the second session to have a lawyer present during questioning. In the case of State v. Farley, supra, “Once a person under interrogation has exercised the right to remain silent guaranteed by *W.Va. Const*, art. III, Section 5, and *U.S. Const.* amend. V, the police must scrupulously honor that privilege. The failure to do so renders subsequent statements inadmissible at trial.” Syllabus Point 1, State v. Woodson, 181 W.Va. 325, 382 S.E.2d 519 (1989). Furthermore, the case of Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981), appears to be the authority on why Finley’s third statement should be suppressed. In Edwards, the United States Supreme Court held that in a custodial interrogation, if an accused indicates that he wishes to remain silent, the interrogation must cease, and if he requests counsel, the interrogation must cease until an attorney is present.

Remember, the second session ended at 4:50 p.m. The third session started four (4) minutes later at 4:54 p.m. Common sense should tell the Court that either the Petitioner was threatened or promised something during this four (4) minute interval. Be it remembered that this four (4) minute interval is “off the record”. When the session reconvened at 4:54 p.m., the Petitioner essentially incriminated himself and the audio version of these sessions demonstrates how the whole demeanor of the Petitioner had changed. It was simply a violation of the Petitioner’s Sixth Amendment Right when the Petitioner requested an attorney and the interrogators stopped for four minutes and then started re-questioning the Petitioner. The third

session should never have occurred if the interrogators had respected the Sixth Amendment to the United States Constitution which said Amendment provides the accused with assistance of Counsel. This same protection for the right of Counsel is contained in Article III, Section 14 of the West Virginia Constitution.

If the State argues that the cases cited by the Petitioner do not apply and argues that this was not a custodial interrogation, the Petitioner requests this Court under the de novo standard to consider the totality of the circumstances and find that the facts and circumstances indicate in this last session that this was a custodial interrogation and should not have occurred.

The State of West Virginia claims that the Petitioner attempted to recant his request for Counsel as contained at the conclusion of the Petitioner's second statement. The State argues that after the Petitioner requested an attorney, he changed his mind and wished to make a statement. The State essentially argues that the Petitioner recanted his request for an attorney.

Petitioner reminds this Court that for a recantation of a request for Counsel to be effective: (1) the accused must initiate a conversation; and (2) must knowingly and intelligently, under the totality of the circumstances, waive his right to counsel. Syl. Pt. 1, State v. Crouch, 178 W.Va. 221, 358 S.E.2d 782 (1987). See also State v. Kilmer, 439 S.E.2d 881 (W.Va. 1993). Furthermore, Petitioner reminds this Court that once an accused asks for Counsel during custodial interrogation, he is not subject to further interrogation by the authorities until Counsel has been made available to him, unless the

accused himself initiates further communication, exchanges, or conversations. Syl. Pt. 2, State v. Bowyer, 181 W.Va. 26, 380 S.E. 2d 193 (1989).

It must be remembered that the Petitioner did not testify during the Suppression Hearing but did testify at trial. The following testimony occurred during the Petitioner's trial as follows:

- Q. Do you remember the third statement?
A. Yes.
Q. On the first statement that you heard, do you remember giving that statement?
A. The first one?
Q. Yes.
A. Yes.
Q. Were you telling the truth during that first statement?
A. Not all.
Q. Can you remember what you were telling the truth about?
A. At first, I was basically saying I had no knowledge on what happened; and then I just - I couldn't take it no more. I couldn't hold it back. I had looked at them and said, "She did it." And they asked me who, and I said, "Shanda Rae, she's the one that done this," but I had left out a lot of different details, you know, of Austin being there, stuff like that.
Q. On the second statement, do you remember asking for an attorney?
A. Yes.
Q. Did you ask for an attorney?
A. Yes.
Q. Did they shut the interview down; did the State Police stop it at that time?
A. Yes, they shut it down. What had happened was after I gave the first statement, they told me I had to sign this paper. So, I signed the paper. Well, when I signed the paper, they said, "You're free to go, Mr. Finley." I said, okay. So, when I walked out the door, I went to the front part there where that side door is to the State Police and my phone went off, my phone was ringing. So, when my phone was ringing, it was a friend of mine, and basically, she said something or other like - I'm trying to remember exactly - it was something like, "Is this true?" I said, "Listen, I can't talk right now."

I looked to my left of me, and in the seat was Austin's mother, and she said something to me like, "Do you know what we're here for?" I said, "I can't talk to you." Well, when I said that, Corporal Frye put his hand on my shoulder and said, "Jeff, come on back in here. I want to talk to you again." I said, "All right."

So, I walked back in there. As I started through the door, J.B. Frye, or Sergeant Frye, was normally at the door. He wasn't there. So, when I started back through the door and was heading toward that seat, I was shoved into the seat. I looked back like "What's going on?" He said, "You're lying to me and you know you are." Said, "I just went and talked to her and she said you did it and that she didn't have no part in this." I said, "I told you she did it." He said, "Either you start telling me the truth or I'm going to hurt you." I said, "Well, okay," like that. I didn't know what else to do. So, I said, okay.

So, when I said that, Sergeant Brown said they started the tape recorder and stuff. I said, okay. I got to thinking, "I want a lawyer." Now, I even asked them, "Don't you think I need a lawyer?" They said, "Well, yes." You could see they got upset about it and they cut the tape recorder off. Then Corporal Frye then come at me again and kind of pushed me up against the thing. He said, "Listen, I'm telling you, either you start telling me the truth, or I'm going to hurt you and your kid." I said, "Okay." I just made up a story and told them. See April 15, 2010, Tr. Pgs. 159-162.

The State of West Virginia's argument that police officers should be allowed to continue an interrogation once a Defendant has requested an attorney has a fatal flaw. More specifically, it would allow any police interrogation to continue long after a Defendant has requested an attorney as the police officers could simply testify that the Defendant wanted to essentially restart the interrogation. Consequently, if this Court believes that present case law allows the interrogation to resume, then the prior cases should be reviewed to prevent such an occurrence. Furthermore, this Counsel submits that the gaps between the interrogation should also be recorded. In other words, keep the

tape running the entire time so that the Court can determine whether a Defendant unequivocally requested a resumption of the interrogation.

CONCLUSION

WHEREFORE, your Petitioner, Jeffrey R. Finley, prays that this Honorable Court find that the Petitioner did not receive a fair trial as the trial Court erroneously admitted the Petitioner's third statement; that upon making this finding, the Supreme Court set aside the conviction resulting from the trial in this matter; that the Petitioner be granted a new trial for the charges herein; and that the Court grant such other, further and general relief as this Court deems proper as in duty bound he will ever pray, etc.

Jeffrey R. Finley

By Counsel



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CERTIFICATE OF SERVICE

I, Mark Hobbs, Counsel for Petitioner, do hereby certify that a true and accurate copy of the foregoing **PETITIONER'S BRIEF** was sent by United States Mail, postage prepaid, to Benjamin R. Yancey, III, Assistant Attorney General, State Capitol, Building 1, Room W-435, Charleston, West Virginia 253025, on this the 12th day of September, 2011.

A handwritten signature in black ink, appearing to read "Mark Hobbs", written over a horizontal line.

Mark Hobbs