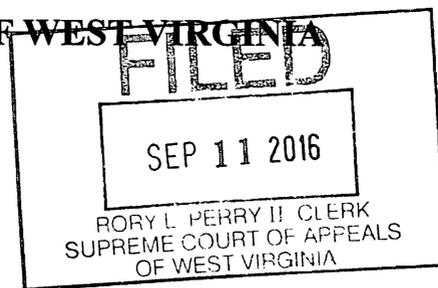


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 15-0535

STATE OF WEST VIRGINIA,
Plaintiff-Respondent,



v.

Appeal From a Final Order
Of the Circuit Court of Berkeley County
(Case No. 113-F-233)

RICKIE L. GREENFIELD, JR.,
Defendant-Petitioner.

PETITIONER'S BRIEF

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ASSIGNMENTS OF ERROR

1. **IT WAS PLAIN AND PREJUDICIAL ERROR FOR THE TRIAL COURT TO DENY THE PETITIONER'S MOTION FOR NEW TRIAL WHEN THE JURY RETURNED ITS VERDICT OF GUILTY FOR FIRST DEGREE MURDER WITHOUT A RECOMMENDATION OF MERCY AFTER DELIBERATING FOR ONLY 70 MINUTES AFTER FOUR DAYS OF TRIAL AND THOUSANDS OF PAGES OF EXHIBITS.**
2. **IT WAS PLAIN AND PREJUDICIAL ERROR AND AN ABUSE OF DISCRETION FOR THE COURT NOT TO ALLOW THE PETITIONER TO INQUIRE INTO THE NATURE OF A PRIOR FELONY CONVICTION OF A STATE'S WITNESS FOR IMPEACHMENT PURPOSES UNDER RULE 613 OF THE RULES OF EVIDENCE.**
3. **IT WAS PLAIN AND PREJUDICIAL ERROR AND AN ABUSE OF DISCRETION FOR THE COURT TO ALLOW THE STATE TO PLAY THE VIDEO RECORDED STATEMENT OF KRISTIN STRONG FOR IMPEACHMENT PURPOSES WHEN SHE HAD ALREADY BEEN IMPEACHED BY THE STATE USING A TRANSCRIPT FROM THE VERY SAME VIDEO TAPED STATEMENT.**
4. **IT WAS PLAIN AND PREJUDICIAL ERROR AND AN ABUSE OF DISCRETION FOR THE COURT TO ALLOW THE STATE TO PRESENT A COLOR PHOTOGRAPH OF VICTIM AS FOUND AT THE CRIME SCENE.**
5. **IT WAS PLAIN AND PREJUDICIAL ERROR AND AN ABUSE OF DISCRETION FOR THE COURT TO NOT GRANT THE PETITIONER A NEW TRIAL BASED UPON THE UNWARRANTED INFORMATION ELICITED BY STATE FROM KRISTIN STRONG THAT THE PETITIONER SIGNED HIS CORRESPONDENCE TO HER AS "THE HAMMER."**
6. **IT WAS PLAIN AND PREJUDICIAL ERROR FOR THE COURT TO FAIL TO DIRECT A VERDICT IN FAVOR OF THE PETITIONER AT THE CLOSE OF THE STATE'S CASE-IN-CHIEF AND AT THE CLOSE OF ALL OF THE EVIDENCE, OR IN THE ALTERNATIVE, THE JURY'S VERDICT WAS CONTRARY TO THE EVIDENCE PRESENTED.**
7. **THAT THE CUMULATIVE WEIGHT OF ALL OF THE ERRORS SET FORTH ABOVE IS SUFFICIENT TO WARRANT THE GRANTING OF A NEW TRIAL.**

STATEMENT OF THE CASE

This appeal is brought pursuant to the West Virginia Rules of Appellate Procedure from the Sentencing Order entered on the 4th day of May, 2015, by the Circuit Court of Berkeley County, West Virginia. At that time, the Honorable Michael D. Lorensen, denied the Petitioner's Motions for New Trial and Judgment of Acquittal; affirmed the his convictions for Murder in the First Degree Without a Recommendation of Mercy, under West Virginia Code §61-2-1, and sentenced him to a sentence of life imprisonment without the possibility of parole.

Pretrial Hearing and Rulings

Pretrial hearing was had on May 16, 2014. Petitioner had previously filed a motion to conduct an *in camera* review of the crime scene and autopsy photographs of the decedent (See: Appendix Record, hereinafter A.R., 1095) asking the Court to conduct the balancing test mandated by Rule 403 of the West Virginia Rules of Evidence and Syllabus Point 8 of *State v. Derr*, 192 W.Va. 165, 451 S.E.2d 731 (1994) and to exclude from the State's use at trial all photographs found to be unduly prejudicial to the Petitioner. The Petitioner also moved the Court to suppress certain statements he made to Ptlm. Scot Shelton of the Martinsburg Police Department made while in custody and after invocation of his right to counsel. (See: A.R. 19).

