

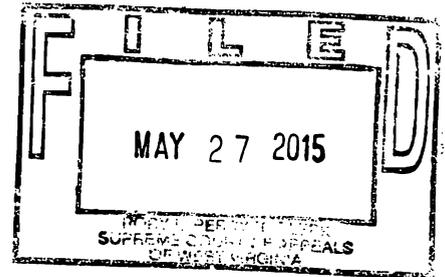
Supplement 2

Julia Surbaugh
51198-2/D-8a

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April 21, 2015

The Honorable Brent D. Benjamin, Justice
West Virginia Supreme Court of Appeals
1900 Kanawha Boulevard East
Charleston, WV 25301



Dear Justice Benjamin:

I am back in front of the West Virginia Supreme Court of Appeals. While I have addressed the omitted trial error in the accompanying letter, I write you individually¹ as you wrote the opinion, *State v. Surbaugh*, 230 W. Va. 212, 737 S.E.2d 240 (2012), my case. As the opinion was in my favor, I did not feel the need to question certain inferences that were contained within and were based upon the State's response brief (majority of which was not cited to trial transcripts) submitted in that appeal. Webster County Prosecutor Dwayne Vandevender wrote the State's response brief in 2012. New evidence has come to light in the second trial (2014) and its preparation that raises questions about the veracity of Mr. Vandevender's first rendition of the facts.

As you are aware in the first appeal, appellate counsel Richard Lorensen, filed a *Crawford*² error. the question of my husband's statement at the hospital – was it testimonial or not – was answered based upon the questioning occurring during an emergent situation. Specifically, was I the gunman and therefore were all around me in danger. While an objective reading of the event could describe the situation as an emergency, an actual account from a law enforcement officer present the morning of the shooting begs to differ.

During pretrial hearing of February 14, 2014, lead investigator, Deputy Richard Clayton, testified when questioned about the morning of August 6, 2009 (the shooting and whether there was an emergency):

Q. So no one else had seen the gun, and at that point you all weren't continued to be worried about the fact that there was a gun somewhere --

A. Well --

¹ As opposed to the accompanying letter and transcript citations I sent to this entire Honorable Court.

² *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004).

Q. – in the house?

A. – **Mr. Surbaugh was in the ambulance. And at this point, at this point we still think of Julie as a victim. So we weren't really concerned** (pg. 229 PT 2014).

This new evidence shows there was no emergent situation by the time the recorded statement was taken from my husband at the hospital.

So, in the second trial, the State put forth that Deputy Vandevender who took the statement from my husband didn't know the gun was found. However, Deputy Vandevender's police report states he left the residence after the gun was found (this is detailed in the accompanying letter on page pages 5-7 and references appropriate transcript citations). The State Trooper who instructed Dep. Vandevender to get a statement now says he sent him to get a *recorded* statement. I know holdings of this Honorable Court do not get changed. However, I pray misstatements from a prosecutor affect such precedence.

The Prosecutor in question also withheld from discovery for both trial counsels a criminal complaint concerning my husband having a loaded gun on school grounds filed the day before the shooting and is motive for my husband's actions (detailed in accompanying letter pages 13 – 16).

I am not the only one questioning Mr. Vandevender. In State ex rel. State v. Alsop³, 227 W. Va. 276; 708 SE2d 470708 S.E.2d 470, (2009) the Honorable Judge Alsop wrote a response brief that accused Mr. Vandevender that this Honorable Court characterized as "troubling scenarios" (FN number two of the aforementioned opinion). Specifically, the Honorable Judge Alsop questioned Mr. Vandevender's interaction with confidential informants. The Honorable Judge stated these interactions resulted in children being left in homes where drugs were used as well as sold, and impartial or misleading information being provided to the lower Court concerning plea agreements (taken from the response brief of the Honorable Judge Alsop page 16).

Additionally, in State v. Lunsford, (Memorandum Decision No. 11-1616 quotes are from the Petitioner's brief – specifically the plea hearing transcripts and the sentencing hearing transcripts) the Honorable

³ I apologize for not including the response brief submitted by Judge Alsop and the Lunsford transcripts with this letter, but I have sent them to my Power of Attorney for holding. As they are in the WVSCAs archives I respectfully request their retrieval for this matter.

Judge Alsop accused Mr. Vandevender of 1) providing sweetheart deals for informants, 2) misleading not only the Webster County Circuit Court but other circuit courts as well concerning plea information and pending charges against informants, and 3) of not understanding the doctrine of separation (pages 15-16 of the Lunsford plea hearing transcripts included in Petitioner's brief for State v. Lunsford).

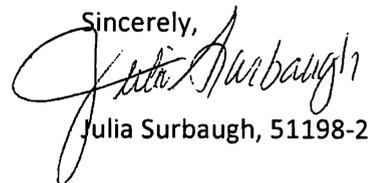
Additional accusations came forth in the Lunsford sentencing hearing as well.

The question of Mr. Vandevender's truthfulness is central to his concealment of the criminal complaint filed against my husband August 5, 2009 that contained a gun charge (the shooting was August 6, 2009 and my pre-arrest statement states my husband knew of the gun charge). Mr. Vandevender concealed the criminal complaint from both trial counsels. Second trial counsel found it in the Magistrate's file at Magistrate Court. The Honorable Judge Facemire found in the February 12, 2014 pretrial that Mr. Vandevender should have included the criminal complaint in State's discovery. He found it harmless error for the second trial. However, the bias of the prosecutor and his conduct was never addressed. The concealment in conjunction with additional behavior creates a pattern of misconduct by the State. This incident actually has its beginnings in Mr. Vandevender instructing the arresting state trooper to not charge my husband with the alcohol, pills, or leaded gun found in his possession on school property (please see pages 13 – 15 of the accompanying letter).

The admission of my statements under the Sixth Amendment assignment of error is now also in a new light. The opinion states both deputies interviewing me testified to the fact that they did not know Trooper Jordan was obtaining an arrest warrant. This is contrary to both deputies' police reports (pages 15-16 accompanying letter).

I do not mean disrespect in any communication I have undertaken. I am fighting for my life, and I do not believe the trial error was adequately put forth in the Petitioner's brief submitted in my name. Part of the error assigned will reference the State v. Surbaugh opinion (even more than is stated above), and I wanted to present such to you.

Thank you in advance.

Sincerely,

Julia Surbaugh, 51198-2