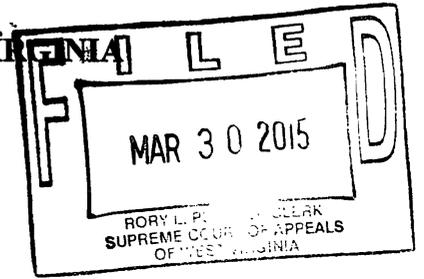


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET No.: 14-1101



**STATE OF WEST VIRGINIA,
PLAINTIFF BELOW, RESPONDENT.**

vs.

**APPEAL FROM A FINAL ORDER
OF THE CIRCUIT COURT OF
MONROE COUNTY (14-F-01)**

**JOSHUA NEAL HUBBARD,
DEFENDANT BELOW, PETITIONER.**

PETITIONER'S BRIEF

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I.

TABLE OF CONTENTS

TABLE OF CONTENTS.....2

TABLE OF AUTHORITIES.....3

ASSIGNMENT OF ERROR.....4

STATEMENT OF THE CASE.....5

SUMMARY OF ARGUMENT.....11

STATEMENT REGARDING ORAL ARGUMENT AND DECISION.....12

ARGUMENT.....13

CONCLUSION.....21

II.

TABLE OF AUTHORITIES

STATUTES:

W.Va. Code §61-2-1.....5
W.Va. Code §61-10-31.....5
W.Va. Code §62-1-5.....13

RULES:

West Virginia Rule of Criminal Procedure 5(a).....13

CASES:

State v. Flourney, 232 W.Va. 175, 751 S.E.2d 280 (2013) per curiam13, 14
State v. Sugg, 193 W.V. 388, 456 S.E.2d 469 (1995).....15
State v. Rogers, 231 W.Va. 205, 744 S.E.2d 315 (2013) per curiam.....13, 16
State v. DeWeese, 213 W.Va. 339, 582 S.E.2d 786 (2003).....13, 16, 17, 18

III.

ASSIGNMENT OF ERROR

The Circuit Court erred by admitting into evidence the Petitioner's statement to law enforcement taken after his arrest but prior to being presented to a Magistrate because his statement was taken in violation of the prompt presentment rule contained in West Virginia Code 62-1-5 and Rule 5(a) of the West Virginia Rules of Criminal Procedure.

IV.

STATEMENT OF THE CASE

On September 26, 2014, after a trial by jury, Joshua Hubbard (“Petitioner”) was convicted in Monroe County of the crime of First Degree Murder in violation of Chapter 61, Article 2, Section 1 of the West Virginia Code, for which he received a sentence of life imprisonment without the possibility of parole, and of the crime of Conspiracy to Commit a Felony Offense: Murder in violation of Chapter 61, Article 10, Section 31 of the West Virginia Code for which he received a sentence of one to five years of incarceration in the State penitentiary, to be served concurrently with his sentence for Murder in the First Degree. *App. Volume 1, Page 1.*

On June 1, 2013, the Petitioner fatally shot Danny Ray Richardson. *App. Volume 1, Page 4.* The Petitioner and his codefendant, Amber Lee Richardson, had previously conspired to kill Danny Ray Richardson. *Id.* Immediately following June 1, 2013, law enforcement conducted an investigation which included obtaining a statement from Ms. Richardson. *App. Volume 2, Page 10.*

Based on their investigation, law enforcement obtained a warrant for the Petitioner’s arrest. *App. Volume 2, Page 11.* On June 4, 2013, the Petitioner was arrested at approximately 4:49 p.m. *App. Volume 2, Page 32.* Shortly after his arrest, the Petitioner was transported to the Greenbrier County West Virginia State Police Detachment in Lewisburg by West Virginia State Trooper, Sergeant Makenzie, and West Virginia State Trooper Richards. *Id.* During the Petitioner’s transport, another West Virginia State Trooper, Corporal Davis, called Sergeant

Makenzie by telephone and told Sergeant Makenzie that he would meet him at the Lewisburg Detachment for the “actual interview” of the Petitioner. *App. Volume 2, Page 47.*