The State presented the Court with copies of the actual photographs intended to be introduced at trial of the crime scene and gave notice of its intent not to present any autopsy photographs. Only one photograph submitted by the State was objected to by the Petitioner, Exhibit No. 55 (A.R. 1100) which was a color photograph of the decedent as she was found at the crime scene. In this photograph, the decedent was lying face up on her bed with her eyes opened, with obvious facial

trauma and surround by multiple blood stained bedding and dried blood on her face, hands arms and neck.

After review of the said photograph, the Court ruled that given the nature of the violence of the offense, the force exerted and the extent of the injuries, the probative value of the photograph outweighed the prejudicial effect to the Petitioner and allowed the photograph to be used by the State. (A.R. 25 & 32-33).

The Court then heard testimony from Ptlm. Scot Shelton, Captain George Swartwood, Chief Kevin Miller and from the Petitioner regarding the Motion to Suppress Statements of the Petitioner and deferred ruling. By separate Order entered June 4, 2014, the Circuit Court suppressed all statements made by the Petitioner while in custody and *after* he invoked his right to counsel. (A.R. 149; 27-145).

After a number of continuances, the trial of this matter convened on January 27, 2015. The following individuals testified at trial and the following is a summary of their testimony and the exhibits presented.

John Kidwell

The first witness testifying for the State was John Kidwell the uncle of the Petitioner. (Appendix Record, hereinafter A.R., 487). Mr. Kidwell testified that he received a call from Rickie Greenfield, Sr., the Petitioner's father, sometime between 9:30 and 10:00 pm., on August 21, 2013. (A.R. 499). Mr. Greenfield told Kidwell that he was afraid something may have happed to Jill, Greenfield's daughter-in-law, after receiving a call from his son, Rickie. (A.R. 489 & 502). It was decided that Mr. Kidwell would pick Mr. Greenfield up at his residence and the two would then proceed to Jill Greenfield's residence at Pendleton Drive. (A.R. 489). Mr. Kidwell admitted that

Mr. Rickie Greenfield, Sr., lived closer to Gill Greenfield's residence but that Mr. Greenfield, Sr., wanted him to drive. (A.R. 501). No calls were made to Jill Greenfield prior to their arrival. (A.R. 491 & 502).

Upon their arrival at Jill Greenfield's residence, Mr. Kidwell noticed that the lights were on inside and both he and Mr. Greenfield went up the stairs to Jill's apartment and knocked, but no one answered. (A.R. 490). Kidwell then tried to open the front door but it was locked and the lights inside the apartment were on. (A.R. 492 & 506-7). He then wiped off door knob to clean his fingerprints therefrom as he "didn't want any bad luck." (A.R. 491). At Mr. Greenfield's direction, Mr. Kidwell called 911 to report the situation and units from the Martinsburg Police Department were dispatched. (A.R. 491-92 & 498). Mr. Kidwell witnessed Martinsburg Police Officers forcibly enter the apartment and then secure the area with police tape. (A.R. 493).

While on the scene at Pendleton Drive, Mr. Kidwell overheard a cell phone conversation (on speaker phone) between Mr. Greenfield and the Petitioner wherein Mr. Greenfield advised his son to turn himself in to law enforcement. (A.R. 494 & 508). Kidwell and Rickie Greenfield, Sr., then drove to an apartment complex at Rumsey Terrace near Hedgesville, West Virginia, where the Petitioner agreed to surrender to law enforcement. (A.R. 494). After the Petitioner surrendered to police, his two daughters who were with him, were taken by Mr. Kidwell. Both children were unharmed. (A.R. 495). Kidwell testified that a Kristin Strong resided at Rumsey Terrace and he believed she and the Petitioner were in a relationship at the time. (A.R. 496). Kidwell also testified that Strong also had a relationship with the Petitioner's children that he observed for about two weeks after the incident when she visited them at his home. (A.R. 497-98 & 509). Kidwell did not know Strong prior to the event. (A.R. 498).

Rickie Greenfield, Sr.

