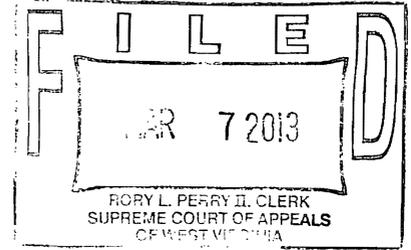


**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**NO. 12-0189**



**STATE OF WEST VIRGINIA,**

*Plaintiff Below,  
Respondent,*

**v.**

**CHARLES EDWARD BRUFFEY,**

*Defendant Below,  
Petitioner.*

---

**SUPPLEMENTAL RESPONSE BRIEF**

---

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 12-0189

STATE OF WEST VIRGINIA,

*Plaintiff Below,  
Respondent,*

v.

CHARLES EDWARD BRUFFEY,

*Defendant Below,  
Petitioner.*

---

SUPPLEMENTAL RESPONSE BRIEF

---

The Respondent State of West Virginia, pursuant to this Court's Order of February 6, 2013, submits a Supplemental Response Brief. This Brief will respond to certain arguments made by the Petitioner in his Reply Brief, on the issues raised in the Petitioner's Assignments of Error Numbers One and Two. On the issues raised in the Petitioner's Assignments of Error Numbers Three and Four, the Respondent will stand on the arguments made in the Respondent's Summary Response.

I.

STATEMENT OF THE CASE

The Respondent incorporates by reference the procedural history and relevant facts regarding Petitioner's trial and conviction contained in Respondent's original Summary Response.

## II.

### SUMMARY OF THE ARGUMENT

The Petitioner incorporates by reference the argument contained in Petitioner's Summary Response, and additionally argues that the prosecutor did not comment on the Petitioner's right to remain silent. The prosecutor commented on an inculpatory statement, which was not error. Further, there was no contemporaneous objection, and any assumed error was harmless under the "plain error" standard.

The trial court did not err in admitting the 404(b) evidence. The trial court, with agreement of Petitioner's counsel, relied upon the proffered evidence referenced in the State's written notice of 404(b) evidence, which was not challenged by the Petitioner. The court then, in a lengthy written order, reviewed the similarities between the charged offense and the offense shown in the proposed 404(b) evidence, and determined that the probative value of the 404(b) evidence outweighed any prejudicial effect. The admission of the 404(b) evidence was therefore proper.

## III.

### ORAL ARGUMENT AND DECISION

This Honorable Court has selected this matter for oral argument.

## IV.

### ARGUMENT

#### A. Assignment of Error Number One.

The Petitioner's Reply argues that the record in fact shows that the prosecutor at trial improperly elicited testimony about and then commented on the Petitioner's post-*Miranda*-warning silence. Obviously, such eliciting and commentary by a prosecutor, for the purpose of suggesting

that a defendant's silence is suggestive of guilt, is improper; although it is certainly not automatically reversible error. *See State v. Marple*, 197 W. Va. 47, 54, 475 S.E.2d 47, 54 (1996) (under plain error standard, brief reference to post-*Miranda* warning silence is not grounds for reversal).

However, this Court can read the record for itself; and the record shows that it was the Petitioner's post-*Miranda*-warning *inculpatory statements* to which the prosecutor directed the jury's attention. (App. vol. 3 at 59.) (Exhibit C hereto.) As explained in the Respondent's Summary Response, there was no error in the prosecutor's action (and there also was no objection thereto; meaning that the rigorous harmless error standard would apply to any assumed error). *See Marple, supra*.

For these reasons, the Petitioner's First Assignment of Error is without merit.

**B. Assignment of Error Number Two.**

In his initial Brief, the Petitioner raised two areas of claimed error with regard to the circuit court's ruling on the 404(b) evidence that was admitted against the Petitioner. That 404(b) evidence showed that the Petitioner had robbed the same bank, in a similar fashion, about a month after the robbery for which he was being tried.

