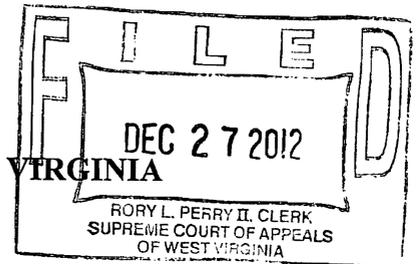


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 11-1271



WILLIAM ADKINS,

*Petitioner Below,
Petitioner,*

v.

**MICHAEL COLEMAN, WARDEN,
MT. OLIVE CORRECTIONAL CENTER,**

*Respondent Below,
Respondent.*

RESPONSE BRIEF

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RESPONSE BRIEF

I.

RESPONDENT'S STATEMENT OF THE CASE AND STATEMENT OF FACTS

A. Introduction.

On the afternoon of September 3, 1999, in Logan County, West Virginia, the Petitioner, William Ray Adkins ("Adkins") shot and killed his former girlfriend's son, 27-year-old Anthony Shawn Dingess ("Dingess"), in Adkins' house. (Pet'r's Br. at 2.)

In March of 2000, a Logan County jury convicted Adkins of first-degree murder, with a recommendation of mercy. (*Id.* at. 6.) Adkins filed a Petition for Appeal with this Court that was refused on January 24, 2001. (*Id.* at. 7, App. at 1181.) In 2001, Adkins filed a Petition for Writ of Habeas Corpus, ultimately claiming that there were 28 separate alleged constitutional violations in his trial that required the reversal of his conviction. (App. at 1057-76.) On August 9, 2011, the Circuit Court of Logan County entered a 20-page Order, finding against Adkins on all 28 claims, and

denying Adkins' *habeas* Petition. (*Id.*) In the instant case, Adkins has appealed that denial Order; however, Adkins' appeal only challenges the circuit court's rulings on two of his 28 claims. (Pet'r's Br. at 8.)

B. Facts About Adkins' Killing of Shawn Dingess.

The following factual summary of the events of Shawn Dingess' killing by Adkins is based on the evidence and testimony adduced at Adkins' trial that supported Adkins' conviction of first degree murder.¹ It should be noted that the purported "Statement of Facts" in Adkins' Brief is largely a restatement of Adkins' testimony at trial, which was discredited and/or contradicted by all of the other evidence at trial (*see* note 2 at p. 5 *infra*). **Importantly, Adkins' own criminal defense expert, in the instant *habeas* case, opined that Adkins' testimony at trial was "unbelievable."** (App. at 885.)

Adkins used a .357 magnum handgun to shoot Dingess five times, while Dingess was talking on the phone to Dingess' friend, Thomas Nord. (App. at 207, 371, 352-54, 537-38.) At the time of the shooting, Dingess had just told Nord that a mutual friend, Gary Price, was coming to Adkins' house to pick Dingess up; and that Dingess had just seen Price drive past Adkins' house, and then turn around and "pull in" in front of Adkins' house. (*Id.*) Nord then heard five or six "rat-a-tat-tats"

¹ An appellate court ordinarily views the facts of a case on review as being the facts and reasonable inferences from the admissible evidence that are consistent with the jury's verdict. *See, e.g., State v. Bull*, 204 W. Va. 255, 258 n.1, 512 S.E.2d 177, 180 n.1 (1998) ("in light of the jury's guilty verdict, we view factual conflicts in the evidence as having been resolved by the jury in a fashion consistent with the jury's verdict") *See also State v. Atkins*, 163 W. Va. 502, 515, 261 S.E.2d 55, 62 (1980) ("the jury's verdict of guilty is taken to have resolved factual conflicts in favor of the State . . ."); *State v. Kirk N.*, 214 W. Va. 730, 735, 591 S.E.2d 288, 293 (2003) ("We set forth in a footnote a summary statement of facts taken from the evidence at trial, assuming that the jury believed those pieces of evidence consistent with their verdict."); *United States v. Jefferson*, 674 F.3d 332, 341 n.14 (4th Cir. 2012) ("On appeal, we consider the facts presented at trial in a light most favorable to the government, as the prevailing party at trial.").

and “moaning and groaning.” (*Id.*) Nord then heard a voice saying “I told you, you son of a bitch, that I’d get you.” (*Id.*) A short time later, Nord heard the voice of Gary Price asking if Shawn Dingess was there, and a voice say that Dingess had gone “down the road.” (*Id.* at 354.) Nord thereafter drove to Adkins’ house and arrived as police were investigating Dingess’ death. (*Id.* at 355-56.)

