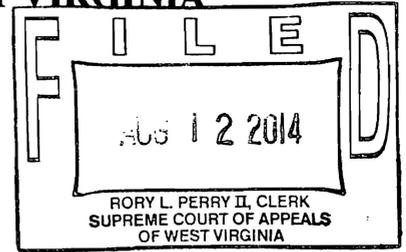


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**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**DOCKET NUMBER: 14-0455**

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**STATE OF WEST VIRGINIA**  
**Respondent,**

**v.**

**STEVEN MICHAEL WILLIAMS,**  
**Petitioner.**

**APPEAL FROM A FINAL ORDER OF THE:**  
**NINTH JUDICIAL CIRCUIT COURT OF MERCER COUNTY (13-F-366-OA)**

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**Petitioner's Brief**

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### ASSIGNMENT OF ERROR

The Petitioner, Steven Williams (hereinafter “Mr. Williams”) contends that the Ninth Judicial Circuit Court in Mercer County (hereinafter “Mercer County Circuit Court”) erred by granting the State’s Motion in Liminie and prohibiting Mr. Williams from effectively cross-examining the State’s key witness Victoria Combs with relevant evidence about her felony conspiracy guilty plea and the fact that she was on probation at the time she gave a statement to the West Virginia State Police implicating Mr. Williams in a crime which would have provided a basis to attack her creditability. It is Mr. Williams’ position that the Mercer County Circuit Court’s ruling on the State’s Motion in Liminie violated Mr. Williams’ guaranteed right to confront and effectively cross-examine witnesses under the Confrontation Clause of the Sixth Amendment to the Constitution of the United States.

### STATEMENT OF THE CASE

On the night of May 5, 2013, Mr. Williams, an African-American male, entered the drive-through lane of the McDonald’s restaurant in Princeton, West Virginia. P195-196. Mr. Williams was driving a black car with two passengers, both African-American males. Id. Mr. Williams and his companions had ordered food and were waiting in the drive-through lane to receive their food. Id.

Behind Mr. Williams’ car were two Caucasian males (Kody Smith and Devon Honaker) in a car who had also ordered and were waiting for their food. P106-108; P128-129. The men in the two cars began to argue with one another while they waited in the drive-through lane. P109-112; P128-129.

The State of West Virginia’s key witness Victoria Combs was working the drive-through window at the McDonalds restaurant. P157-162. Ms. Combs was in the process of serving food

to the black car with the African-American males (Mr. Williams' car) when she saw the driver of the car remove a handgun from the car's center console and place it in his lap. Id. Ms. Combs gave the driver of the black car their food and the black car drove out of the drive-through area. Id. The car containing the two Caucasians (Kody Smith and Devon Honaker) pulled up to the drive-through window, received their food and drove out into the parking lot. P109-112; P130.

While driving through the parking lot Kody Smith and Devon Honaker came upon the black car and the men in the two cars began to argue with one another again. P130-131. Mr. Williams got out of his car and Devon Honaker got out of his car and started walking toward one another. Id. Devon Honaker told police that an African –American male, who he did not know and could not identify, pulled out a handgun and shot at him at which time he jumped back into his car and drove away. P113-118. He also told police that the African-American male was the driver of the black car and he was wearing a black shirt. P121. Of the three African-American males in Mr. Williams' car only the back seat passenger was wearing a black shirt, Mr. Williams along with the front seat passenger were both wearing white shirts. P214-216.

A few hours after the shooting, the State's key witness Victoria Combs provided a statement to the West Virginia State Police about what she saw while working the drive-through window. P158-159. She was only able to identify the man she saw with the handgun as an African-American male sitting in the driver seat of a black car. Id. She did not know the African-American man and was not able to identify him. Id.

At the time Victoria Combs gave the statement to the West Virginia State Police she was on probation for pleading guilty to felony conspiracy. P148-156; P11. Six months earlier Ms. Combs had pleaded guilty to a felony conspiracy and was placed on probation for two years under a deferred adjudication. Id. According to the plea agreement, if she successfully completed

probation she would be permitted to withdraw her guilty plea under the deferred adjudication. P11. Additionally, the West Virginia State Police officer who was assisting with the investigation into the shooting at McDonalds was the same West Virginia State Police officer who arrested Victoria Combs leading to her pleading guilty to felony conspiracy. P151.