After arriving at the Lewisburg Detachment at approximately 5:10 p.m., Sergeant Makenzie read the Petitioner his *Miranda* rights beginning at 5:26 p.m. *App. Volume 2, Page 14, 32.* Corporal Davis had arrived at the Detachment prior to the Petitioner being *Mirandized*. *App. Volume 2, Page 13, 47.* At approximately 5:35 p.m., the Petitioner signed the *Miranda* rights form. *App. Volume 2, Page 16.* Approximately two hours later, at 7:23 p.m., the Petitioner gave a recorded statement. *App. Volume 2, Page 19.* During the two hour time period from 5:35 p.m. to 7:23 p.m., the Petitioner was engaged in a conversation by both Corporal Davis and Sergeant Makenzie. *Id.* The recorded statement lasted from 7:23 p.m. to 9:47 p.m., and the Petitioner was taken before a Magistrate at approximately 10:00 p.m. *App. Volume 2, Page 19, 20, 33, 34, 42.* Neither Sergeant Makenzie nor Corporal Davis attempted to contact a Magistrate prior to the conclusion of the Petitioner’s recorded statement. *App. Volume 2, Page 42, 43, 59.* There was no testimony that a Magistrate was not available from the Petitioner’s arrival at the Detachment until the time he was finally arraigned.

On June 2, 2014, Counsel for the Petitioner filed a Motion for Production of Oral Statements Made by the Defendant and a Motion to Suppress any and all statements made by the Petitioner. *App. Volume 1, Page 7, 8.* On July 10, 2014, a hearing was held on the Petitioner’s Motion to Suppress Statement of the Defendant. *App. Volume 2, Page 4.* At that hearing, the State presented the testimony of Sergeant Makenzie and Corporal Davis. *App. Volume 2, Page 8, 45.* When questioned by Counsel for the Petitioner, Corporal Davis testified that he was not present for the arrest of the Petitioner but that he, “called Trooper Makenzie and asked him if he needed me to come talk to him or assist in the actual interview, and at that point he asked me if

I'd head to Lewisburg detachment." *App. Volume 2, Page 47*. Then, in direct contradiction of his previous testimony, Corporal Davis testified that the first time he became aware that the Petitioner wanted to give a statement was, "Basically as soon as I started talking to him," which was between 5:10 p.m. and 5:35 p.m., after Corporal Davis arrived at the Lewisburg Detachment. *App. Volume 2, Page 59-60*.

Sergeant Makenzie testified that shortly upon arrival at the Lewisburg detachment, he *Mirandized* the Petitioner and, "explained to him what information we had gathered through our investigation to that point, and ask(ed) if he wished to make a statement or tell his side of the story." *App. Volume 2, Page 13*. Specifically, when asked if the Sergeant talked to the Petitioner about anything prior to arrival at the Detachment, the Sergeant responded, "He was told he was under arrest for the crime of first degree murder. Other than that there was no discussion." *App. Volume 2, Page 38*. When asked by Counsel for the Petitioner, "Did you talk about anything?" The Sergeant responded, "Not with him. Richards and I had a discussion." *Id.* Sergeant Makenzie also testified that to the best of his knowledge, the Petitioner, "made no statements about the crime prior to being *Mirandized*," and further, that there was nothing in his report or that he intended to offer at trial concerning any statement the Petitioner made from the point of his arrest to the point where the Sergeant talked to him. *App. Volume 2, Page 12*. There was no testimony that Sergeant Makenzie told Corporal Davis during their telephone conversation that the Petitioner had said anything about wanting to tell his side of the story to Sergeant Makenzie, Trooper Richards or any other law enforcement officers.

Later in Sergeant Makenzie's testimony, when asked by Counsel for the Petitioner if there was any reason the Petitioner could not have been taken before a Magistrate at 5:10 p.m., the Sergeant responded, "No sir, I don't guess there was." *App. Volume 2, Page 42, 43*. Then

the Sergeant testified that the reason he did not take the Petitioner to a Magistrate at 5:10 p.m. was because the Petitioner had stated “in the cruiser” that he “wanted to tell his side or make a statement about what his side of it was.” *App. Volume 2, Page 43*. Finally, Sergeant Makenzie testified that at the conclusion of the recorded statement, routine police procedure was conducted including fingerprinting which took only approximately ten to fifteen minutes. *App. Volume 2, Page 42*. On August 12, 2014, the Petitioner’s motion to suppress the recorded statement was denied. *App. Volume 1, Page 11*.