Gary Price and his fiancée Violet Maynard also testified at Adkins’ trial. Shortly before the shooting, Dingess had called Gary Price from Adkins’ house, wanting a ride to cash a check. (*Id.* at 310.) Price and Maynard drove past, and then to, Adkins’ house, where they pulled up in front and immediately heard gunshots. (*Id.* at 311, 334, 343, 348.) Adkins came to the front door and told Price that Dingess was not there. (*Id.* at 312.) Price observed a bullet hole in the glass front door of Adkins’ residence. (*Id.*) Thinking he might have the wrong house, Price drove to a neighbor’s house, and then to Dingess’ nearby residence, where Price spoke with Dingess’ wife and learned that he (Price) had been at the right house. (*Id.* at 313.)

Price and Maynard and Dingess’ wife drove back to Adkins’ house, where they found Adkins gone, and Shawn Dingess lying dead in a pool of blood. (*Id.* at 313-14.) They called 911 and the police arrived within minutes. (*Id.* at 315-16.) Adkins, meanwhile, had taken the .357 that he used to kill Dingess and driven to his parents’ house, where he was arrested a short time later. (*Id.* at 49.)

Forensic evidence showed that Adkins shot Shawn Dingess five times -- three shots in the back, and two in the front. (*Id.* at 537-38.) Several shots were fired from close range, six inches or less. (*Id.* at 535.) A sixth bullet missed Dingess and went through the front door and lodged in a porch post. (*Id.* at 443.) An open .357 ammunition box was found in Adkins’ upstairs bedroom. (*Id.* at 124.) There were sixteen fresh bruises/abrasions and a skull fracture on the side of Dingess’

face; the bruises' shapes were consistent with the barrel of Adkins' .357. (*Id.* at 544-47.) When the police arrested Adkins and confiscated his gun, Dingess' blood was found on Adkins' shoes and pants legs, and on the handgrip and inside the barrel of the .357. (*Id.* at 504-05, 510.)

C. Adkins' Self-Defense Story.

At trial, Adkins claimed he shot Dingess in self-defense. Adkins told the jury a confused, confusing, and convoluted version of events -- a story that Adkins' own criminal defense expert in the instant *habeas* case called "unbelievable." (App. at 885.) At the core of Adkins' story was Adkins' repeated claim that Dingess had "pulled a gun" on Adkins, and that Adkins had taken his concealed .357 handgun from under a cushion and killed Dingess as Dingess was "raising up" his gun and pointing it at Adkins:

Q: He [Dingess] had a gun?

ADKINS: Yes, he did.

(*Id.* at 187.)

Q: Your testimony is that [Dingess] had a gun?

ADKINS: That's correct.

(*Id.* at 625.)

Q: You had a gun and he had a gun?

ADKINS: That's correct.

(*Id.* at 190.)

Q: Was he pointing it at you?

ADKINS: He pulled it on me, yeah.

Q: He pulled it on you and was pointing it at you?

ADKINS: Yeah.

(*Id.* at 195.)

For more of Adkins' "unbelievable" version of events, (*see* App. at 614-18.) There were many major and serious contradictions and discrepancies between Adkins' story and all of the other evidence at trial -- too many to fully discuss in this Response. Some of the more notable contradictions and discrepancies are summarized in a footnote.²

Adkins' response to the substantial evidence that contradicted his story, as expressed by his counsel at the beginning of the trial, was a simple denial: "[a]ll of this structured evidence, so and so heard shots, so and so was going to fix a toilet, so and so was on the telephone with the deceased -- none of it happened." (*Id.* at 289.)

²Adkins claimed that Dingess was an uninvited trespasser in his home, but Dingess's wife testified that Adkins had come to her house to get Dingess to do some home repair for him, and that she had spoken to Dingess twice at Adkins' house before the shooting. (App. at 294-96.) Despite the forensic evidence of Dingess' blood on Adkins' shoes and pants, and on his gun, Adkins claimed that he shot Dingess from a distance, and that he was never in a position to get Dingess' blood on the gun or on his clothing and shoes. (*Id.* at 622-24.)

Q: Do you have any information for how that stippling got on [Dingess'] skin that [the medical examiner] testified about when the gun discharged?

ADKINS: I don't know. I don't know nothing about his testimony. **I'm not into that far out stuff.**

(*Id.* at 618, emphasis added).