Mr. Greenfield, Sr., testified that he was the Petitioner's father. (A.R. 512). On August 21, 2013, he had worked a 12 hour shift at Quad Graphics. (A.R. 514). He had already gone to bed and had taken a Tylenol PM to help him sleep as he had to get up early next morning between four and five am. (A.R. 514). Somewhere around 9:30 or 10:00 pm., he received a call from Rickie his son. (A.R. 515). Rickie told him that "Dad I'm sorry Jill's dead." (A.R. 516). Mr. Greenfield testified that the Petitioner said he had killed her, however, Mr. Greenfield was skeptical. (Id.). Mr. Greenfield said Rickie admitted hitting Jill in the head with a hammer 40 to 50 times, however, he did not tell police this fact in his statement that night. (A.R. 516 & 541-42). Mr. Greenfield said Rickie was upset and said that Jill had told him this evening "she would screw whomever she wanted in front of his daughters," and he lost it. (A.R. 546). Mr. Greenfield also admitted that Jill would say things to Rickie to "push his buttons." (A.R. 546). Mr. Greenfield encouraged Rickie not to harm himself for his children's sake and for religious reasons. He also told Rickie to turn himself into the police. (A.R. 517-18).

After his phone conversation with Rickie, Mr. Greenfield called John Kidwell and it was mutually decided to go to Jill's residence to check on her welfare. (A.R. 516-17). Mr. Greenfield did not call Jill even though he had her phone number. (A.R. 519). Upon his arrival at Pendleton Drive, he accompanied John Kidwell up the stairway and witnessed the door to be locked, the lights in the apartment were on and there was no answer when he knocked on the door. (A.R. 520). At this time Mr. Greenfield told John Kidwell to call 911. (Id.).

Thereafter, units from the Martinsburg Police arrived on scene and Mr. Greenfield witnessed them force entry into the apartment. (A.R. 521). While waiting in the parking lot, Mr. Greenfield

received another phone call from Rickie who said his girls were safe and with Kristen his girlfriend. (A.R. 522). Mr. Greenfield alerted Lt. Justin Darby of the Martinsburg Police Department to the call and an audio recording was made by Lt. Darby of the conversation which was on speaker. (Id.). In that conversation, Rickie said he and his daughters were at Rumsey Terrace Apartments (Kristin Strong's residence) and Mr. Greenfield again encouraged Rickie to surrender to the police. (A.R. 523). Mr. Greenfield testified that Rickie then asked Mr. Greenfield to assist him in doing so. (Id.).

Mr. Greenfield also testified that he knew that Rickie and Jill had been having marital problems. He told the jury that the couple had been split up for a week or more and that each was seeing other people outside the marriage. (A.R. 523).

Mr. Greenfield then testified that on a prior occasion, Rickie said he was going to kill his wife. (A.R. 551). Mr. Greenfield gave no particulars about this statement but only told the jury it was made after "they (Rickie and Jill) started cheating." On cross-examination, Mr. Greenfield admitted that he really didn't take the statement seriously as in the past Rickie was known for "shooting off his mouth," and he didn't believe the mother of his grandchildren was in any real danger because he never warned her about the purported statement. (A.R. 553-54). Mr. Greenfield did testify, however, that he did later speak to his son about his emotional condition and that Rickie told him that he was hurt but was no longer angry and that he wanted Jill back. (A.R. 527).

Mr. Greenfield also testified that Kristen Strong (Rickie's girlfriend) had approached him either the day before or the day of August 21, 2013, with concerns about Rickie's state of mind. (A.R. 526). As a result, Mr. Greenfield testified that on the 21st of August, 2013, he again checked in with Rickie at work and Rickie told him he was alright and that he was "over Jill." (A.R. 526 & 545). Rickie told his father that he was planning on dropping his girls off at Jill's apartment later that

evening and Mr. Greenfield testified he told Rickie not to take a gun. (A.R. 529 & 552). Again on cross-examination, Mr. Greenfield clarified this warning to Rickie as he didn't really believe he would shoot her, but because it was not unusual for Rickie to have a gun in his vehicle as he was an avid skeet shooter. (A.R. 553 & 555-56).

Mr. Greenfield also told the jury that Rickie was the outdoors type, that he loved to hunt, fish and shoot skeet. Mr. Greenfield also told the jury that Rickie had attended bible college and that he was a very good father to his children. (A.R. 533-34). Mr. Greenfield said Rickie was a very hard worker and provided for his family's needs. (A.R. 546). Mr. Greenfield also admitted that he had Jill's phone number on the night in question but did not call her first before going to her apartment. (A.R. 534-35). Mr. Greenfield also admitted that he had taken a sleeping pill, Tylenol PM, that evening before he received the initial phone call from Rickie. (A.R. 536). Mr. Greenfield conceded that at he had a "rocky" relationship with Rickie as he didn't always approve of his choices in life. (A.R. 547).

Amanda Kellett

Amanda Kellett testified that she was Rickie's sister and that she lived in Salisbury, Maryland. (A.R. 558). She testified that just prior to 10:00 pm., on August 21, 2013, she received a text message from Rickie which read "call me, 911 emergency." (A.R. 559). She immediately called Rickie and he was distraught and crying. (A.R. 566). He told her that he loved her and asked her to tell his brother the same. He then told Amanda that he was going to kill himself and that he had just killed Jill. (A.R. 559-60). He also told her that another man was coming over that evening and that he and Jill had an agreement that if she had men over Rickie would first come and get the girls. Rickie told her that they got into an argument and that things just escalated. (A.R. 560).