Also, on August 12, 2014, another pretrial motions hearing was held. *App. Volume 3*. At this hearing the Petitioner’s alleged oral statement was discussed. *App. Volume 3, Page 3*. The lower Court inquired of the State if there were any statements that he wanted to introduce that had not already been addressed. *App. Volume 3, Page 11*. The State replied, “The oral statement, I want to tell my side of the story.” *Id.* The Court then asked the State to remind the Court where that statement was made. *Id.* The State then responded, “I’m advised at the site of the arrest,” which is contrary to Sergeant Makenzie’s testimony that it had been made “in the cruiser” during transport. *Id.*

On September 10, 2014, another pretrial motions hearing was held. *App. Volume 4*. At this hearing, Petitioner’s Counsel directed the lower Court’s attention to factual inconsistencies in the Troopers’ testimony from the July 10, 2014, hearing which made it clear that they knew the primary purpose of taking the Petitioner to the Detachment rather than to a Magistrate first, was to get a statement from him. *App. Volume 4, Pages 28 through 31*. The State argued that there were no factual inconsistencies and directed the lower Court’s attention to an additional inconsistent statement made by Corporal Davis. *App. Volume 4, Pages 17 through 28, 32, 33*. The State pointed out that Corporal Davis testified at the July 10, 2014, hearing that an “initial

interview” that occurred prior to taking the Petitioner’s recorded statement, was only “partially” at the Petitioner’s suggestion. *App. Volume 4, Page 26*. Specifically, in the recorded statement Corporal Davis said to the Petitioner, “We talked awhile prior to this taped conversation. Is that correct?” *Id.* The Petitioner replied in the affirmative. *Id.* Then Corporal Davis said, “And that was partially your suggestion, too; is that right?” *Id.* On September 16, 2014, the lower Court Ordered that the Petitioner’s Motion to Suppress the Petitioner’s recorded statement had previously been denied and that the oral statement would be admissible at trial because, “the statement was made voluntarily and was not the product of any interrogation by the police.” *App. Volume 1, Page 11*.

On September 17, 2014, Counsel for the Petitioner filed a Motion to Reconsider the lower Court’s denial of his Motion to Suppress. *App. Volume 1, Page 16*. In this Motion, Counsel for the Petitioner argued that the Petitioner’s statement was taken in violation of the prompt presentment rule and Rule 5(a) of the West Virginia Rules of Criminal Procedure, and specifically set out the glaring inconsistencies in the Troopers’ testimony from the July 10, 2014, hearing. *Id.* On September 18, 2014, the lower Court denied the Petitioner’s Motion to Reconsider. *App. Volume 1, Page 23*.

On September 22, 2014, Counsel for the Petitioner filed a Motion to Set Aside the Order Denying the Petitioner’s Motion to Reconsider. *App. Volume 1, Page 29*. The basis for this Motion, was that the Order contained factual findings which were not contained anywhere in the record of the proceeding. *Id.* For explanation of Corporal Davis’ call to Sergeant Makenzie asking if he should come to the Detachment for the “actual interview,” the Court found that the, “Corporal heard on the radio that the Defendant was in custody.” *Id.* This factual finding was not based on evidence offered in this proceeding. The Court also found that, “He called Sergeant

Makenzie, at which time the Corporal indicated the Defendant wanted to make a statement.” *Id.* Thereafter, he offered to help the Sergeant.” *Id.* These factual findings are likewise, not contained in the record of this proceeding. Also, in the Order, if the lower Court inadvertently interchanged the word “Corporal” with the word “Sergeant,” and the Order was meant to say that “the Sergeant indicated the Defendant wanted to make a statement,” based on Sergeant Makenzie’s previous testimony, he did not tell Corporal Davis during their telephone conversation, that the Petitioner had indicated anything about wanting to give a statement. The lower Court subsequently denied this Motion without argument.

V.

