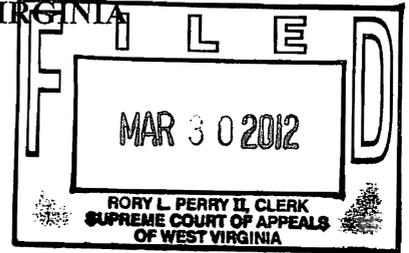


IN THE SUPREME COURT OF APPEALS, WEST VIRGINIA

DOCKET NO.: 11-1777



STATE OF WEST VIRGINIA,
Plaintiff Below-Appellee,

Appeal From the final order
of the Circuit Court of Kanawha
County (Case No.: 91-F-209)

v.

JOHN ALAN BOYCE,
Defendant Below-Appellant.

PETITIONER'S BRIEF

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Plaintiff below-Appellee,

and

Civil Action No.: 91-F-209

JOHN ALAN BOYCE,
Defendant below-Appellant.

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

PETITIONER'S BRIEF

The Appellant, John Alan Boyce, by and through his counsel, Shawn D. Bayliss, presents this brief pursuant to Rules 10 and 38 of the Revised Rules of Appellate Procedure of the West Virginia Supreme Court of Appeals. Mr. Boyce, the Appellant herein, seeks a reversal/vacation of his guilty plea with remand to the Circuit Court of Kanawha County, West Virginia for new trial, upon the indictment for First Degree Murder. Appellant Boyce contends that his rights were violated to the extent that his plea should be vacated due to his decision to enter said plea being based upon the errant advice of counsel regarding the admissibility of his co-defendant's statement following his unlawful arrest. Said co-defendant's statement was determined to be unlawfully taken by this Court, which overturned his conviction and granted him a new trial. The State of West Virginia should have disclosed the tenuous nature of the co-defendant's matter as part of its discovery obligations. Accordingly, all the action undertaken by the State of West Virginia, based upon the co-defendant's unlawful arrest and inadmissible statement should be excluded as fruit of the proverbial poisonous tree.

ASSIGNMENTS OF ERROR

- I. **The Court erred when it failed to adequately engage in a sufficient interrogation of the Petitioner to determine if he was knowingly and intelligently entering into the plea agreement.**
- II. **The State of West Virginia violated the Petitioner's Constitutional rights when it failed to provide him with exculpatory evidence regarding the illegality of his co-defendants arrest and the taking of his statement.**

CASE HISTORY

John Alan Boyce submits his appeal from the Circuit Court of Kanawha County, West Virginia, seeking the Court's review and vacation of the Petitioner's plea of guilty to the charge of murder in the first degree on November 6, 1992, with a remand for new trial. On February 10, 2011, the Circuit re-sentenced the Petitioner to confinement in the State Penitentiary for the rest of his natural life, without a recommendation of mercy such that he would not ever be eligible for parole.

Appellant, John Alan Boyce, was indicted along with his co-defendant, Doug E. Jones, on July 30, 1991, for the murder of Frank Stafford. On November 6, 1992, Appellant Boyce entered a plea of guilty to murder in the first degree, a violation of *West Virginia Code* § 61-2-1. On February 18, 1993, Mr. Boyce was originally sentenced to confinement in the State Penitentiary for the rest of his natural life, without a recommendation of mercy such that he would not ever be eligible for parole. Said sentence is in accordance with *West Virginia Code* § 61-2-2, as amended.

The Appellant's co-defendant, Doug E. Jones, elected to proceed to jury trial and was found guilty of murder in the first degree. On August 18, 1993, Mr. Jones was sentenced to spend the rest of his natural life in the State Penitentiary with a recommendation of mercy. However, said conviction was reversed and remanded by this Court in its opinion styled *State v.*

Jones, 193 W.Va. 378, 456 S.E.2d 459 (W.Va., 1995), wherein this Court held that not only was Mr. Jones' arrest unlawful due to a lack of probable cause, that his confession obtained during the ensuing interrogation was inadmissible. Thereafter, Mr. Jones entered a plea of guilty to murder in the second degree, and was sentenced to incarceration in the State Penitentiary for a period of not less than five (5) nor more than eighteen (18) years, the imposition of which was suspended and Mr. Jones was granted five (5) years of supervised probation. Subsequently, the Petitioner's Motion to Reconsider said sentence was denied without hearing by Order entered October 9, 1993.