The Petitioner's first claim in his initial Brief was procedural--the Petitioner complained that the circuit court had not conducted a sufficient proceeding and analysis on the record in evaluating 404(b) evidence. (Pet'r's Br. at 17.) The Petitioner's second claim was substantive--the Petitioner claimed that the court had abused its discretion in concluding that the 404(b) evidence was admissible. (*Id.* at 18.)

As to this second claim, the Petitioner's Reply appears to ignore entirely the cases from numerous jurisdictions that are cited in the State's Summary Response, all closely on point, holding

that a court's allowing 404(b) evidence of "other similar robberies" is well within the court's discretion. (See Summary Resp. at 5-6.) The Petitioner's Reply does not discuss or criticize any of these cases or their substantive holdings. The Petitioner also does not discuss the substantive holding of *State v. Johnson*, 105 W. Va. 598, 143 S.E. 352 (1928) to the same effect. By failing to discuss or criticize these cases and their holdings, the Petitioner has effectively conceded the legal point that evidence showing that the Petitioner robbed the same bank in a similar fashion was--in the exercise of the court's discretion--admissible as evidence of *modus operandi*. The circuit court did not commit reversible error in this substantive ruling.

Rather than attacking in any fashion the substance of the circuit court's 404(b) ruling, the Petitioner's Reply focuses entirely and erroneously on criticizing the *procedure* used by the circuit court. While the Petitioner seems to criticize the circuit court for not taking testimonial evidence at the hearing on the prosecution's 404(b) motion, the record of the hearing shows that the Petitioner's counsel never requested an evidentiary hearing, and was entirely content to go forward on the pleadings and evidence referenced in the prosecution's written 404(b) notice. (App. vol. 2, June 28, 2011 hearing at 3-8.) (Exhibit B hereto.) (App. vol 1 at 11-12.)

The purpose of having a 404(b) hearing out of the presence of the jury is so that the trial court can consider "the similarities and differences between the collateral offenses and the present offenses and can supply the balancing test to determine whether the probative value outweighs the prejudicial effect of such evidence." *State v. Dolin*, 176 W. Va. 688, 694, 347 S.E.2d 208, 214 (1986), *overruled on other grounds*, *State v. Edward Charles L.*, 183 W. Va. 641, 398 S.E.2d 123 (1990).

This purpose was fully accomplished, as demonstrated by the circuit court's five-page Order, entered on June 7, 2011, discussing the factors applicable to the 404(b) issue and making detailed

Findings of Fact and Conclusions of Law that explain and support the circuit court's 404(b) ruling. (App. vol. 1 at 13-17.) (Exhibit A hereto.) Those Findings and Conclusions (too lengthy to quote here), demonstrate the circuit court's careful consideration of all of the relevant factors in analyzing the admissibility of the 404(b) evidence. (*Id.*) The Petitioner has not pointed to a single instance of "clear error" in the court's Findings and Conclusions.

On this point, the applicable standard of review for a circuit court's determinations on 404(b) issues is as follows:

In *State v. LaRock*, 196 W. Va. 294, 470 S.E.2d 613 (1996), the defendant had argued that prejudicial evidence with limited probative value had been presented to the jury. In assessing the defendant's contentions, we delineated the following standard of review for Rule 404(b) evaluations:

The standard of review for a trial court's admission of evidence pursuant to Rule 404(b) involves a three-step analysis. First, we review for **clear error** the trial court's factual determination that there is sufficient evidence to show the other acts occurred. Second, we review **de novo** whether the trial court correctly found the evidence was admissible for a legitimate purpose. Third, we review for an **abuse of discretion** the trial court's conclusion that the "other acts" evidence is more probative than prejudicial under Rule 403.

196 W. Va. at 311, 470 S.E.2d at 629-30 (footnote omitted).

This Court has specified that a circuit court abuses its discretion in admitting Rule 404(b) evidence **only where the court acts in an "arbitrary and irrational" manner**. *State v. McGinnis*, 193 W. Va. 147, 159, 455 S.E.2d 516, 528 (1994). We specified as follows:

Our function on this appeal is limited to the inquiry as to whether the trial court acted in a way that was so arbitrary and irrational that it can be said to have abused its discretion. In reviewing the admission of Rule 404(b) evidence, we review it in the light most favorable to the party offering the evidence, in this case the prosecution, maximizing its probative value and minimizing its prejudicial effect.