SUMMARY OF ARGUMENT

Law enforcement took the Petitioner from the place of his arrest to the West Virginia State Police Detachment, rather than to presentment before a Magistrate, for the primary purpose of obtaining a statement from him. The record establishes that from the time of his arrest, law enforcement's primary goal was to obtain a statement from the Petitioner rather than promptly presenting him to a Magistrate; that law enforcement encouraged the Petitioner to give a statement during the two hour time period that lapsed from the time he signed the *Miranda* rights form until the time he gave a statement; that there was no reason the Petitioner could not have been taken promptly before a Magistrate after his arrest; that routine police procedure did not contribute to the delay because it occurred after the Petitioner gave a recorded statement; and that within a few minutes of obtaining his recorded statement, law enforcement finally presented him to a Magistrate. Therefore, from the totality of the circumstances, it is clear that the Petitioner's statement should not have been admitted as evidence against him because it was taken in violation of the prompt presentment rule contained in West Virginia Code §62-1-5 and Rule 5(a) of the West Virginia Rules of Criminal Procedure.

VI.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Pursuant to Rule 18(a) of the West Virginia Rules of Appellate Procedure, oral argument is necessary.

Pursuant to Rule 19(a) of the West Virginia Rules of Appellate Procedure, this appeal should be scheduled for oral argument because this appeal raises an assignment of error in the application of settled law.

Pursuant to Rule 19(g) of the West Virginia Rules of Appellate Procedure, the Petitioner argues that the issue presented in this appeal merits a signed opinion by this Honorable Court.

VII.

ARGUMENT

The Circuit Court erred by admitting the Petitioner's statement to law enforcement taken after his arrest and prior to being presented to a Magistrate as evidence against him because his statement was taken in violation of the prompt presentment rule contained in West Virginia Code §62-1-5 and Rule 5(a) of the West Virginia Rules of Criminal Procedure.

Under the prompt presentment rule contained in the West Virginia Code §62-1-5 and Rule 5(a) of the West Virginia Rules of Criminal Procedure, once an officer makes an arrest, the arrested person shall be taken without unnecessary delay before a magistrate of the county where the arrest is made. The purpose of the statute is to “avoid prolonged interrogation in order to coerce a confession.” *State v. Flournoy*, 232 W.Va. 175, 180; 751 S.E.2d 280, 285 (2013) (*per curiam*). Specifically, “The delay in taking a defendant to a magistrate may be a critical factor in the totality of circumstances, making a confession involuntary, and hence, inadmissible where it appears that the primary purpose of the delay was to obtain a confession from the defendant.” *State v. Rogers*, 231 W.Va. 205, 210; 744 S.E.2d 315, 320 (2013) (*per curiam*). Furthermore, “The prompt presentment rule is not nullified merely because the police read *Miranda* warnings to a suspect who is under arrest.” *State v. DeWeese*, 213 W.Va. 339, 345; 582 S.E.2d 786, 792 (2003).

In *State v. Flournoy*, 232 W.Va. 175, 176; 751 S.E.2d 280, 280 (2013), this Court found that the prompt presentment rule had not been violated. In *Flournoy*, once the investigating officer sat down with the defendant, he was read his *Miranda* rights, waived his rights within approximately five minutes, and then immediately began giving his recorded statement. *Id.* at 179, 284. Thereafter, the tape player malfunctioned and had to be exchanged for another tape

player. *Id.* Once the second tape player was obtained, the defendant was again read his rights, again waived them, and then confessed to the crime. *Id.* Despite the malfunctioning tape player, the defendant's confession was concluded within approximately twenty one minutes of his first waiver of his *Miranda* rights. *Id.* Also, even though from the time of the defendant's arrival at the police station to the time he gave his statement, a period of approximately one hour and forty minutes passed, the defendant was not being engaged in an "interview" by law enforcement. *Id.* During this lapse in time, the defendant did not give an unrecorded statement. *Id.* Rather, this delay was due to the investigating officer having to attend to other matters outside of the police station, and to the investigating officer conferring with other investigators upon his arrival at the station, prior to *Mirandizing* the defendant. *Id.*

Contrary to the facts in *Flournoy*, in this matter, during the approximate two hour period from the time the Petitioner was *Mirandized* to the time he gave his recorded statement, he was in the presence of at least one or more investigating officers, he was engaged in a conversation by the officers, and he gave an interview which according to Corporal Davis' testimony was only "partially" at the Petitioner's suggestion. Also, there was no testimony that during the approximate five hour time period, from his arrest to the conclusion of his statement, any officer attempted to reach a Magistrate, that a Magistrate was not available or that any routine police procedure caused the delay. Rather, the testimony was that the routine police procedure took only approximately ten to fifteen minutes and did not occur until after the Petitioner gave a recorded statement.