On August 27, 2010, the Appellant presented his petition for habeas corpus as subjiciendum before the West Virginia Supreme Court Appeals. By Order dated October 27, 2010, this Court Ordered a rule to the Circuit Court of Kanawha County directing that the Appellant be resentenced for the purpose of an appeal. On February 10, 2011, the Circuit re-sentenced John Alan Boyce to confinement in the State Penitentiary for the rest of his natural life, without a recommendation of mercy such that he would not ever be eligible for parole. It is from this Order that the Appellant requests that this Court vacate his prior plea of guilty and remand this matter for a new trial.

STATEMENT OF THE CASE

On or about March 12, 1991, the Appellant, John Alan Boyce, was arrested in Brownsville, Texas and charged with the murder of Frank Stafford. This arrest was predicated upon the March 7, 1991, arrest and statement of Doug E. Jones, the co-defendant in the case below. Appellant, John Alan Boyce and his co-defendant, Doug E. Jones, were indicted on July 30, 1991, for the murder of Frank Stafford. On November 6, 1992, John Alan Boyce entered a plea of guilty to murder in the first degree.

Defense counsel filed the appropriate discovery and pre-trial motions but no hearing on said motion ever took place prior to the entry of the Petitioner's plea. Within said motions, the Appellant's trial counsel moved to sever the co-defendant's trials, to which the State of West Virginia did not object.

Discovery materials and responses were tendered by the State of West Virginia, on March 26, 1992, including a list of witnesses that the State intended to call upon to testify at the trial of this matter. Of note, is that the co-defendant, Doug E. Jones, was not included on said list, nor was his statement included in the original discovery packet.

On or about June 25, 1992, the State of West Virginia tendered a response to the Appellant's Motion for a Bill of Particulars. Absent again from the list of forty three (43) persons the State intended to call upon to testify at trial was the co-defendant, Doug E. Jones. The State of West Virginia had two (2) opportunities to advise the Appellant of the problems attendant to his and Mr. Jones' case(s).

The State of West Virginia should have advised the Appellant and his counsel about the tenuous and unlawful nature of Mr. Jones' arrest, along with the inadmissibility of his statement. Said disclosure is part of the State's continuing obligation to provide a criminal defendant with material evidence that is favorable to their defense pursuant to *Brady v. Maryland*, 83 S.Ct. 1194 (1963). Absent this information, it was impossible for Appellant Boyce to voluntarily, knowingly and intelligently enter into a plea agreement.

At the November 6, 1992 plea hearing, the Appellant was placed under oath, and the Court engaged in a colloquy with Mr. Boyce. During this exchange, the Court undertook an examination of the circumstances of the guilty plea and the Appellant's understanding of his

rights, the voluntary and knowing nature of the Appellant's decision to enter said plea along with a factual basis for the same.

The Court inquired of the Appellant as to whether his court appointed counsel advised him about the wisdom of his decision to accept the plea offer, and whether or not he was satisfied with their advice to which the Appellant answered, "yes, sir." (Plea transcript Pages 10 and 11). At no point in the Court's colloquy did they engage in any reference to viable defenses that were available to the Appellant at the trial of this matter. Regardless, the Appellant persisted in putting forth his plea of guilty to murder, and set forth his understanding of the factual basis for said plea. (Plea Transcript pages 39 and 40).

The State of West Virginia then supplemented the factual basis for the plea by stating the additional evidence and testimony that they believed would be presented at the trial of this case. (Plea Transcript pages 40-42). The Court then asked Appellant's trial counsel if they had any dispute over the proffered evidence as follow:

THE COURT: Mr. Smith or Mr. Jones, do you have any reason to contest or dispute that which Mr. Revercomb has placed upon the record as a characterization of at least a part of the evidence the State would be introducing and producing in front of a jury?

MR. SMITH: We have no reason to believe that that would not be the State's evidence. (Plea Transcript, page 42).

At that time the State did not advise the Court nor counsel about the issues regarding the unlawful arrest and thus the inadmissible statement of the co-defendant, Doug E. Jones. Accordingly, neither the Appellant nor his counsel could make comment or objection to material evidence that would normally weigh heavily in any defendant's decision as to whether or not to enter a guilty plea in a criminal matter.