Adkins told the jury that Thomas Nord was lying about speaking with Sean Dingess on the phone at Adkins' house. (*Id.* at 635.) Adkins denied speaking with Gary Price. (*Id.* at 634.) Adkins claimed that Dingess was drunk and belligerent; toxicology showed that Dingess had a blood alcohol content of .03, one-third of the legal driving limit. (*Id.* at 543.)

The prosecution (agreeing with Adkins' own expert witness in the instant case), argued that Adkins' story was unbelievable; and that the evidence showed that Adkins had shot the unarmed Dingess deliberately and repeatedly, including shots from very close range; and that Adkins also brutally and repeatedly struck Dingess' face with the barrel of his gun. (*Id.* at 703-21.)

The remainder of the pertinent facts will be set out in the following Argument section.

II.

RESPONDENT'S SUMMARY OF ARGUMENT.

The circuit court in the instant *habeas* case did not err in concluding that Adkins' conviction should not be voided on the grounds that Adkins' trial counsel did not give the circuit court a proposed "habitation defense" instruction; nor should his conviction be voided on the grounds that Adkins' trial counsel did not adequately present a suppression-of-evidence argument.

III.

RESPONDENT'S STATEMENT REGARDING ORAL ARGUMENT AND DECISION.

The Respondent does not believe that oral argument of the instant case is necessary.

IV.

RESPONDENT'S ARGUMENT.

- A. Adkins' First Assignment of Error, arguing that his conviction should be voided because his counsel did not give the trial judge a "habitation defense" instruction, is without merit.**

A "habitation defense" instruction allows a jury to find an occupant of a home not guilty of murder if the occupant kills an unlawful intruder who threatens the occupant with "imminent physical violence or the commission of a felony." Syl. Pt. 2, in part, *State v. W. J. B.*, 166 W. Va. 602, 276 S.E.2d 550 (1981). The habitation defense permits the occupant "[to] kill [the intruder]

to prevent personal violence not amounting to a felony or a threat of death or serious bodily injury.” (*Id.* at 610, 276 S.E.2d at 555.) (emphasis added). A “habitation defense” instruction thus allows a jury to excuse a homicide in certain cases where “*the intruder has not threatened the occupant with serious bodily harm or death.*” (*Id.* at 607, 276 S.E.2d at 554.) (emphasis added).

In the instant case, Adkins’ defense was set out by his trial counsel in counsel’s opening statement: “[Nobody likes homicides, but **nobody likes to be killed** either.” Adkins repeatedly and consistently claimed that he retrieved his .357 and killed Dingess after Dingess threatened Adkins with a gun. *See* Adkins testimony at pp. 4-5 *supra*. Adkins directly and repeatedly claimed to the jury that he used deadly force against Dingess because Dingess was threatening Adkins with the infliction of death or serious bodily harm. (*Id.*) At no time did Adkins claim that he shot Dingess to “prevent personal violence *not amounting to a felony or a threat of death or serious bodily injury.*” *State v. W.J.B., supra*, 166 W. Va. at 610, 276 S.E.2d at 555.

The trial court's instructions regarding Adkins' self-defense rights are given in a footnote.³ The trial judge in the instant case correctly instructed the jury, with approval from Adkins' trial counsel and in accord with Adkins' testimony, that Adkins could use deadly force against Dingess if Adkins (as he claimed) "believed that he was in imminent danger of death or serious bodily harm" from Shawn Dingess. (App. at 681.) This instructional language was consistent with the longstanding West Virginia standard set out in *State v. Hughes*, 197 W. Va. 518, 524, 476 S.E.2d 189, 195 (1996), where this Court

succinctly stated the elements of our self-defense doctrine as follows:[A] defendant who is not the aggressor and has reasonable grounds to believe, and actually does believe, that he is in imminent danger of death or serious bodily harm from which he could save himself only by using deadly force against his assailant has the right to employ deadly force in order to defend himself.

State v. Harden, 223 W. Va. 796, 809, 679 S.E.2d 628, 641 (2009).

Syllabus Point 4 of *State v. Collins*, 154 W. Va. 771, 180 S.E.2d 54 (1971) (emphasis added), states that jury "[i]nstructions must be *based upon the evidence* and an instruction which

³In order for the defendant to have been justified in the use of deadly force in self-defense, he must not have provoked the assault on the victim or have been the aggressor. Mere words, without more, do not constitute provocation or aggression.

The circumstances under which the defendant acted must have been such as to produce the mind of a reasonably prudent person, similarly situated, that reasonable belief that the other person was about to kill him or do him serious bodily harm. In addition, the defendant must have actually believed that he was in imminent danger of death or serious bodily harm and that deadly force must be used to repel it.