(*Id.*)

In *LaRock*, we noted that “[t]he balancing of probative value against unfair prejudice is weighed in favor of admissibility and rulings thereon are reviewed only for an abuse of discretion.” 196 W. Va. at 312, 470 S.E.2d at 631. This Court “applies a reasonableness standard and examines the facts and circumstances of each case.” *Id.* Further, this Court “reviews disputed evidence in the light most favorable to its proponent, maximizing its probative value and minimizing its prejudicial effects.” *Id.*

*State v. McIntosh*, 207 W. Va. 561, 568-69, 534 S.E.2d 757, 764-65 (2000) (emphasis added).

*See also State ex rel. Caton v. Sanders*, 215 W. Va. 755, 762 n.6, 601 S.E.2d 75, 82 n.6 (2004). (“We note that a failure to expressly articulate how 404(b) evidence is probative does not mandate automatic reversal. If the basis for the admission of the evidence is otherwise clear from the record, we can affirm the circuit court.” *See also State v. McFarland*, 228 W. Va. 492, 721 S.E.2d 62, 75-77 (2011) (Davis, J. & McHugh, J. dissenting).

The circuit court’s written Order does not show an arbitrary and irrational abuse of discretion. Rather, the Order is well-reasoned and sound.

In summary: the Petitioner did not in any fashion challenge the circuit court’s procedure in considering the issue of the admissibility *vel non* of the State’s 404(b) evidence of a subsequent similar robbery. And the Petitioner has not challenged any of the circuit court’s extensive analysis, made on the record in the form of written Findings of Fact and Conclusion of Law, in granting the State’s Motion to use 404(b) evidence.

For the foregoing reasons, both the substantive and procedural aspects of the Petitioner’s Assignment of Error Number Two are without merit.

**C. Assignments of Error Three and Four.**

The Respondent relies upon its previously stated arguments with respect to the Petitioner’s Assignments of Error Numbers Three and Four.

V.

**CONCLUSION**

Based upon the Respondent's original Summary Response and the additional recitations of fact and arguments of law herein, the Respondent respectfully requests this Honorable Court to affirm the conviction and sentence imposed upon the Petitioner.

Respectfully submitted,

STATE OF WEST VIRGINIA  
*Respondent,*

By counsel,

PATRICK MORRISEY  
ATTORNEY GENERAL



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*Counsel for Respondent*

**CERTIFICATE OF SERVICE**

I, THOMAS W. RODD, Assistant Attorney General and counsel for the Respondent, do hereby verify that I have served a true copy of the *SUPPLEMENTAL RESPONSE BRIEF* upon counsel for the Petitioner by depositing said copy in the United States mail, with first-class postage prepaid, on this 7<sup>th</sup> day of March, 2013, addressed as follows:

To: Nicholas T. James, Esq.  
The James Law Firm PLLC  
65 N. Main Street  
Keyser, West Virginia 26726

  
\_\_\_\_\_  
THOMAS W. RODD

Misc Bond  Misc   
Criminal   
Order Book 71 Page 27  
Date 7-7-11

IN THE CIRCUIT COURT OF MINERAL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

v.

Case No. 11-F-29  
Judge Lynn A. Nelson

CHARLES EDWARD BRUFFEY,  
Defendant.

ORDER ADMITTING RULE 404B EVIDENCE

On this 28<sup>th</sup> day of June 2011, this matter came on before the Court, the Honorable Lynn A. Nelson presiding, upon the State's *Notice of Intent to Use 404(b) Evidence*. The State was present by its Prosecuting Attorney, James W. Courier, Jr., and the Defendant was present, in person, in custody, and by his counsel Seth D'Atri and Gainer Cosner.