Naturally, when the Court subsequently inquired of the Appellant as to whether or not he wanted to proceed with the plea, both he and his counsel answered in the affirmative. (Plea Transcript, pages 43-45). It cannot be disputed that had the State of West Virginia advised and provided the Appellant, his counsel and the trial court of the tainted nature of the co-defendant's arrest and illegally obtained statements, it is likely that the Appellant's decision to proceed with the guilty plea would have been different or at least made knowingly and intelligently.

Unfortunately, when a matter is resolved by plea agreement, no evidence is tested and thus no facts established beyond that which is proffered and placed on the record by the defendant and the parties' respective counsel.

On February 18, 1993, Mr. Boyce was originally sentenced to confinement in the State Penitentiary for the rest of his natural life, without a recommendation of mercy such that he would not ever be eligible for parole.

SUMMARY OF ARGUMENT

The Court, counsel and the State of West Virginia failed the Appellant in that the Court erred when it failed to adequately engage in a sufficient interrogation of the Petitioner to determine if he was knowingly and intelligently entering into the plea agreement.

Further, the State of West Virginia violated the Petitioner's Constitutional rights when it failed to provide him with exculpatory evidence regarding the illegality of his co-defendants arrest and the taking of his statement.

John Alan Boyce could not competently aver that he was fully informed regarding the preparation of his defense and the merits thereof absent this critical information. Thus by definition he could not have knowingly and intelligently entered his plea of guilty herein, such that the same should be vacated by this Court.

Additionally, the provision of the Brady exculpatory evidence would likely have resulted in the record being fully developed, all attendant issues tested because the Appellant would have pushed this matter to trial in lieu of entering a plea of guilty to murder in the first degree. Accordingly, the Petitioner asserts that his due process rights were violated by the State's failure to disclose this evidence and this matter should be vacated, reversed and remanded for new trial.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Appellant John Alan Boyce requests oral argument as he believes that it will aid the Court in the decisional process. Appellant requests a Rule 19 argument as this case presents error in the application of settled law. Appellant further requests the Court to issue a full opinion as the same will give guidance to Circuit Court's as to the proper application of the law relevant to this case and the taking of plea in criminal matter.

ARGUMENT AND DISCUSSION OF LAW

- I. The Court erred when it failed to adequately engage in a sufficient interrogation of the Petitioner to determine if he was knowingly and intelligently entering into the plea agreement.**

When a defendant undertakes to enter a plea of guilty, he is necessarily dependent upon the advice of counsel regarding the wisdom of this course of action, in light of the strengths of the evidence that is likely to be presented at trial. The only safeguard that most defendants, and especially indigent defendants, have in that regard is the trial court sufficiently engaging both the defendant and his counsel regarding the facts and circumstances of the given plea agreement. In *Call v. McKenzie*, 159 W.Va. 191, 220 S.E.2d 665 (1975), this Court set forth guidelines that should be followed by a trial court before accepting a guilty plea.

When a criminal defendant proposes to enter a plea of guilty, the trial judge should interrogate such defendant on the record with regard to his intelligent understanding of the following rights, some of which he will waive by pleading guilty:

- 1) the right to retain counsel of his choice, and if indigent, the right to court appointed counsel;
- 2) the right to consult with counsel and have counsel prepare the defense;
- 3) the right to a public trial by an impartial jury of twelve persons;
- 4) the right to have the State prove its case beyond a reasonable doubt and the right of the defendant to stand mute during the proceedings;
- 5) the right to confront and cross-examine his accusers;
- 6) the right to present witnesses in his own defense and to testify himself in his own defense;
- 7) the right to appeal the conviction for any errors of law;
- 8) the right to move to suppress illegally obtained evidence and illegally obtained confessions; and,
- 9) the right to challenge in the trial court and on appeal all pre-trial proceedings.

Id., syl. pt. 3.