On May 6, 2013, Mr. Williams voluntarily gave a statement about what occurred at McDonalds. P194-197; P209. Mr. Williams told police that he was a felon, was driving the black car, got into an argument with two Caucasian males who he didn't know, got out of his automobile to fight one of the males but he did not have a handgun in his possession and he did not fire the handgun. Id. He told police that the gunshot came from behind him.<sup>1</sup> Id. Thereafter, Mr. Williams was arrested and indicted on one count of felon in possession of a firearm and two counts of wanton endangerment for shooting at Kody Smith and Devon Honaker. P388.

Prior to trial, Mr. Williams 's counsel made it known to the State that he intended to cross-examine the State's key witness Victoria Combs about the fact that she was on probation for pleading guilty to felony conspiracy at the time she gave her statement to police and that she was on probation at the time of the shooting. P7. Mr. Williams' counsel also made the State aware that he intended to cross-examine Ms. Combs with the fact that six months **after** providing the statement to the West Virginia State Police implicating Mr. Williams in the crime, an order from the Mercer County Circuit Court was entered releasing Ms. Combs from probation one year early and dismissing her criminal conviction. P14.

The purpose of such cross-examination would be to expose or provide a basis **to suggest to the jury an inference** that undue pressure was placed on Ms. Combs to cooperate with police because of her vulnerable position as a probationer. P7. It was Mr. Williams' counsel position

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<sup>1</sup> Mr. Williams also underwent a gunpowder residue test performed by the West Virginia State Police which was negative. No gunpowder residue was found on Mr. Williams' hands or face. P171.

that he should be permitted to cross-examine Ms. Combs relating to her felony guilty plea and her probation in the presence of the jury to determine: (1) if a deal was entered into between the State of West Virginia and Ms. Combs for her statement implicating Mr. Williams in the crime; (2) to determine if Ms. Combs had any ulterior motive in believing that if she helped the West Virginia State Police prove its case against Mr. Williams it might help her with her felony plea or probation; and (3) to determine if Ms. Combs felt pressured to provide a statement to the West Virginia State Police implicating Mr. Williams in the crime because she was on probation at the time and feared her probation could be revoked if she did not cooperate. P7; P48-66.

On February 12, 2014, the State of West Virginia filed a Motion in Liminie to prohibit Mr. Williams' counsel from cross-examining the State's key witness Victoria Combs about the fact that she was on probation for pleading guilty to felony conspiracy at the time she gave her statement to police and that she was on probation at the time of the shooting. P1; P49-64. The Mercer County Circuit Court over Mr. Williams' counsel's objection granted the State's Motion in Liminie. P1.

On February 18, 2014, Mr. Williams' trial began and the State's key witness Victoria Combs testified to what she witnessed while working the McDonald's drive-through window. P157-162. Pursuant to the Mercer County Circuit Court's ruling, Mr. Williams' counsel was prohibited from effectively cross-examining Ms. Combs about her probation and her felony conspiracy guilty plea. Additionally, Mr. Williams was prohibited from exploring into the fact that the West Virginia State Police officer who was assisting with the investigation into the incident at McDonalds was the same West Virginia State Police officer who arrested Victoria Combs leading to her pleading guilty to felony conspiracy.

The jury found Mr. Williams guilty of the crime - felon in possession of a firearm - but not guilty as to the two counts of wanton endangerment. P2-4. Ms. Combs' testimony was the only reliable evidence linking Mr. Williams to the handgun which the jury could have relied on to find Mr. Williams guilty of the crime.