Amanda was skeptical and suggested that Jill might only be hurt. Rickie told Amanda he was sure Jill was dead as he had hit with a hammer in the face 50 times. (A.R. 560 & 565). Amanda testified that Rickie told her that Jill told him how many times she had done things (sexual) in front of the girls and the girls knew. Amanda said Rickie told her that Jill said to him she would “screw anybody she wanted in front of his girls and he couldn’t do anything about it. (A.R. 568). Rickie told her that he then just “snapped” and lost control. (Id.). Amanda said Rickie and Jill had been separated for about a week or two and that Jill knew how to push Rickie’s buttons and did so frequently. (A.R. 575-76). Amanda said Rickie told her the only concern he had about his separation from Jill was that he didn’t want his girls around if Jill was doing anything with another man. (AR. 569). Rickie told her that evening the two got into an argument about another man Jill was seeing who worked with her at FedEx, a Michael Stotler, (A.R. 573), and that the two began pushing each other. Amanda testified that Jill was “playing with his emotions,” that she told him that she had a girlfriend, and that Jill “really knew how to push Rickie’s buttons.” Amanda told the jury that Rickie was very concerned about the mental well being of his 3 year old daughter, Haley, as she was wetting her pants and asking him if he was her daddy.

Amanda testified that Rickie was a devoted father and had a very strong bond with Haley, even stronger than Jill’s relationship with her. (A.R. 570 & 573). She testified that Rickie would spend quality time with his family as evidenced from their pictures on Facebook. (A.R. 574). Amanda stated that Rickie’s younger daughter, Megan wasn’t old enough yet to develop such a bond but it was in progress. (A.R. 571). Amanda testified that Rickie feared for his children’s safety given the actions of their mother with other men.

Shane Everhart

Officer Everhart testified that he was employed by the Martinsburg Police Department and had responded to Pendleton Drive on the night in question upon receiving a dispatch from 911. (A.R. 578). Upon arrival at the apartment there was no answer to his knock on the door and he was directed by his superior to force entry into the apartment. (A.R. 580 & 585). Inside the lights and the computer were on. (A.R. 581). One bedroom door was shut and had apparent blood spatter on it. (A.R. 581 & 584). There were no signs of struggle inside the apartment (A.R. 585), and nothing was in disarray. Inside the bedroom he discovered a female on a bed with her face covered. She had no pulse and had obvious facial and head trauma. The bedding was soaked in blood. (A.R. 582-83).

Scottie Doyle

Scottie Doyle testified that he was a detective with the Martinsburg Police Department and was on-call the evening of the 21st of August. (A.R. 587). He received a call and proceeded to the Pendleton Drive location. On scene he collected evidence at crime scene from West Virginia State Police Crime Team and sent the same to the West Virginia State Crime Lab. (A.R. 588-89).

He further testified that he found a hammer on the bed where the decedent was located (A.R. 593), and forwarded the same to the Crime Lab for fingerprint analysis, however, no latent prints were found on the hammer. (A.R. 596). He also testified that the hammer was discolored due to testing. Det. Doyle also testified to receiving the Petitioner's clothing into evidence and collecting possible DNA evidence from them. (A.R. 590-93). Doyle also recovered other possible items of evidence including the pillow and comforter the decedent was found lying on. (Id.).

Detective Doyle testified that he impounded the Petitioner's pick-up truck and found various tools in the bed of the truck along with shotgun ammunition consistent with skeet shooting. (A.R. 598-99 & 711). Rickie was a machine operator at Quad Graphics and such the presence of tools in

his truck were not unusual.

Margaret Hoogland

Margaret Hoogland testified that she was the Berkeley County Central Dispatch 911 Tape Custodian. She authenticated the audio recording of the 911 call of August 21, 2013, by John Kidwell. She testified that the 911 call was received at 10:15 pm. The 911 recording was then played for the jury. (A.R. 600-603).

Justin Darby

Officer Darby testified that was the senior officer supervising the scene at Pendleton Drive on the evening of August 21, 2013. (A.R. 606). He verified that the decedent was found on the bed in a bedroom of the apartment and that her upper body was covered by a comforter. (A.R. 607-08). While on scene, Officer Darby was alerted that Mr. Rickie Greenfield, Sr., had just received a cell call from the Petitioner. Officer Darby had Mr. Greenfield place his phone on speaker mode and he then recorded the conversation between Mr. Greenfield and the Petitioner. That recording was then played for the jury. (A.R. 609).