The State did not provide any explanation or offer an evidence to the lower Court to explain this delay except to say that after his arrest, the Petitioner stated that he wished to tell his side of the story. The State's position on when this statement was made was somewhat fluid and, based

on the Troopers' testimony, was arguably was not made at all or was not made until sometime during the interrogation and lengthy holding period at the Detachment and even then, according to Trooper Davis was only made "partially" at the Petitioner's suggestion "too."

In *State v. Sugg*, 193 W.V. 388, 395-396; 456 S.E.2d 469, 476-477 (1995), this Court recognized that "certain delays such as delays in the transportation of a defendant to the police station, completion of booking and administrative procedures, recordation and transcription of a statement, and the transportation of a defendant to the magistrate do not offend the prompt presentment requirement." In the present case, the Petitioner is not contending that any of the delays discussed in *Sugg*, contributed to a violation of the prompt presentment rule. Rather, the Petitioner is specifically arguing that, excluding travel time, the time period from his arrest to the beginning of his recorded statement constituted unreasonable delay and based on the events that took place during that time period it is clear that law enforcement's primary purpose was to get a statement from the Petitioner. It can logically be inferred from Corporal Davis' question to the Petitioner that conversing with law enforcement was "partially" his idea "too," that the delay had a coercive influence on his decision to give a statement. It obviously was not solely the Petitioner's desire to talk, it was law enforcement's "too." And curiously, it took approximately two hours of unrecorded colloquy between the officers and the Petitioner from the time the Petitioner signed the *Miranda* Form and the beginning of the recorded statement, to arrive at the Corporal's conclusion that it was only "partially" the Petitioner's idea "too." This was a long time from the time and place of the arrest, according to the Prosecutor, or, from transport "in the cruiser", according to Sergeant Makenzie, whichever the case may be, where the Petitioner allegedly initially said he wanted to tell his side of the story.

Simply put, if the Petitioner truly just wanted to tell his side of the story and made law enforcement aware of this at some fluid time between the place of arrest and arrival at the Detachment, he could have easily been *Mirandized* upon arrival, signed the waiver of *Miranda* rights form and immediately or shortly thereafter provided a recorded statement. But as discussed above, that is not what happened. Despite the officers' testimony that he wanted to tell his side of the story, it took two hours to get a recorded statement, and even then, according to Corporal Davis, talking to law enforcement was only "partially" the Petitioner's idea "too."

In *State v. Rogers*, 231 W.Va. 205, 211; 744 S.E.2d 315, 321-322 (2013) (*per curiam*), this Court held that the prompt presentment rule had not been violated because the defendant was *Mirandized* upon arriving at the Sheriff's department, he was repeatedly informed of his right to be promptly presented to a Magistrate, he waived this right, and his recorded statement was concluded approximately fifty five minutes after being *Mirandized*. The remainder of the delay before taking the defendant to a Magistrate occurred after the conclusion of the recorded statement, and was due to the defendant waiving his right to prompt presentment, routine police processing and the Magistrate's unavailability. *Id.* This case differs from *Rogers*, because in this case, all of the delay occurred prior to the Petitioner giving a recorded statement and because the Petitioner was not informed of his right to prompt presentment before a Magistrate. Once he provided a statement, he was processed for approximately ten to fifteen minutes and then was taken immediately to a Magistrate. Also, there is no evidence that the Petitioner waived his right to prompt presentment.

In *State v. DeWeese* 213 W.Va. 339, 353; 582 S.E.2d 786, 800 (2003), this Court reversed and remanded to the lower Court based partly on the appellant's argument that the prompt presentment rule had been violated. In *DeWeese*, the defendant was given *Miranda*

warnings after he was arrested and taken into custody. *Id.* at 343; 790. He then gave incriminating statements. *Id.* He was not taken before a Magistrate for in excess of fifteen hours from the time of his initial arrest. *Id.* at 344; 791. Even though the investigating officer testified that his primary concern was getting a statement from the defendant and that the officer did not care whether the defendant was presented to a Magistrate, the State still argued that since the defendant had waived his *Miranda* rights, his statement was voluntary and admissible. *Id.* at 345; 792. This Court disagreed and held that, “the prompt presentment rule is not nullified merely because the police read *Miranda* warnings to a suspect who is under arrest,” and further held that it rejected the State’s argument, “as it would completely abolish the very essence of the prompt presentment rule.” *Id.* Also, this Court noted that, “Our cases have never held that the police may purposefully delay taking a suspect before a magistrate in order to encourage the suspect to make a statement.” *Id.* at Footnote 10.