On April 7, 2014, Mr. Williams filed a Motion for New Trial arguing that it was error for the Mercer County Circuit Court to grant the State's Motion in Limine and prohibit Mr. Williams' counsel from effectively cross-examining the State's key witness Victoria Combs. P23; P338-365. The Mercer County Circuit Court denied Mr. Williams' motion and sentenced Mr. Williams to a determinate sentence of four years in the penitentiary. P5. Mr. Williams appealed his conviction on May 2, 2014, seeking a reversal of his conviction or a new trial with the finding that he should be permitted to cross-examine the State's key witness Victoria Combs with regard to her probation and guilty plea pursuant to the Confrontation Clause of the Sixth Amendment to the Constitution of the United States.

#### **SUMMARY OF ARGUMENT**

On November 19, 2012, the State of West Virginia's key witnesses Victoria Combs plead guilty to felony conspiracy and an order was entered placing her on probation for two years under a deferred adjudication. On May 6, 2013, Ms. Combs provided a statement to law enforcement implicating Mr. Williams in a crime. On November 20, 2013, before Mr. Williams' trial, an order was entered releasing Ms. Combs, one year early, from probation and dismissing her criminal conviction.

Based on the United States Supreme Court's ruling in Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974), Mr. Williams should have been permitted to cross-examine Ms. Combs with this relevant evidence before the jury *to afford a basis for an inference* of

undue pressure. Mr. Williams should have been permitted to cross-examine Ms. Combs relating to her guilty plea and probation. The credibility of a witness is a question for the jury to decide not the court. The only way a jury can determine a witness's credibility is to allow the jury to see and hear the witness's responses to questions during direct and cross-examination. Not permitting Mr. Williams' counsel an opportunity to cross-examine Ms. Combs in the presence of the jury with the highly relevant evidence that Ms. Combs had plead guilty to a felony and was on probation at the time she gave a statement to law enforcement implicating Mr. Williams was a violation of his Sixth Amendment right under the Constitution of the United States. Serious damage to the strength of the State's case could have been a real possibility had Mr. Williams been allowed to pursue this line of inquiry at trial.

#### **STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

The principle issue in this case has been authoritatively decided by the Court. Oral argument under Rule 18(a) of the West Virginia Rules of Appellate Procedure is not necessary unless the Court determines that other issues arising upon the record should be addressed. If the Court determines that oral argument is necessary, this case is appropriate for a Rule 19 of the West Virginia Rules of Appellate Procedure argument and disposition by memorandum decision.

#### **ARGUMENT**

##### **Standard of Review**

The Supreme Court of Appeals of West Virginia has held that the "[f]ailure to observe a constitutional right constitutes reversible error unless it can be shown that the error was harmless beyond a reasonable doubt." Syllabus point 5, State ex rel. Grob v. Blair, 158 W.Va. 647, 214 S.E.2d 330 (1975). "Errors involving deprivation of constitutional rights will be regarded as harmless only if there is no reasonable possibility that the violation contributed to the

conviction." State v. Jenkins, 195 W.Va. 620, 629, 466 S.E.2d 471, 480 (1995)(*quoting*, syllabus point 20, State v. Thomas, 157 W.Va. 640, 203 S.E.2d 445 (1974). Moreover, once an error of constitutional dimensions is shown, the burden is upon "the beneficiary of a constitutional error"—the State—"to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.ed. 2d 705 (1967).

In this case, the Mercer County Circuit Court erred by failing to observe Mr. Williams' constitutional right which is clearly reversible error. The Mercer County Circuit Court should have allowed Mr. Williams to cross-examine Victoria Combs with relevant evidence about her felony guilty plea and the fact that she was on probation at the time she gave the statement to the West Virginia State Police implicating Mr. Williams in the crime. Ms. Combs' testimony was the only reliable evidence linking Mr. Williams with the gun supporting the State's position that Mr. Williams was a felon in possession of a firearm. Ms. Combs' testimony was the only evidence that could support a conviction against Mr. Williams for felon in possession of a firearm. All other evidence present at the trial was used to try and link Mr. Williams to the crime of wanton endangerment for shooting at Cody Smith and Devon Honaker and was discredited during the course of the trial.<sup>2</sup> Serious damage to the strength of the State's case could have been a real

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<sup>2</sup> At trial, the State called Victoria Combs in an attempt to prove the criminal charge of felon in possession of a firearm. Ms. Combs' testimony was limited to this charge because she did not see the alleged shooting which occurred in the parking lot of McDonalds involving Devon Honaker and Kody Smith. P162.