Janette See

Tpr. See testified that she was employed by the West Virginia State Police and was a member of the State Police Crime Scene Team. (A.R. 614). She testified that her team arrived on scene to collect evidence at the request of the Martinsburg Police Department. (Id.). She could not recall if the front door and jam were not splintered. (A.R. 622 & 634). On scene, she directed the photography of all possible evidence and placed evidence markers at all pertinent locations within the apartment. The State then began to obtain a foundation for admission of the photographs of the crime scene, at which time the Petitioner again renewed his motion objecting to a picture of the

decedent (State's Exhibit 55) found at the scene as being unfairly prejudicial under Rule 403 of the Rules of Evidence. The Court had previously ruled during a pre-trial hearing that this photograph was admissible having first conducted the Rule 403 balancing test as required by law. The Petitioner's objection was preserved for the record. (A.R. 618-20). All other crime scene photographs were admitted without objection. She testified that there was apparent blood spatter in the bedroom where the decedent was found and that no other blood spatter was found elsewhere in the apartment. She ultimately prepared a report and turned over all evidence collected to Detective Doyle.

Kaitlin Shanahan & Colin Shanahan

Kaitlin Shanahan and Colin Shanahan testified that they lived directly across from the Greenfield apartment at the Pendleton Drive location. (A.R. 646). They confirmed that at approximately 8:29 pm., they left their apartment to go to Dairy Queen. (A.R. 647). Neither could recall if the Petitioner's truck was located in the parking lot upon their departure. (A.R. 653).

They verified that they returned sometime between 9:00 and 9:15 pm., that evening (A.R. 649-50), and again couldn't recall if the Petitioner's truck was present in the parking lot. (A.R. 654). They testified that at approximately 9:30 to 9:45 they heard an adult and small children descending the stairway outside of their apartment and concluded it was the Petitioner with his children. (A.R. 650). They said they did not hear anything from the children indicating they were upset or distraught. (A.R. 655, 661 & 664). They testified that the stairway was made of wood and was hollow underneath and enabled them to determine that the footsteps they heard were of an adult and two small children. (A.R. 655). Kaitlin Shanahan commented to her husband that it was rather late for such small children to be up. Neither Shanahan testified to hearing anything else that evening

until they were awoken by the presence of police outside the apartment complex. (Id.).

Both Shanahans testified that they never heard their neighbors (Rickie and Jill) fighting and did not hear any fighting between Rickie and Jill that evening, but had on occasion heard Jill yelling at her children. (A.R. 652 & 663).

Harley Heil

Trp. Heil testified that he was employed by the West Virginia State Police and was a member of the State Police Crime Scene Team. (A.R. 666). He testified that he was called on scene the evening in question and prepared two detailed diagrams of the crime scene. (A.R. 667). Those diagrams were collectively admitted into evidence as Exhibit 71 and published to the jury. Tpr. Heil then explained the contents of the diagrams to the jury particularly pointing out the location of the decedent's body and possible blood splatter in the bedroom where the body was found. Exhibit 71 was primarily an overview of the crime scene. (A.R. 669).

Dr. Vernard Adams

Dr. Adams testified that he was employed by the West Virginia Medical Examiner's Office and that he performed the autopsy on Jill Greenfield. (A.R. 686-87). He testified to observing three small bruises on the decedent's forearm and upper arm, which were measured in centimeters. (A.R. 688 & 696). He testified that these bruises were fresh, to-wit, that they were incurred between 24 to 48 hours prior to death. (A.R. 689, 695-96). He was unable to opine whether or not these bruises were consistent with defensive wounds. (A.R. 699). He also observed bruises on the decedent's lower extremities, however, these were much older in nature. Dr. Adams saw no injuries to the decedent's torso. (A.R. 689-90).

Dr. Adams testified to multiple facial wounds including an open fracture vertically oriented

over the bridge of the nose, laceration of skin, fracture at the left frontal region of the scalp, lacerations to the right orbit and eyebrows, cheek and nostril. (A.R. 691).

Dr. Adams testified as to the cause of death, opining in a general sense, that the decedent died from multiple strikes about her face and head with a blunt object, which could have been a hammer. (A.R. 692). Dr. Adams testified to observing 7 or 8 strikes/blows to the decedent's head and face and that the manner of death was homicide. (A.R. 693 & 694).

David Miller

David Miller testified that he was employed by the West Virginia Crime Lab as a forensic scientist and that he performed a series of presumptive tests to determine the presence of blood on articles of clothing worn by the Petitioner on the date and time in question. He testified that he found blood on the Petitioner's shirt, pants and boots. (A.R. 720, 724-727). Mr. Miller was unable to determine if the blood found was the result of a transfer or spatter. (A.R. 743). Mr. Miller also testified that blood was found on the hammer, State's Exhibit 5. (A.R. 728). Mr. Miller testified that much of the other evidence provided to the Lab was not tested for a variety of reasons. (A.R. 729-32).