The Court heard the arguments of counsel relating to the 404(b) Notice and upon consideration of same does hereby make the following FINDINGS OF FACT and CONCLUSIONS OF LAW:

1. The Defendant was indicted during the January 2011 term of Court on one count of Robbery, W.Va. Code § 61-2-12. The Defendant is scheduled to be tried on this offense on July 5 & 6, 2011.
2. The facts underlying this charge relate to a bank robbery that occurred on December 23, 2009 at the M&T Bank in Fort Ashby, West Virginia. On that date, a white male - appearing to be between 40-55 years old, with blue eyes, blonde-graying hair, being 5'6"-5'9" tall, wearing all black (coat, hooded sweatshirt, & mask) – walked into the bank and approached a teller. He told the teller that "this is a robbery", "give me all your loose money", directed her to lay the money on the counter, asked "if there were any bait or die (sic) packs", stated that he "wouldn't

James W. Courier  
G. Cosner  
S. D'Atri  
7-7-11  
22

hurt me [the teller]", and that "he had just lost his job and he had to do this"<sup>1</sup>. The individual then walked out of the bank.

3. During the search for the suspect, the police came across an individual who had noticed someone fitting the description of the suspect sitting in a car smoking cigarettes parked in the Taste of Town restaurant parking lot (located near the bank). The witness stated that the man was wearing a ball cap. At some point he exited his car and put on a black hooded coat and walked out of view. Later that morning he noticed that the car was gone. The witness likewise gave a description of the car to the police. The investigating officer went to the area where the car was parked and recovered cigarette butts for evidence. The police were not able to capture the suspect on the date of the robbery. Sgt. Droppleman of the West Virginia State Police investigated this robbery.

4. On February 26, 2010, the M&T Bank located in Fort Ashby, West Virginia was robbed a second time. On that date the suspect was described as being a white male, 40-50 years old, blue eyes, wearing a dark color jacket, grey hooded sweatshirt, and a dark burgundy colored scarf around the lower portion of his face. The suspect approached teller Ginna Abernathy-Mason and held up a note printed in dark ink on blue lined notebook paper that stated: "This is a robbery give me \$20-\$50-\$100 dollar bills lots Put the money on the counter spread out No tricks, dye packs, bait money No one gets hurt". The suspect likewise told the teller "Large Money, Hurry up". After collecting the money and placing it into a bag, the suspect fled on foot; however, he left the note behind on the bank counter. The suspect was not captured that date. Deputy Kevin McKone of the Mineral County Sheriff's Department investigated this robbery.

5. Subsequent to the second incident, Sgt. Droppleman suspected that the Defendant was the robber in the first bank robbery and executed a search warrant on his residence. The property

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<sup>1</sup> *Statement of Lisa Wagoner*, p. 1, (December 23, 2009).

seized included a blue jacket, gray hooded sweatshirt, maroon cloth, two blue lined notebooks containing know writing of the Defendant, and a pack of Pall Mall cigarettes. Sgt. Droppleman also obtained a mouth swab from the Defendant for DNA comparison to the cigarette butts.

6. The DNA sample was submitted to the crime lab for comparison with the cigarette butt evidence and came back as a 99% match to the Defendant. The Defendant was arrested on October 13, 2010 and charged with the crime of robbery as it related to the first occasion. The case was submitted to the Grand Jury during the January 2011 term of Court and a true bill was returned.

7. The note that was recovered from the scene at the second robbery was submitted to the FBI crime lab for comparison to the recovered samples from the search. After comparing the Defendant's handwriting to the note, the FBI examiner preliminarily determined that the Defendant was the author of the note, however, the examiner requested additional samples for confirmation. At this point, the Defendant was charged with the second robbery, but this case has not been presented to the Mineral County Grand Jury<sup>2</sup>. Upon review of additional samples obtained via warrant from the Defendant's file at the Potomac Highlands Regional Jail, the FBI examiner confirmed that the note was authored by the Defendant and provided confirmation of same on June 17, 2011.