The State called Devon Honaker and Cody Smith to provide evidence in an attempt to link Mr. Williams to the crime of wanton endangerment. The jury clearly did not rely on Devon Honaker and Kody Smith's testimony because their testimony was shown to be unreliable.

Mr. Honaker testified that the driver of the black car was the person who fired the firearm that night and the driver was wearing a black shirt. P121. A recorded video surveillance was presented to the jury that clearly showed that Mr. Honaker's statement was not accurate because based on recorded video surveillance Mr. Williams (the driver of the black car) was wearing a white shirt the night of the shooting. P122; P214-216.

possibility had Mr. Williams been allowed to pursue this line of inquiry. The State cannot argue that the Mercer County Circuit Court's error in failing to observe Mr. Williams' Sixth Amendment Right under the Constitution of the United States was harmless.

### Argument

**Pursuant to Confrontation Clause of the Sixth Amendment to the Constitution of the United States Mr. Williams' counsel should have been permitted to cross-examine the State's key witness Victoria Combs at trial about her felony criminal conviction and probation status.**

The Supreme Court of the United States held in Davis v. Alaska, 415 U.S. 308, 317, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974), "that the United States Constitution permits the accused to cross-examine witnesses for the purpose of exposing biases, prejudices, or ulterior motives" and "by so doing the cross-examiner intends to afford the jury *a basis to infer* that the witness' character is such that he would be less likely than the average trustworthy citizen to be truthful in his testimony." Id. at 318 (*emphasis added*). Additionally, the Supreme Court in Pointer v. Texas, 380 U.S. 400, 408, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965), held that these rights guaranteed under the Sixth Amendment to the Constitution are secured for defendants in state as well as federal criminal proceedings.

Justice Davis in her dissenting opinion in State v. Jones, 230 W. Va. 692, 742 S.E.2d 108, 120 (2013), explained the importance of the right to cross-examine in a criminal trial. Justice Davis stated that:

"Probably no one, certainly no one experienced in the trial of lawsuits, would deny the value of cross-examination in exposing falsehood and bringing out the truth in the trial of a criminal case."(*quoting Pointer v. Texas*, 380 U.S. 400, 404, 85 S.Ct. 1065 1068, 13 L.Ed.2d 923 (1965). Indeed, "[t]he right to confront and to cross-examine witnesses is primarily a functional right that promotes

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Mr. Smith testified at trial that he saw a gun being raised from the driver's window of the black car P134-138; however, Mr. Smith's recorded statement shortly after the shooting revealed that he only saw a gun but did not identify what window of the black car the gun came from. Id.

reliability in criminal trials.”(quoting Lee v. Illinois, 476 U.S. 530, 540, 106 S.Ct. 2056 2062, 90 L.Ed.2d 514 (1986). ***For this reason, the United States Supreme Court scrupulously has guarded against “restrictions imposed by law or by the trial court on the scope of cross-examination.”***(quoting Delaware v. Fensterer, 474 U.S. 15, 18, 106 S.Ct. 292, 294, 88 L.Ed.2d 15 (1985). In fact, the Confrontation Clause of the Sixth Amendment of the United States Constitution guarantees a criminal defendant the right to be confronted with the witnesses against him or her. Moreover, the Supreme Court has held that the rights under the Confrontation Clause mean more than merely being allowed to confront a witness physically. In Pennsylvania v. Ritchie, 480 U.S. 39, 51, 107 S.Ct. 989, 998, 94 L.Ed.2d 40 (1987), the Court held that “[t]he Confrontation Clause provides two types of protections for a criminal defendant: the right physically to face those who testify against him, and the right to conduct cross-examination.”(quoting)(***emphasis added***).