Furthermore, Rule 11 of the *West Virginia Rules of Criminal Procedure* provides, in part:

(c) Advice to Defendant. Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and inform him of, and determine that he understands, the following:

- (1) The nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law; and
- (2) If the defendant is not represented by an attorney, that he has the right to be represented by an attorney at every stage of the proceeding against him and, if necessary, one will be appointed to represent him; and
- (3) That he has the right to plead not guilty or to persist in that plea if it has already been made, and that he has the right to be tried by a jury and at that trial has the right to the assistance of counsel, the right to confront and cross-examine witnesses against him, the

right not to be compelled to incriminate himself, and the right to call witnesses on his behalf; and

(4) That if he pleads guilty or nolo contendere that there will not be a further trial of any kind, so that by pleading guilty or nolo contendere he waives the right to a trial; and

(5) That if he pleads guilty or nolo contendere, the court may ask him questions about the offense to which he has pleaded, and if he answers these questions under oath, on the record, and in the presence of counsel, his answers may later be used against him in a prosecution for false swearing.

These guidelines, set forth in *Call* and Rule 11 of the *Rules of Criminal Procedure*, promote "the law of this jurisdiction that, prior to receiving a plea of guilty, the court should see that it is freely and voluntarily made by a person of competent intelligence with a full understanding of its nature and effect." *Riley v. Ziegler*, 161 W.Va. 290, 292, 241 S.E.2d 813, 815 (1978).

A review of the limited record in this case indicates that the trial court's inquiry of the Appellant, under the circumstances of most cases, would have been adequate to satisfy the *Call* requirements to ensure protection of a defendant's constitutional rights. However, in Mr. Boyce's case, there is an overlay to the proceedings in trial court which, if not explored further results in severe prejudice to the Appellant, that of the State's failure to provide him with exculpatory evidence herein.

There is nothing in the plea hearing transcript that sets forth the extent of trial counsels' investigation of the co-defendant's case, and the circumstances surrounding Mr. Jones' arrest and the taking of his statement. Further, there is nothing in the record from the State of West Virginia referring to the co-defendant's case and the inherent problems therein. The Court made inquiries of the Appellant that merely called for him to answer either "yes" or "no". It would be

vastly superior for the trial court to have actually engaged the Appellant in such a way that he would be required to reiterate his understanding of his individual rights and whether or not he had an intelligent understanding of the consequence of the rights he was actually waiving by the entry of a guilty plea. Other than the Appellant's limited recitation regarding the incident of April 4 and 5, 1991, there is nothing in the entire transcript of the court's colloquy that is in the Appellant's own words regarding his understanding of the elements of the crime, his actions in committing the crime, the potential penalties, the differences in the lesser included offenses and possible verdicts at trial, the issue of mercy, the record cannot be deemed sufficient to establish the Appellant's waiver of his Constitutional rights consistent with the *Call* requirements. As such, there is no way that the Appellant can competently aver that he was fully informed regarding the preparation of his defense and the merits thereof absent this critical information. Thus by definition he could not have knowingly and intelligently entered his plea of guilty herein and should be vacated by this Court.

II. The State of West Virginia violated the Appellant's Constitutional rights when it failed to provide him with exculpatory evidence regarding the illegality of his co-defendants arrest and the taking of his statement.

The effect of understanding and knowing what evidence the prosecution has in its arsenal cannot be overstated. Any defendant's decision making process is critically undermined by not knowing the full breadth and quality of said evidence.

The Appellant, John Alan Boyce, was indicted along with his co-defendant, Doug E. Jones, on July 30, 1991, for the murder of Frank Stafford. On November 6, 1992, Appellant Boyce entered a plea of guilty to murder in the first degree.

In order to avoid penalizing the Appellant for matters that were beyond his control, he should not again be punished for the oversight of his trial lawyers in investigating the illegal

circumstances of his co-defendant's arrest. Further he should not be punished for the prosecutor's failure to provide information regarding the illegality of Mr. Jones' arrest and statement. These are critical factors affecting the Appellant's decision to enter a plea of guilty herein.

The Appellant's co-defendant, Doug E. Jones, elected to proceed to jury trial and was found guilty of murder in the first degree. However, said conviction was reversed and remanded by this Court in the matter of *State v. Jones*, 193 W.Va. 378, 456 S.E.2d 459 (W.Va., 1995), wherein this Court held that not only was Mr. Jones' arrest unlawful due to a lack of probable cause, that his confession obtained during the ensuing interrogation was inadmissible.