8. The State has provided a *Notice of Intent to Use 404(b) Evidence* in which it advises that the State intends to use the evidence of the second robbery during the trial for the first robbery for the purpose of establishing a common scheme and plan on the part of the Defendant, the identity of the Defendant, and the plan and intent of the Defendant. The

---

<sup>2</sup> The Court would note that the explanation the Prosecutor has provided for not indicting both robberies together was the delay in the confirmation from the FBI laboratory regarding the handwriting sample.

Defendant objects to the inclusion of the evidence obtained during the second robbery during this trial.

9. “Where an offer of evidence is made under Rule 404(b) of the West Virginia Rules of Evidence, the trial court, pursuant to Rule 104(a) of the West Virginia Rules of Evidence, is to determine its admissibility. Before admitting the evidence, the trial court should conduct an *in camera* hearing as stated in *State v. Dolin*, 176 W.Va. 688, 347 S.E.2d 208 (1986). After hearing the evidence and arguments of counsel, the trial court must be satisfied by a preponderance of the evidence that the acts or conduct occurred and that the defendant committed the acts. If the trial court does not find by a preponderance of the evidence that the acts or conduct was committed or that the defendant was the actor, the evidence should be excluded under Rule 404(b). If a sufficient showing has been made, the trial court must then determine the relevancy of the evidence under Rules 401 and 402 of the West Virginia Rules of Evidence and conduct the balancing required under Rule 403 of the West Virginia Rules of Evidence. If the trial court is then satisfied that the Rule 404(b) evidence is admissible, it should instruct the jury on the limited purpose for which such evidence has been admitted. A limiting instruction should be given at the time the evidence is offered, and we recommend that it be repeated in the trial court's general charge to the jury at the conclusion of the evidence.” Syl. Pt. 2, *State v. McGinnis*, 193 W.Va. 147, 455 S.E.2d 516 (1994).

10. In conducting the *McGinnis* analysis, this Court is convinced by a preponderance of the evidence that the second robbery did occur and that the Defendant was the person who committed it based upon the fact that the Defendant robbed the exact same bank in an almost identical manner. The Court likewise is convinced based upon the results of the handwriting analysis that the Defendant did author the note found at the second robbery. Additionally, the

use of the terms "bait money" and "dye pack" during both robberies seems to indicate that the same actor was involved on both occasions.

11. The Court further finds that the evidence sought to be introduced is relevant under Rule 402 of the West Virginia Rules of Evidence.

12. The requirements of Rule 403 of the West Virginia Rules of Evidence would also be satisfied inasmuch as the evidence from the second robbery is highly probative as to the identity of the Defendant, and to the common plan and scheme the Defendant employed to commit the crime, and also goes to proof of intent of the Defendant through his actions. This evidence is not being presented to inflame the jury or cast the Defendant as a "bad guy" in the eyes of the jury. Rather it is offered for proof on limited matters in the State's case and shall be admitted.

13. Pursuant to the requirements of Rule 404(b) of the West Virginia Rules of Evidence and upon the request of the Defendant, the Court will prepare and read a limiting instruction to the jury at the time of the presentation of the evidence and when the Court instructs the jury.

ACCORDINGLY, it is hereby ORDERED:

1. The State MAY PRESENT the evidence obtained from the second robbery during the trial of the first robbery as contained within its *Notice of Intent to Use 404(b) Evidence*.
2. The Defendant's objections to this ruling are hereby SAVED.
3. The Circuit Clerk shall provide a copy of this Order to all counsel of record.

ENTERED this 7<sup>th</sup> day of June 2011.

  
\_\_\_\_\_  
JUDGE

1 THE COURT: Do you want a minute to talk to him in the  
2 back?

3 MR. D'ATRI: Well, yes, I would, Your Honor.

4 THE COURT: Okay. Go ahead.

5 (The Defendant and his attorney left the courtroom.)

6 (A recess was taken.)