If evidence of self-defense is present, the State must prove beyond a reasonable doubt that the defendant did not act in self-defense. If you find that the State has failed to prove beyond a reasonable doubt that the defendant did not act in self-defense, you must find the defendant not guilty. In other words, if you have a reasonable doubt as to whether or not the defendant acted in self-defense, your verdict must be not guilty.

(App. at 702.)

is not supported by evidence should not be given.” Importantly, **jury instructions must “be applicable to the particular facts** which the evidence tends to prove.” Syl. Pt. 3, in part, *Adkins v. Smith*, 142 W. Va. 98 S.E.2d 712 (1957) (emphasis added).

The law that was “applicable to the particular facts” (*Adkins, supra*) that Adkins alleged, and the law that was “based upon the evidence” (*Collins, supra*) that Adkins asked the jury to credit as the basis for his defense -- was correctly described in the self-defense instructions that the court gave.

While Adkins’ Brief on Appeal argues that “[w]ithout the defense of habitation instruction, there was no real defense, and the trial was at best a formality” (Pet’r’s Br. at 14), with all due respect, this rather hyperbolic statement is at complete odds with the record. The jury had all the law they needed to acquit Adkins, if they had at all believed his story.⁴ The jury did not need a “habitation defense” instruction, that told them what Adkins’ rights *would have been* in a purely hypothetical case, where “the intruder [Dingess did] not threaten[] Adkins with serious bodily harm or death.” *State v. W.J.B., supra*, 166 W. Va. 602, 607, 276 S.E.2d 550, 554 (1981). A review of the entire record shows that the trial in the instant case was hardly a formality. Adkins’ self-defense claim was squarely and fairly presented to the jury. It is not Adkins’ counsel’s fault that the jury found Adkins’ story to be as unbelievable as Adkins’ own expert did.

Moreover, the “habitation defense” standard applies only in the case of an “intruder [who commits] the violent and unlawful entry into a dwelling with intent to injure the occupants or commit a felony.” *State v. W. J. B.*, 166 W. Va. 602, 612, 276 S.E.2d 550, 556 (1981). Although Adkins testified that he had not invited Shawn Dingess into Adkins’ home at the time Adkins killed

⁴Notably, the Petitioner’s own expert witness, an experienced defense lawyer, would only opine that if there had been a habitation defense instruction, “the defense would have been more properly focused.” (App. at 885.)

Shawn Dingess, there was testimony from Dingess' wife that undermined Adkins' testimony. It was certainly not "probable" that a jury would have found that Shawn Dingess was an "intruder," to whom the habitation defense standard would apply. This fact adds further weight to the circuit judge's conclusion that the lack of a habitation defense instruction did not call for voiding the jury's verdict.⁵

The jury was also informed that Adkins had no duty to "retreat" in his own home. The Petitioner's trial counsel told the jury:

When William Adkins came into his home, he found a trespasser there. That trespasser was Shawn Dingess . . .

[n]ow when I'm in my home, I don't have to run from you. I can stand my ground, and I've been taught that ever since I was a boy, and I know a lot of men that have

⁵ The prosecution in the instant case carefully pointed out to the *habeas* court why *State v. W.J.B.* was inapplicable to the claims made by Adkins, and particularly noted that the *W.J.B.* standard only applies in the case of an "intruder:"

Mr. Adkins's testimony at the suppression hearing indicates that it wasn't any intruder. He knew this fellow. He came over to the house. He asked to use the phone. He came in, wanted to use the phone. These guys sat and drank, sat down and drank a beer together at the same time in that incident. In fact, Mr. Adkins's testimony was even after the guy poked him with a screwdriver, he got up, went to the bathroom, "he" being Adkins, came back, went to the kitchen, got another beer and went back into the living room where the victim was.

The victim could in no way, shape, or form be seen as an intruder on that occasion under the *W.J.B.* case cited, so it's our position that the reason there was no defense of habitation instruction requested, issued, or given by the Court, mentioned by Attorney Koontz on the appeal, was because the doctrine didn't apply. By his own testimony at the pre-trial stage, Mr. Ellis knew this man said the guy wasn't an intruder. He came in to use the phone. They sat down and drank beer. It didn't qualify, didn't apply. It not only didn't apply, but it certainly can't be used to say he was ineffective. It would have been inappropriate for him to try to get the Court to give that instruction under such testimony.