Justice Davis further stated in State v. Jones, that:

Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested. Subject always to the broad discretion of a trial judge to preclude repetitive and unduly harassing interrogation, the cross-examiner is not only permitted to delve into the witness' story to test the witness' perceptions and memory, but the cross-examiner has traditionally been allowed to impeach, i.e., discredit, the witness.... A more particular attack on the witness' credibility is effected by means of cross-examination directed toward revealing possible biases, prejudices, or ulterior motives of the witness as they may relate directly to issues or personalities in the case at hand. ***The partiality of a witness is subject to exploration at trial, and is always relevant as discrediting the witness and affecting the weight of his testimony.*** Davis v. Alaska, 415 U.S. 308, 315–17, 94 S.Ct. 1105 1110, 39 L.Ed.2d 347 (1974).<sup>3</sup>(***emphasis added***).

Additionally, Justice Davis stated that the decision in Davis v. Alaska clearly “illustrates the problem of denying a defendant the right to cross-examine a key witness ***with relevant*** evidence that attacks the witness' credibility.” Id. at 121(***emphasis added***).

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<sup>3</sup> See also Maryland v. Craig, 497 U.S. 836, 845, 110 S.Ct. 3157 3163, 111 L.Ed.2d 666 (1990)(quoting “The central concern of the Confrontation Clause is to ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversary proceeding before the trier of fact.”); Pointer v. Texas, 380 U.S. 400, 405, 85 S.Ct. 1065 1068, 13 L.Ed.2d 923 (1965) (quoting “There are few subjects, perhaps, upon which this Court and other courts have been more nearly unanimous than in their expressions of belief that the right of confrontation and cross-examination is an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal.”).

In Davis v. Alaska, the Alaska State Police were investigating a burglary where a safe had been stolen from a local bar. Id. at 311. The safe was later discovered in a wooded remote area and had been opened by force using a crowbar. Id. The Alaska State Police interviewed a young man named Richard Green who lived in the area and who stated that he had seen two African-American males in the area where the stolen safe was discovered and one was holding a crowbar. Id.

Richard Green was taken to the police station and present with photographs and identified the petitioner as one of the men. Id. He later identified the petitioner in a line-up. Id. Thereafter, the petitioner was arrested and tried for burglary and grand larceny. Id.

At trial, Richard Green was the prosecution's key witness; however, before the trial, the prosecution moved for a protective order to prevent the defense from cross-examining Richard Green with the fact that at the time of trial and at the time of the events he would testify to, he was on probation by order of a juvenile court after having been adjudicated a delinquent for burglarizing two cabins. Id. and 312.

The defense opposed the motion, arguing to the court that the defense would not introduce Richard Green's juvenile adjudication to impeach Green's character "but rather to show specifically that at the same time Richard Green was assisting the police in identifying petitioner he was on probation for burglary." "The petitioner would argue to the jury that Richard Green acted out of fear or concern of possible jeopardizing his probation." Id. The defense sought only to argue to the jury that Richard Green might have been subject to undue pressure from the police and made his identifications under fear of possible probation revocation. Id.

The Alaska trial court granted the prosecution's protective order and the defense was not permitted at trial to cross-examine Richard Green with regard to the fact that at the time of trial and at the time of the events he would testified to, he was on probation. Id.

On appeal, the United States Supreme Court stated that “[t]he accuracy and truthfulness of Green’s testimony were key elements in the State’s case against petitioner.’ ‘The claim of bias which the defense sought to develop was admissible *to afford a basis for an inference of undue pressure* because of Green’s vulnerable status as a probationer.” Id. 318-318(*emphasis added*).

The Supreme Court held that “[t]he Sixth Amendment to the Constitution guarantees the right of an accused in a criminal prosecution ‘to be confronted with the witnesses against him.’

The United States Supreme Court further stated:

[t]he main and essential purpose of confrontation is to secure for the opponent the opportunity of cross-examination. The opponent demands confrontation, not for the ideal purpose of gazing upon the witness, or of being gazed upon by him, but for the purpose of cross-examination, which cannot be had except by the direct and personal putting of questions and obtaining immediate answers. Id. at 316-317 (*citing* 5 J. Wigmore, Evidence Section 1395, p. 123(3d ed. 1940).