In the present case, approximately two hours lapsed between the time the Petitioner signed the *Miranda* form and the time he gave his statement. It is clear, that during this time, the Petitioner was engaged in a discussion about the case by Troopers Davis and Makenzie. This raises the question why, if the Petitioner had already announced and decided entirely on his own hours before, that he wanted to tell his side of the story, that any off the record discussion with law enforcement of any length of time would be necessary. Based on Corporal Davis’ explicit testimony, it is unquestionable that the Petitioner was encouraged to give a recorded statement. This is obvious by the Corporal’s question to the Petitioner that this is what he wanted to do “too.” By definition the word “too” means “as well as” or “in addition to.” Therefore, is it undeniable from the Corporal’s question, that law enforcement had, during that two hour off the record conversation, made it clear that it was their desire that the Petitioner give a statement,

encouraged him to give it and then attempted to minimize their encouragement by including in the recording that it was his desire “too.” Under the State’s theory, once a defendant is *Mirandized*, it does not matter what occurs or how long it takes to obtain a recorded statement, it is still admissible and not a violation of the prompt presentment rule. This theory is directly contrary to *DeWeese*.

In addition, in *DeWeese*, this Court sets out the importance of the prompt presentment rule and the intention of this Court to strictly adhere to it. In *DeWeese*, this Court states that, “The prompt presentment rule is not a constitutional doctrine. It is a legislatively created and judicially adopted rule.” *Id.* at 346, 793. In reviewing its prior cases, this Court recognized that, “The right to prompt presentment is not constitutionally guaranteed outside the context of a warrantless arrest, but rather exists as a statutory and procedural right.” *Id.* Simply put, the prompt presentment rule is not a constitutional provision subject to interpretation. It is a statutory and procedural right of an accused, which may not be violated.

The record from the lower Court proceedings is riddled with inconsistencies that raise suspicion as to the reason the Petitioner gave a recorded statement, and as to the reason there was a delay on the part of law enforcement in presenting him to a Magistrate. The inconsistencies are as follows: Sergeant Makenzie and West Virginia State Trooper Richards, not Corporal Davis, transported the Petitioner from the place of his arrest to the Lewisburg Detachment; Corporal Davis had no contact or conversation with the Petitioner until the Corporal arrived at the Lewisburg Detachment; neither Sergeant Makenzie nor Trooper Richards at any time told Corporal Davis that the Petitioner had allegedly stated that he wished to give a statement; Corporal Davis testified that the first time he learned the Petitioner wished to give a statement was as soon as he started talking to him at the Lewisburg Detachment; despite this testimony,

Corporal Davis testified that during the Petitioner's transport, Corporal Davis called Sergeant Makenzie by telephone and told Sergeant Makenzie that he would meet him at the Lewisburg Detachment for the "actual interview" of the Petitioner; Sergeant Makenzie testified that the Petitioner, "made no statements about the crime prior to being *Mirandized*;" Sergeant Makenzie testified that "no discussion" took place with the Petitioner during his transport from the place of his arrest to the Lewisburg Detachment; Sergeant Makenzie testified that other than the recorded statement, there was nothing in his report or that he intended to offer at trial concerning any statement the Petitioner made from the point of his arrest to the point where the Sergeant talked to him; Sergeant Makenzie testified that shortly upon arrival at the Lewisburg detachment, he *Mirandized* the Petitioner and, "explained to him what information we had gathered through our investigation to that point, and ask(ed) if he wished to make a statement or tell his side of the story;" Sergeant Makenzie's testimony that the Petitioner had stated "in the cruiser" that he "wanted to tell his side or make a statement about what his side of it was," differs from the State's representation to the lower Court that the State was advised (by law enforcement) that the Petitioner made that statement at the "site of the arrest;" if the Petitioner in fact made this statement "at the site of the arrest" or "in the cruiser," Sergeant Makenzie would not have needed to ask him after arrival at the Detachment if he wanted to tell his side of the story; approximately two hours passed between the time the Petitioner signed the *Miranda* rights form and the time he gave a statement; during this two hour time period, the Petitioner was engaged in a conversation by Sergeant Makenzie and Corporal Davis that lead to Corporal Davis asking the Petitioner, if this was "partially" his idea "too;" the Petitioner was finally taken before a Magistrate within approximately ten minutes of the conclusion of his recorded statement; neither Sergeant Makenzie nor Corporal Davis attempted to contact a Magistrate prior to the conclusion of the