(App. at 877, pp. 27-28).

died under it. They mistakenly believed that they could go into people's homes . . . you can't do it.

(*Id.* at 722-23.)

A large number of cases, from West Virginia and elsewhere, support the proposition that claims of ineffective assistance of counsel (like Adkins' claim in the instant case) that are based on "Monday-morning quarterbacking" about allegedly incomplete instructional language, are properly viewed through a skeptical lens -- especially when, as in the instant case, the evidence of guilt was very strong.⁶ *See, e.g., State v. Hatfield*, 169 W. Va. 191, 212-13, 286 S.E.2d 402, 415 (1982):

The final ground of the ineffective assistance claim is pointed at defense instructions which did not include instructions for lesser degrees of murder and manslaughter. These lesser offenses were included in the State's instructions. It is clear that defense counsel's primary argument was self-defense. There is no question that in defense counsel's closing argument he attempted to negate first and second degree murder and stated, "I think this is a case of either not guilty because of self-defense or guilty of voluntary or involuntary manslaughter." We find no basis for holding that counsel's actions on this point fell below our standard of effective representation. *Counsel did what could be reasonably expected in a difficult case.* [emphasis added].

This last sentence's language, the Respondent submits, applies well to the instant "difficult case" -- where Adkins' counsel had to deal with Adkins' patently "unbelievable" version of events.

For other cases supporting a properly skeptical approach to *habeas* claims like Adkins' that make *post hoc* complaints about trial counsel's alleged failure to submit certain instructions, *see also*

⁶The Respondent believes that in each of the cases cited by the Petitioner where ineffective assistance was found in connection with the submission of instructions, failure to tender a specific instruction was ineffective assistance only when the specific instruction was (1) necessary and properly tailored under the particular alleged facts in the case in order to state the applicable law for the specific claims made by the defendant; and (2) where the reviewing court was confident that the jury was misled about a material legal issue in the case because of the absence of an instruction, and that the result could well have been different with other instructional language. Neither is the case for William Adkins' *habeas* claim.

State v. Miller, 194 W. Va. 3, 17, 459 S.E.2d 114, 128 (1995) (“We hold that the mere fact that trial counsel failed to offer a viable defense instruction is not alone a sufficient ground to prove ineffectiveness of counsel”). *See also* Syl. Pt. 6, *State v. Milam*, 159 W. Va. 691, 226 S.E.2d 433 (1976) (“When instructions are read as a whole and adequately advise the jury of all necessary elements for their consideration, the fact that a single instruction is incomplete or lacks a particular element will not constitute grounds for disturbing a jury verdict.”). *See also* *U.S. ex rel. Huckstead v. Greer*, 737 F.2d 673, 678 (7th Cir. 1984) (no ineffective assistance, instructions taken together were sufficient; “. . . it is highly unlikely that the jury was confused . . . on the issue of self-defense.”). *See also* *State v. Phifer*, 598 S.E.2d 172, 177 (N.C. 2004) (“we overrule defendant's argument that he received ineffective assistance of counsel when his counsel failed to request jury instructions on self-defense, **defense of habitation**, and defense of others.”). *See also* *Hill v. State*, 722 S.E.2d 708, 714 (Ga. 2012) (emphasis added) (“[Hill] has failed to show how he was prejudiced by the failure to request such a charge under the facts of this case. Here, the jury was charged on the law of self-defense, but rejected that defense, **[the evidence of Hill's guilt was overwhelming,] and [he] has not established how a jury charge on defense of habitation would have raised a reasonable probability that the outcome of the case would have been different.**”), quoting *Smith v. State*, 709 S.E.2d 823, 830 (2011).

This last-quoted case’s language, Respondent submits, also applies well to the instant case. Adkins premised his self-defense claim on a patently unbelievable version of events, and the evidence against that version of events and that claim was overwhelming. Adkins simply has “**not established how a jury charge on defense of habitation would have raised a reasonable**

probability that the outcome of the case would have been different.” (*Id.*)⁷ Applying the principles set forth in the foregoing cases, and for all of the foregoing reasons, Adkins’ First Assignment of Error -- claiming that the *habeas* court committed reversible error when it ruled against Adkins on his ineffective assistance claim -- is without merit.

B. Adkins’ Second Assignment of Error, arguing that the *habeas* court should have voided Adkins’ conviction because of his trial counsel’s conduct in connection with trying to suppress the evidence of the .357 ammunition found in Adkins’ bedroom, is also without merit.