The Supreme Court stated “[c]ross-examination is the principle means by which the believability of a witness and the truth of his testimony are tested. Id. at 317. “[W]e have recognized that the exposure of a witness’ motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination. Id. *citing* (Greene v. McElroy, 360 U.S. 474, 496, 79 S.Ct. 1400, 1413, 3 L.Ed.2d 1377 (1959).

In applying this principle, the Supreme Court held that the petitioner should have been allowed to cross-examine Richard Green with the highly relevant fact that at the time of trial and at the time of the events he would testify to, he was on probation. Id. at 318. The Court stated:

[w]e cannot speculate as to whether the jury, as sole judge of the credibility of a witness, would have accepted this line of reasoning had counsel been permitted to fully present it. ***But we do conclude that the jurors were entitled to have the benefit of the defense theory before them so that they could make an informed judgment as to the weight to place on Green's testimony which provided a crucial link in the proof ...of petitioner's act.*** The accuracy and truthfulness of Green's testimony were key elements in the State's case against petitioner. The claim of bias which the defense sought to develop was admissible to afford a basis for an inference of undue pressure because of Green's vulnerable status as a probationer. Id. at 318-319 (***emphasis added***).

Thus, the “[p]etitioner was [] denied the right of effective cross-examination which ‘would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it.’”

In this appeal before the West Virginia Supreme Court, the jury on February 18, 2014, found that Mr. Williams was in possession of a firearm on the night of May 5, 2013. P2-4. Obviously, the crucial piece of evidence the jury considered in making this determination was the testimony of the State's key witness Victoria Combs.

Just like Richard Green's testimony in Davis v. Alaska, Ms. Combs' testimony at trial that she saw an African-American male in the driver's seat of a black car, with a gun in his lap while he was in the drive-through was the crucial evidence linking Mr. Williams to the gun. P157-162. Additionally, just like Richard Green's testimony in Davis v. Alaska, the accuracy and truthfulness of Ms. Combs' testimony were key elements in the State's case against Mr. Williams. Based on the United States Supreme Court's ruling in Davis v. Alaska, Mr. Williams should have been permitted to cross-examine Ms. Combs before the jury with highly relevant evidence to afford a basis for an inference of undue pressure.

Specifically, Mr. Williams' counsel should have been permitted to cross-examine Ms. Combs with the highly relevant evidence that on November 19, 2012, she had plead guilty to felony conspiracy and an order was entered placing her on probation for two years under a

deferred adjudication. P11. That at the time Ms. Combs provided her statement to law enforcement implicating Mr. Williams in the crime she had plead guilty to a felony and was on probation. That one year later, on November 20, 2013, before Mr. Williams' trial, an order was entered releasing Ms. Combs from probation one year early and dismissing her criminal conviction. P14. That the West Virginia State Police officer who was assisting with the investigation into the incident at McDonalds was the same West Virginia State Police officer who arrested Victoria Combs leading to her pleading guilty to felony conspiracy. P151. Clearly, these facts were *relevant evidence to suggest and infer* that Ms. Combs was or could have been pressured in cooperating with the West Virginia State Police.

The purpose of such cross-examination would have been to expose or provide a basis to suggest to the jury an inference that undue pressure was placed on Ms. Combs to cooperate with police because of her vulnerable position as a probationer. It was Mr. Williams' counsel's position that he should be permitted to cross-examine Ms. Combs relating to her felony guilty plea and her probation in the presence of the jury to determine: (1) *if a deal was entered* into between the State of West Virginia and Ms. Combs for her statement implicating Mr. Williams in the crime; (2) *to determine if Ms. Combs had any ulterior motive* in believing that if she helped the West Virginia State Police prove its case against Mr. Williams it might help her with her felony conviction or probation; and (3) *to determine if Ms. Combs felt pressured* to provide a statement to the West Virginia State Police implicating Mr. Williams in the crime because she was on probation at the time and feared her probation could be revoked if she did not cooperate. Serious damage to the strength of the State's case could have been a real possibility had Mr. Williams been allowed to pursue this line of inquiry during her testimony.