Syllabus Pt. 4 of *Jones* holds as follows:

4. "A confession obtained by exploitation of an illegal arrest is inadmissible. The giving of Miranda warnings is not enough, by itself, to break the causal connection between an illegal arrest and the confession. In considering whether the confession is a result of the exploitation of an illegal arrest, the court should consider the temporal proximity of the arrest and confession; the presence or absence of intervening circumstances in addition to the Miranda warnings; and the purpose or flagrancy of the official misconduct." Syllabus Point 2, *State v. Stanley*, 168 W.Va. 294, 284 S.E.2d 367 (1981).

Thus it is clear that the information gleaned by law enforcement from Mr. Jones inadmissible statement resulting from his unlawful arrest, was used by the State of West Virginia to one effectuate the subsequent arrest of Mr. Boyce some five (5) days later, and then as part of its case in chief against him at the ensuing trial herein.

The gravity of the prosecutor's failure to provide this critical information is made clear in syllabus point 1 of *State v. Youngblood*, 650 S.E.2d 119 (W.Va. 2007), which states: A police investigator's knowledge of evidence in a criminal case is imputed to the prosecutor. Therefore, a prosecutor's disclosure duty under *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d

215 (1963) and *State v. Hatfield*, 169 W.Va. 191, 286 S.E.2d 402 (1982) includes disclosure of evidence that is known only to a police investigator and not to the prosecutor.

The prosecutor herein should have known that the co-defendant's arrest was illegal as there was no probable cause for Mr. Jones to have been detained by law enforcement and subsequently illegally interrogated. Accordingly, all further actions undertaken by law enforcement that has any nexus to Mr. Jones' illegal arrest are the venomous offshoots of the *Jones* poisonous tree. As such, co-defendant Jones, circumstances clearly become exculpatory evidence to which the Appellant is entitled under *Brady*.

It is widely held that an individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police. But whether the prosecutor succeeds or fails in meeting this obligation, the prosecution's responsibility for failing to disclose known, favorable evidence rising to a material level of importance is inescapable. Given this Court's vacation of Mr. Boyce's co-defendant's conviction on the aforementioned grounds, the results of how such failure to disclose impacted the Appellant's case is inescapable.

The obvious problem with the Appellant's request for review is that there is no factual record developed in the trial court beyond the plea hearing. Appellant urges that he should not be doubly punished by this Court for the how the case developed at the trial court level, where he was not afforded the opportunity to test these matters or place upon the record his objections to the trial court's findings.

This Court has recently held that "A claim of a violation of *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), presents mixed questions of law and fact. Consequently, the circuit court's factual findings should be reviewed under a clearly erroneous

standard, and questions of law are subject to a *de novo* review." Syllabus point 7, *State v. Black*, No. 34722, _W. Va._, _S.E.2d_, 2010 WL 761061 (March 4, 2010)". Syllabus Point 15 of *State v. White*, No. 35529, (W.Va. 2011). As there are no facts from which this Court may undertake such a review, the Appellant urges the Court to apply the *Brady* test to this matter as matter of law relating to the violation of his rights.

The United States Supreme Court held in *Brady* that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." The requirement under *Brady* that evidence must be requested by a defendant was later modified in *United States v. Agurs*, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976), where the Supreme Court stated that "there are situations in which evidence is obviously of such substantial value to the defense that elementary fairness requires it to be disclosed even without a specific request." *Agurs*, 427 U.S. at 110, 96 S.Ct. at 2401.

There are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued. Syllabus Point 15 of *State v. White*, No. 35529, (W.Va. 2011); *State v. Youngblood*, 650 S.E.2d 119 (W.Va. 2007).

When this analysis is applied to the facts of this case, it is clear that the Appellant is deserving of his plea being vacated and the granting of a new trial.

(1) **The evidence was favorable exculpatory evidence.** The first element under *Brady* and *Hatfield* that one must consider is whether the evidence of the co-defendant's illegal arrest and inadmissible statement would have been exculpatory to the Appellant's case. As previously

stated, not only was the evidence of the co-defendant's arrest found to be illegal by this Court, his statement was deemed inadmissible, and his conviction overturned. This same information was utilized by law enforcement in effectuating the original criminal complaint and subsequently the Appellant's arrest, prosecution and conviction. Had the Appellant been armed with this knowledge, counsel's trial strategy would have been altered in that they would not have moved for a severance from the co-defendant, and possibly could have prevented his own arrest.