7 THE COURT: We're back on the record in the Bruffey  
8 matter, same appearances as noted before. Mr. Bruffey and  
9 Mr. D'Atri had a chance to go back into the jury room and  
10 speak privately. Anything to report?

11 MR. D'ATRI: No, your Honor. Ready to proceed.

12 THE COURT: Okay. Are you ready, Mr. Courrier, on  
13 your motion?

14 MR. COURRIER: Yes, Your Honor.

15 THE COURT: Go ahead, sir.

16 MR. COURRIER: Our Motion is contained in the notice  
17 that I gave. But, of course, I mentioned last time,  
18 briefly, that we had just found out from a report from the  
19 FBI lab that they will conclusively say that Mr. Bruffey's  
20 handwriting was the handwriting from the note that was  
21 used in the second robbery at the same location, just more  
22 than two months after the first. Because of that, we want  
23 to use that evidence from the handwriting analysis.

24 I listed three different things that are explanations

MARIA K. CLARK, Official Court Reporter  
21st Judicial Circuit of West Virginia  
HC 84, Box 80, Burlington, WV 26710

**EXHIBIT B**

1 for usage for that, beyond the impermissible reasons why  
2 that would be used: To use a common scheme and show a  
3 common scheme and plan, the identity of the defendant, and  
4 the plan and intent of the defendant. Note in that, the  
5 similarities between the two robberies: The same  
6 location, similar identifying descriptions given by bank  
7 employees between the two. The first robbery language was  
8 used to the effect of not having any "die packs or bait  
9 money." That same exact language was placed in the note  
10 itself.

11 THE COURT: Do I understand the first time it was  
12 allegedly said verbally and then--

13 MR. COURRIER: Correct. And the second time it was  
14 presented in a note. And with that we would believe that  
15 would show this common plan of Mr. Bruffey during the time  
16 when he needed money, which was indicated in the first  
17 robbery that he had this intent to commit robberies  
18 because he wasn't able to support himself during this time  
19 period.

20 The similarities, obviously, would go towards the  
21 identity and, certainly, the plan and intent, as well.

22 THE COURT: Alright.

23 MR. COURRIER: So we believe we should be allowed to  
24 get that in for those reasons.

1 THE COURT: Mr. D'Atri?

2 MR. D'ATRI: Your Honor, I would argue against  
3 entering in any of the evidence related to the second M&T  
4 robbery. Now, a three-tier kind of argument.

5 The first would be, it would be overly prejudicial and  
6 confuse the jury to entering all this evidence on a crime  
7 not which -- which my client certainly has not been  
8 charged on. The only indictment is for the December bank  
9 robbery. Again, especially at this late stage of the  
10 game, entering in any expert testimony would be  
11 extraordinarily prejudicial, especially when it pertains  
12 to an entirely different incident.

13 And that would be part of my second argument. It sort  
14 of takes a leap of logic to take a subsequent incident and  
15 kind of try to incorporate it into the first incident and  
16 say that it's a pattern of establishing a common scheme.  
17 It's kind of putting the cart before the horse. I don't  
18 really know how to say that. It's -- to take acts from  
19 the February bank robbery and to say that they establish a  
20 common scheme on the December, it's sort of counter  
21 logical.

22 And, then, third, I would also say that really the  
23 State has failed to provide enough evidence that it's a  
24 scheme and plan. In the first robbery, there was no

1 note. In the second robbery, there was a note. I could  
2 understand if there were notes in both robberies, if there  
3 were similarities between the paper used, between the  
4 handwriting or the ink or Sharpie or whatever used. To  
5 say that a common scheme is established based on the  
6 wording of a demand -- well, all bank robberies would be  
7 worded similarly.

8 THE COURT: Well, I mean, all bank robberies have the  
9 conveyance of the one point or another: I've got  
10 something, and I want some money.

11 MR. D'ATRI: Right. You don't go in and demand notary  
12 services.

13 THE COURT: That's true.

14 MR. D'ATRI: It's -- you know, all bank robberies have  
15 that same common element. To argue -- you know, to  
16 establish a common scheme, to enter into evidence from the  
17 second investigation of a second subsequent incident would  
18 be just extraordinarily prejudicial to my defendant.