Angela Gill

Angela Gill testified that she was employed as a scientist at the Bio-Chemistry Division of the West Virginia Crime Lab. (A.R. 746). She testified that she performed DNA testing on the blood samples collected by Mr. Miller and that the decedent's blood was found on area #1 of the Petitioner's shirt and area #6 of his pants. (A.R. 751-52; 759-60). Ms. Gill testified that the blood found was from a single donor, the decedent, as opposed to a mixture of blood. She testified that the blood found on the Petitioner's boot was donated primarily from the Petitioner and from another

unidentified donor. (A.R. 756). She also testified that DNA was extracted from under a nail on the decedent's right hand and that it was a mixture which contained male DNA, however, she was unable to determine the source of the male DNA. (A.R. 754-55). Gill testified that blood found on the hammer was the decedent's. (A.R. 750). She also testified that much of the evidence submitted was not tested.

Patrick Chrisman

Mr. Chrisman testified that he was a co-worker of Jill Greenfield at FedEx. (A.R. 766). He admitted to having developed a relationship with the decedent, however, that relationship had only been through text messaging between the two over the course of 2 or 3 weeks prior to Jill Greenfield's death. (A.R. 767-69; 770-71). Forensic analysis of Jill Greenfield's cell phone by Sgt. David Boober of the West Virginia State Police and Detective Adam Albaugh of the Martinsburg Police Department uncovered a significant number of text messages between Mr. Chrisman and Jill Greenfield of a sexually explicit nature, which texts were read to the jury. Mr. Chrisman testified that while he and Jill had plans to meet for the first time the Friday of the week she died, he never actually met with her outside of work. (A.R. 772-73).

Michael Stotler

Michael Stotler testified that he too was a co-worker of Jill Greenfield's at FedEx. (A.R. 774). He told the jury that he had been seeing Jill Greenfield for approximately for 2 months prior to her death. (A.R. 775 & 778). Stotler also stated that Jill and her younger daughter Megan spent the night at his home a couple of weeks prior to August 21, 2013. (A.R. 777 & 790). He admitted to having a sexual relationship with her and to spending the night at her Pendleton Drive apartment on August 19, 2013, two days before her death and on another occasion prior to that. (A.R. 780).

He admitted to arriving at her house around 9:22 pm., on August 19, 2013, and his text messages to Jill revealed the couple had agreed he would not park in front of her apartment but in a nearby parking lot presumably to keep his presence at Jill's apartment a secret. (A.R. 792-94). Stotler denied being at Jill's house on August 21, 2013. (A.R. 783). Stotler admitted to being in love with Jill and was to looking forward embracing her and her two children as a family. (A.R. 795). Stotler was confronted with texts from Jill around 7:10 pm., on the day before her death, wherein she abruptly broke off her relationship with him and he admitted to being hurt but not upset or angry as a result. (A.R. 797-80). Mr. Stotler testified that the break-up was mutual, however, the texts in question contradicted his testimony. (Id). Text records show the couple were still texting on August 21st as late as 7:27 pm., when Stotler sent Jill a text asking "do you think maybe if we slowed down some, stop talking about living together, and just hang, sometimes we might be able to keep going or would you just rather stop altogether?" The phone records also show that Jill never responded to this text, although Stotler claimed she did. (A.R. 806-7). Mr. Stotler also admitted to posting on his Facebook account on August 20, 2013, that he had some time off coming up and that he was "out of here, not sure where I'm going but I need to go somewhere." (A.R. 808). Stotler also admitted to sending Jill flowers at work on August 19, 2013, (A.R. 809), and flowers were found in Jill's trash can on the date of her death.

Mr. Stotler admitted at trial that he was a convicted felon. (A.R. 814). That conviction was in 1986 from Virginia and was for setting a fire. The Defense wished to impeach Stotler with this conviction as he was also a volunteer firefighter and argued to the Court that even though it was conviction more than ten years old, it nevertheless was offered to show a history of contradiction which was especially relevant as Stotler was denying he was upset or angry over Jill's break-up with

him just two days prior to her death. The State objected as the conviction was older than 10 years and excluded under Rule 609(b). Nevertheless, the Court, exercising its discretion under Rule 609(b), allowed the Defense to inquire if Stotler had a prior felony conviction but not to go into the details thereof. (A.R. 811-12).