The credibility of a witness is a question for the jury to decide not the court. The only way a jury can determine a witness's credibility is to allow the jury to see and hear the witness's responses to questions during direct and cross-examination. Not permitting Mr. Williams an opportunity to cross-examine the witness in the presence of the jury with the highly relevant facts that she had plead guilty to a felony, was on probation at the time she gave a statement to law enforcement implicating Mr. Williams, was subsequently taken off probation one year early before Mr. Williams' trial was a violation of his Sixth Amendment right under the Constitution of the United States.

Mr. Williams concedes that pursuant to the language contained within Rule 609(a)(1)(A) of the West Virginia Rules of Evidence that at the time of trial Ms. Combs was not technically a convicted felon; however, the relevant facts are that Ms. Combs *did plead guilty* to a felon crime and was on probation *at the time she provided evidence against Mr. Williams*. The relevant facts clearly support Mr. Williams' contention that Ms. Combs could have been pressured into providing evidence against him. The relevant facts clearly support the right to cross-examine Ms. Combs to test her accuracy and truthfulness since her accuracy and truthfulness were key elements in the State's case. The relevant facts clearly could have supported *an inference* to the jury that undue pressure was placed on Ms. Combs.

The Mercer County Circuit Court did permit Mr. Williams to explore Ms. Combs' credibility in an *in camera* hearing before the court outside the presences of the jury. P148-154. After the hearing, the Mercer County Circuit Court ruled that Ms. Combs was a credible witness and because she did not admit in the *in camera* hearing to being pressured or feeling pressured to cooperate with the West Virginia State Police her credibility would not be allowed to be questioned P155-156; however, "*determinations as to the credibility of witnesses are matters*

*for the jury to resolve, not matters to be decided by ... the trial court.”* State v. Whittaker, 221 W. Va. 117, 650 S.E.2d 216, 227 (2007)(citing Syl. pt. 3, in part, State v. Guthrie, 194, W. Va. 657, 461 S.E.2d 163 ( 1995).

Mr. Williams was entitled under the Sixth Amendment to the Constitution of the United States to present his theory of Ms. Combs’ credibility to the jury, not the Mercer County Circuit Court. As the Supreme Court stated in Davis v. Alaska, the jury is entitled “to have the benefit of the defense theory before them so that they could make an informed judgment as to the weight to place on [] the testimony which provided a crucial link in the proof.” Davis v. Alaska, at 318. The United States Supreme Court in Maryland v. Craig, 497 U.S. 836, 845, 110 S.Ct. 3157, 3163, 111 L.Ed.2d 666 (1990) held that “[t]he central concern of the Confrontation Clause is to ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversary proceeding before the trier of fact.”

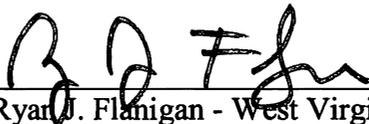
The Mercer County Circuit Court’s determination that Ms. Combs was a credible witness was irrelevant. The Mercer County Circuit Court erred by failing to observe Mr. Williams’ right under the Confrontation Clause of the Sixth Amendment to the Constitution of the United States to cross-examine Ms. Combs with relevant evidence that would have attacked her credibility.

#### CONCLUSION

Victoria Combs’ testimony was key evidence in the case and Mr. Williams pursuant to the Sixth Amendment to the Constitution of the United States should have been permitted to cross-examine her regarding the relevant evidence that she had plead guilty to a felon and was on probation at the time she made a statement implicating Mr. Williams in the crime.

Mr. Williams seeks a reversal of his conviction or a new trial with the finding that Mr. Williams should be permitted to cross-examine the State's key witness Ms. Combs with regard to her guilty plea and probation.

**Counsel for Petitioner**



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 12<sup>th</sup> day of August, 2014, true and accurate copies of the foregoing **Petitioner's Brief** were deposited in the U.S. Mail contained in postage-paid envelope addressed to counsel for all other parties to this appeal as follows:

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