Petitioner's recorded statement despite Sergeant Makenzie's testimony that there was no reason that the Petitioner could not have been taken promptly to a Magistrate; there was no testimony that a Magistrate was not available from the Petitioner's arrival at the Detachment until the time he was finally arraigned; and the Order denying the Petitioner's Motion to Set Aside the Order Denying his Motion to Reconsider contained facts that were nowhere in the record of the proceeding.

The Petitioner argues that the reason for the inconsistencies is clear. Law enforcement took him to the Lewisburg Detachment for the primary purpose of obtaining a statement, and not because the Petitioner spontaneously offered to "tell his side of the story." To achieve this purpose, rather than presenting the Petitioner promptly to a Magistrate as required by law, law enforcement spent approximately two hours conversing with the Petitioner during which, they encouraged him to give a statement. The Troopers believed they were justifying their actions by *Mirandizing* the Petitioner and then getting him to say on the record that it was his idea "too," but this was clearly not a voluntary statement as those given in *Flournoy*, *Sugg*, and *Rogers*. This statement is more akin to the one obtained in *DeWeese*. Undeniably, the testimony of the officers in this case is not as explicit as that of the officer in *DeWeese*, but when considering the totality of the circumstances, their intentions were just as obvious. This was a statement that was encouraged and prompted by the actions of law enforcement after unnecessary delay before presentment to a Magistrate. This Petitioner was taken to the Lewisburg State Police Detachment, not simply for routine police procedure, but for the primary purpose of obtaining a statement from him. Therefore, the lower Court should have suppressed the Petitioner's statement because it was taken in violation of the prompt presentment rule and Rule 5(a) of the West Virginia Rules of Criminal Procedure, and is contrary to case precedent.

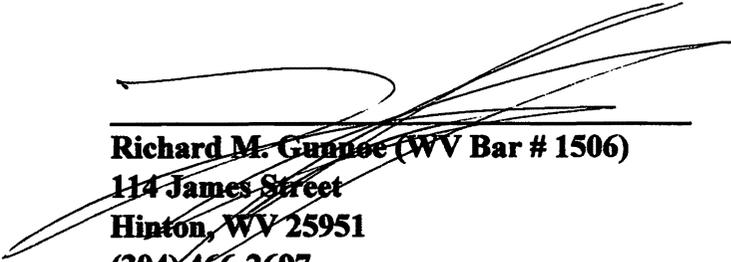
VIII.

CONCLUSION

Based on the foregoing arguments, Petitioner respectfully requests that this Honorable Court reverse the conviction and sentence below, and remand the case to the Circuit Court of Monroe County.

Respectfully Submitted,

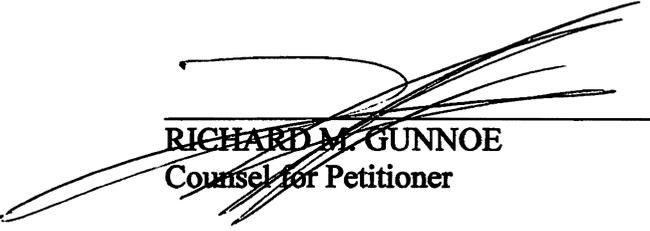
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CERTIFICATE OF SERVICE

I, Richard M. Gunnoe, do hereby certify that on the 27th day of March 2015, a copy of the foregoing Petitioner's Brief was mailed to David Stackpole, Assistant Attorney General, 812 Quarrier Street, 6th Floor, Charleston, WV 25305.



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