(2) The evidence was suppressed by the State. This Court has previously determined that evidentiary knowledge by the police is imputed to the prosecution. Syll, Pt. 1, *Youngblood*. Consequently, the facts of this case clearly show that the State suppressed the exculpatory evidence surrounding the co-defendant's illegal arrest by failing to disclose the same to the Appellant and his trial counsel.

(3) The evidence was material. The question here is whether or not the State's failure to disclose the illegal nature of the co-defendant's arrest and the thus his inadmissible statement, was material to the Appellant's defense. The fact is, that without Doug Jones' statement, the Appellant may have not been arrested. Certainly the Appellant was prejudiced by the State's failure to disclose the same, and likely changed the Appellant's trial strategy and influenced his decision whether or not to accept a guilty plea herein.

Evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." *State v. Fortner*, 182 W.Va. 345, 353, 387 S.E.2d 812, 820 (1989) (quoting *United States v. Bagley*, 473 U.S. 667, 682, 105 S.Ct. 3375, 3383, 87 L.Ed.2d 481 (1985)).

Additionally, it has been said that "a showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal. All that is required is a "showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Kyles v. Whitley*, 514 U.S. 419 (1995). Finally, the suppressed evidence "must be evaluated in the context of the entire record." *Agurs*, 427 U.S. at 112, 96 S.Ct. at 2402.

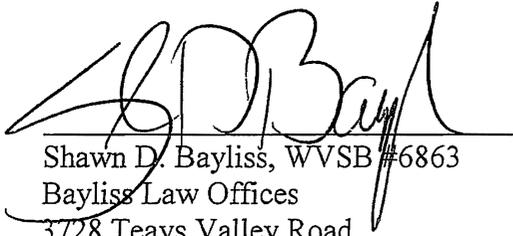
In this case, the provision of this material evidence would have likely resulted in the record being fully developed, all attendant issues tested because the Appellant would have pushed this matter to trial in lieu of entering a plea of guilty to murder in the first degree. Accordingly, the Appellant asserts that his due process rights were violated by the State's failure to disclose this evidence.

This Court has previously held that "failure to observe a constitutional right constitutes reversible error unless it can be shown that error was harmless beyond a reasonable doubt.: Syl. Pt. 14, *State v. Salmons*, 203 W.Va. 561, 509 S.E.2d 842 (W.Va.1998). When the facts and circumstances of the Appellant's case are considered in this light, it is clear that the State's failure to disclose the *Jones* evidence herein constitutes reversible error sufficient to vacate the Appellant guilty plea.

CONCLUSION

For the reasons stated above-herein, the Appellant, John Alan Boyce, prays that the Court will grant his Petition for Appeal; that his guilty plea be vacated and held for naught: that this matter be remanded to the Circuit Court of Kanawha County for a trial; and, any such other and further relief that the Court deems fair and just under the circumstances herein.

JOHN ALAN BOYCE
By Counsel

A handwritten signature in black ink, appearing to read 'S.D. Bayliss', written over a horizontal line.

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IN THE SUPREME COURT OF APPEALS, WEST VIRGINIA

DOCKET NO.: 11-1777

STATE OF WEST VIRGINIA,
Plaintiff below-Appellee,

and

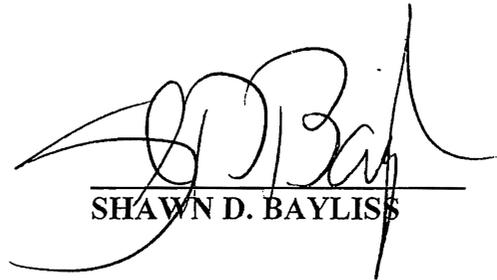
Civil Action No.: 91-F-209

JOHN ALAN BOYCE,
Defendant below-Appellant

CERTIFICATE OF SERVICE

I, Shawn D. Bayliss, counsel for the Defendant, John Alan Boyce, hereby certify that on this 29th day of March, 2012, service of the forgoing “**Petitioner’s Brief**” was made upon the party herein, by depositing a true and exact copy of the same in the United States Mail, postage prepaid, to the following address:

C. Casey Forbes, Esq.
Assistant Attorney General
812 Quarrier Street, 6th Floor
Charleston, West Virginia 25301



SHAWN D. BAYLISS