The Circuit Court of Logan County, ruling on Adkins’ instant *habeas* claim, found that the evidence-suppression issue -- was an “issue[] where there was no ground for appeal or the chances for success were minimal.” (App. at 1076.) The circuit court did not err in concluding that Adkins’ counsel’s not securing a complete copy of the suppression hearing transcript was not grounds for reversing Adkins’ conviction.

Adkins’ argument on this issue runs squarely into a well-settled principle of law: that a trial court’s ruling on a suppression motion is entitled to a very high degree of deference:

⁷Thus, the prosecution correctly argued to the circuit court in the instant case:

Interestingly, his defense from start to finish was self-defense, and of course to -- you have to have something to show that indeed, when it comes to ineffective assistance of counsel in particular, that there would have been a probability of a different outcome, if indeed what they consider errors hadn’t occurred.

In this case, there were several items presented to the jury as evidence that helped convict him, quite frankly, not only his own comments and his own testimony, which Mr. Cagle indicates in his report was, quote, “unbelievable,” end of quote, which indicates the Defendant’s position. I don’t think it shows ineffective assistance of trial counsel. It shows the story that Mr. Adkins was telling as to what took place and the fact that the jury didn’t agree with it.

(App. 875 at 17-18.)

When reviewing a ruling on a motion to suppress, an appellate court should construe all facts in the light most favorable to the State, as it was the prevailing party below. Because of the highly fact-specific nature of a motion to suppress, particular deference is given to the findings of the circuit court because it had the opportunity to observe the witnesses and to hear testimony on the issues. Therefore, the circuit court's factual findings are reviewed for clear error.

Syllabus Point 1, *State v. Lacy*, 196 W. Va. 104, 468 S.E.2d 719 (1996).

Adkins argues, as he must in an ineffective assistance claim, that but for Adkins' counsel's conduct in not assuring that there was a full transcript of a suppression hearing -- that an appeals court would have likely found error in the trial court's suppression ruling, and reversed Adkins' conviction.

However, there was evidence presented in the instant case that the ammunition in Adkins' bedroom that he tried to suppress was seen by the police, in plain view, shortly after the shooting and during a protective sweep of the very home where he killed Dingess -- well before any suspect was in custody, and before the murder weapon was located. (App. at 426-28.) It does not require an elaborate exegesis of Fourth Amendment law to recognize that -- with this sort of evidence before the court -- the chances of prevailing on a suppression motion was essentially nil, both before the trial court and on appeal. While counsel had to make the suppression motion, the motion was permissibly denied under the evidence. Had the entire suppression hearing transcript been made part of the record, the result would very likely not have been any different.

Moreover, as the prosecutor argued to the *habeas* court,

[T]he weapon that [Adkins] used when shooting the victim, he voluntarily, as he said, when they came to the door of where he was at his father's house, which was nearby, the Defendant said in the suppression transcript, "I gave them the weapon voluntarily." I had, quote, "nothing to hide." He was even asked about the search of his home, and he said then that he did not agree to the search of the home, **but he would have if asked** because, "I had nothing to hide." To me, that's the gist of his

whole self-defense position at trial, and even from that day right forward, and that is there's nothing to hide. There was nothing recovered that he wanted to hide.

(*Id.* 875 at 18-29, emphasis added).

For the foregoing reasons, Adkins' claim that the *habeas* court erred, in not overturning Adkins' conviction because of Adkins' trial counsel's conduct with respect to the ammunition evidence suppression motion, is without merit.

V.

CONCLUSION

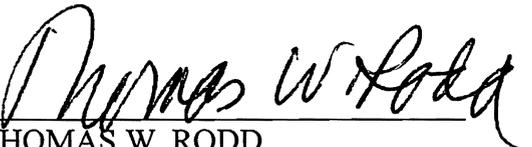
For the foregoing reasons, the West Virginia Supreme Court of Appeals should not disturb the August 9, 2011, Order of the Circuit Court of Logan County denying William Adkins' Petition for a Writ of Habeas Corpus.

Respectfully submitted,

STATE OF WEST VIRGINIA
MICHAEL COLEMAN, WARDEN
Respondent

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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 a true copy of the *RESPONSE BRIEF* upon counsel for the Petitioner by depositing said copy in the United States mail, with first-class postage prepaid, on this 27th day of December, 2012, addressed as follows:

To: Matthew Brummond, Esq.
Kanawha County Public Defender Office
PO Box 2827
Charleston, WV 25330

A handwritten signature in black ink, appearing to read "Thomas W. Rodd". The signature is written in a cursive style with a large initial "T".

THOMAS W. RODD