Kristen Strong

Kristen Strong testified that she was a co-worker of the Petitioner at Quad Graphics. (A.R. 816). She testified that she was his girlfriend and had been in a relationship with him for about a month prior to Jill Greenfield's death. (A.R. 829). She testified that Rickie had been residing with her for several days prior to Jill's death. She testified that on August 21, 2013, Rickie got off work and picked up his children from the babysitters and stopped by her apartment. She testified that Rickie then told her he was taking his children over to Jill's that evening. (A.R. 819-20). Rickie had not changed his clothes and still had his work uniform on. (A.R. 834).

When Rickie returned, Ms. Strong testified that he came back with his daughters. (A.R. 820). She said Rickie was worried about Jill. She told the jury that Rickie knew a man was coming over to Jill's apartment that night. Strong testified that Rickie told her that Jill had died but she didn't recall what happened. (A.R. 821). The State, believing that Strong was being evasive, moved the Court to declare her a hostile witness and allow leading questions, which motion was granted. (A.R. 822-23). The State then used Strong's prior statement to police to establish that she reported that upon returning to her home that evening, Rickie was scared and shaking; he told her he had gotten into an argument with Jill and beat her in the face with a hammer; and that Rickie said that he lost control during the argument and snapped. (A.R. 824-25, 833 & 835). Ms. Strong could not recall telling Detective Swartwood that Rickie had told her that he had struck Jill several times with a

hammer and suggested that such “fact” was provided to her, not from Rickie, but from other officers that evening. (A.R. 836-36).

Ms. Strong also testified that Rickie had the same clothing on when he returned from Jill’s apartment that evening that he wore to work the morning of August 21st. She said she saw no blood on his clothing. (A.R. 830). She did state that he washed his hands upon entering her apartment but that such was not unusual as he dipped Skoal. (A.R. 832-34).

The State then inquired if Strong and the Petitioner had corresponded extensively by mail and when Strong confirmed they had, then asked her how the Petitioner would sign his letters to her. Strong replied he would sign them “hammer.” The prosecutor then asked Strong if she thought that was funny? (A.R. 827).

Strong testified that she had ample opportunity to observe Rickie care for his children and that he was a great father. (A.R. 829).

After Strong testified, the State moved the Court to admit and publish Strong’s video recorded statement take the night of the incident, over objection by the Defense, to impeach her trial testimony citing Rule 613 of the Rules of Evidence. The Defense objected arguing that the witness had already been impeached with a transcript from that very video statement and that playing the video would be cumulative. The Court overruled the Petitioner’s objection citing the video was an important piece of evidence which the jury should have as video and photographs “frequently tell a story much more vividly than recounting it verbally from the stand ever could.” (A.R. 840-43).

George Swartwood

George Swartwood testified he was a captain with the Martinsburg Police Department. (A.R. 845-46). Also, he conducted the video interview of Kristin Strong the night of the incident and

testified that he did not discuss the modality of Jill Greenfield's death with Strong prior to her statement. (A.R. 846). The State then moved admission of the video, Exhibit 98, and the Court admitted it over the Petitioner's objection. (A.R. 847). The video was then played for the jury.

Adam Albaugh

Adam Albaugh testified that was employed by the Martinsburg Police Department as a detective. He testified that he obtained the forensic analysis of Jill Greenfield's cell phone containing the texts above recited between her and Messrs. Christman and Stotler. Detective Albaugh also testified that he recovered texts between Jill Greenfield and the Petitioner for approximately four days prior to and including the date of her death as well as the actual incoming and outgoing calls from the Petitioner's cell phone. All of phone records the text messages above referenced were admitted into evidence by stipulation and read aloud to the jury. (A.R. 850-59).

Detective Albaugh also testified to cell phone records obtained from the Petitioner's cell phone carrier, Sprint, which showed the dates and times of the cell phone calls he made the evening of August 21, 2013, to his father (two calls) and to his sister Amanda Kellett. (A.R. 859-61).

The text messages between the decedent and Patrick Chrisman showed a flirtatious dialogue between the two with explicit and suggestive sexual content. Clearly the two were enamored with each other and were eager to have a sexual relationship. The text messages revealed they planned to get together that Friday if the Petitioner could keep the children. The text messages were had on August 21, 2013, the night of incident, up until approximately 7:46 pm. (A.R. 847).