19 THE COURT: Okay. Well, it's the Court's  
20 understanding that there was a robbery that occurred on  
21 December 23rd for which he's been charged. At that time  
22 he came in or allegedly came in -- someone came in,  
23 whether it was Mr. Bruffey or not -- someone came in and  
24 said to them I don't -- or: Give me some money. I don't

1 want any dye packs, no bait money. Which the Court's been  
2 prosecuting robberies for twenty some years as the  
3 prosecutor prior to taking the bench, and I find that  
4 that's a very distinctive type phrase that you don't hear  
5 with the dye packs and the bait money.

6 I understand Mr. D'Atri's arguments, but I am going to  
7 let it come in for the purpose of establishing a common  
8 scheme and identity. And I will prepare a jury  
9 instruction to that effect. It will be written at that  
10 time. It will advise them that he's not charged with  
11 this; you're not to consider this except for that  
12 purpose. And I will read it at the time of the  
13 presentation of the evidence and the time of the final  
14 instructions, unless you request otherwise.

15 But I note your objections. Certainly, you have to  
16 preserve that for appeal.

17 MR. D'ATRI: Understood, Your Honor.

18 THE COURT: Now, what did -- or is Mr. Cosner going to  
19 assist you?

20 (Mr. D'Atri confers with the defendant.)

21 MR. D'ATRI: No objection to Mr. Cosner.

22 THE COURT: Alright. I just want to make sure that  
23 you understand that when you're cross-examining or  
24 presenting a witness, one of you will question them. It

1 doesn't have to be the same person every time, but you,  
2 both, don't get to.

3 MR. D'ATRI: Right. I understand.

4 THE COURT: Alright. Then we'll be back here Tuesday  
5 morning at nine o'clock.

6 \*\*\*\*\*

7 CERTIFICATE

8 I, MARIA K. CLARK, Official Court Reporter in the  
9 Twenty-First Judicial Circuit of the State of West  
10 Virginia, do hereby certify:

11 That the foregoing transcript is a complete, true, and  
12 correct account of the stenographic notes taken by me on  
13 the 28th day of June, 2011, in Mineral County Case No.  
14 11-F-29, State of West Virginia versus Charles Edward  
15 Bruffey.

16 I further certify that the foregoing transcript is a  
17 true and accurate computer-generated record of my  
18 stenographic notes taken at the above mentioned proceeding  
19 and meets the requirements of West Virginia Code 51-7-4,  
20 and all rules pertaining thereto as promulgated by the  
21 Supreme Court of Appeals.

22 Maria K. Clark  
23 MARIA K. CLARK

24 Dated: 4-2-2012

1 before the robbery is an exact match to Mr. Bruffey's  
2 characteristics.

3       Sergeant Droppleman will also give you some further  
4 testimony beyond the DNA evidence that linked Mr. Bruffey  
5 to the scene of the crime, right moments before the crime  
6 occurred. Also Sergeant Droppleman will testify that on  
7 the occasion that he went to the home for a search  
8 warrant, he gave a Miranda warning to Mr. Bruffey to  
9 indicate that he did not have to give a statement to him.  
10 But during the course of that time, after Miranda was  
11 given, he did make a statement that he had been unemployed  
12 and out of work for a number of months. On another  
13 occasion, after another Miranda warning was given,  
14 Sergeant Droppleman also was told by Mr. Bruffey, "I'm  
15 going to jail for a long time. You're a nice guy, but I  
16 think I should wait to talk to you about this," and said  
17 nothing further.

18       You will also hear, again for the limited purpose that  
19 is being offered for a common scheme and plan, from Deputy  
20 McKone from the Sheriff's Department, who will indicate he  
21 was able to identify some additional handwriting samples,  
22 known samples of Mr. Bruffey, for the second incident.  
23 That along with the other items that already had been  
24 provided to the FBI Laboratory in Quantico, Virginia, he