The text messages between Jill and Michael Stotler evidenced a more subdued and serious relationship. The two repeatedly traded expressions of love for each other throughout. The texts included references to the Petitioner's inquiries about Stotler to Jill. Jill indicated that the Petitioner

was “alright” with their relationship and was mostly concerned about its effect upon his daughters. (A.R. 891). The two also discussed Stotler’s divorce a couple of days prior to August 21st, with Stotler stating that he was now free. (A.R. 894). The texts also reference the couple’s date at her home on the 19th of August, and that Stotler should park his vehicle in the lot across the street. (A.R. 897). The texts also reference Jill’s unexpected change of heart towards Stotler telling him, the next day, August 20th, that they should take a break as things are moving too fast. (A.R. 900). Stotler replies, “okay, that’s fine. If you didn’t want to be with me, just tell me.” (Id.). Stotler then states that he will leave her (Jill) alone and he hopes everything works out for her the way she wanted but he’d wish she told him sooner. (Id.). Jill then replied to Stotler stating that things were just getting too serious too fast. (A.R. 901). She said she was sorry but that she didn’t want to be tied down to just one person. (A.R. 902). The text message records clearly demonstrated that Jill was breaking up with Michael Stotler at the very same time she was having sexual dialogue with Patrick Chrisman. (A.R. 920).

Text messages were also presented between the Petitioner and Jill which clearly referenced the Petitioner’s love and concerns for his daughters. The Petitioner stated in a text to Jill that it was hard to trust another man around his little girls, he (Stotler) may be a good guy, but they are my babies. (A.R. 904). The Petitioner says that he’s “going to lay down the law about his girls, then you all go and enjoy life.” (A.R. 904-05). Both express their wishes that the other will be happy now that their marriage is over. (A.R. 905). The texts also demonstrate the Petitioner’s concern for his daughters well being asking Jill to keep them away from her relationship with Stotler for now. Jill replies “whatever.” Petitioner says he’s protecting his girls and Jill responds that he has to trust her. (A.R. 908). These text messages were in the hours immediately preceding the incident in

question and reference that the Petitioner is on his way to Jill's apartment with the girls. (Id.). The Petitioner even asks Jill where he can find a Shrek coloring book for one of his daughters. (Id.). Petitioner also asks Jill when they can shop for clothing for the girls. (A.R. 910). The Petitioner then asks if Stotler has spent the night at Jill's apartment; that his older daughter is asking if he (Petitioner) is her daddy; that she is wetting her pants. (A.R. 911). Petitioner then asks Jill if they can have a serious talk that night about their daughters and she agrees. (Id.). Petitioner texts "I don't want to see my kids get hurt but just the same don't want to see you hurt either. (A.R. 912).

Lastly, Detective Albaugh authenticated the Face Book account of Rickie Greenfield which was admitted into evidence by the parties' stipulation. These photographs depicted the Petitioner in family pursuits with Jill and the children in happier times. (A.R. 922-23).

Scott Shelton

PtIm. Shelton testified that he was employed by the Martinsburg City Police Department and that he transported the Petitioner after his arrest at the Rumsey Terrace Apartments to the Martinsburg Police Station. (A.R. 700). PtIm. Shelton testified that while en route to the Police Department, the Petitioner overheard radio traffic that the coroner was on scene at Pendleton Drive. (A.R. 937). The Petitioner then inquired of Shelton if "they saved her?" Shelton asked him who? The Petitioner responded "my wife." Shelton told him he was unsure of her status even though he knew she was deceased. (Id.). Once on station awaiting to be processed, PtIm. Shelton testified that the Petitioner overheard radio traffic that the coroner was on the scene and again asked if she (Jill) was dead. Shelton responded at that time he informed the Petitioner that his wife was deceased. (A.R. 938). PtIm. Shelton then testified that the Petitioner immediately started crying and stated it was hard that his wife of seven years had left him for another man. (Id.). Shelton testified that he

again advised the Petitioner of his rights, however, the Petitioner advised that he didn't mind talking to Shelton about it. (Id.). Petitioner told Shelton that he didn't want to relive what had happened again and that he and his wife were having difficulties in their marriage and had decided to separate. Shelton further stated the Petitioner told him that when he returned the children to Jill's house earlier that evening, he and Jill got into a heated verbal argument and he "snapped." (A.R. 938-39). Shelton stated that the Petitioner told him that he snapped when Jill told him, in front of his girls, that she would sleep with whomever she wanted and "fuck them in front his kids." (A.R. 939). Petitioner also told Shelton that he didn't mind if Jill was dating other men, but that he just didn't want that type of stuff going on in front of his kids, and that he just snapped. (Id.). Shelton testified that the Petitioner was very upset and emotional during this explanation. (Id.).

Motion for Directed Verdict of Acquittal

Following the conclusion of the State's case-in-chief and at the close of all of the evidence, the Defense moved the Court for a judgment of acquittal under Rule 29 of the West Virginia Rules of Criminal Procedure arguing that the State had failed to present any evidence, direct or circumstantial, as to the elements of malice, premeditation or deliberation. (A.R. 926-930). The Defense argued that at best the State's evidence suggested a sudden provocation in the heat of passion which could only support a voluntary manslaughter conviction. (Id.). Accordingly, the Defense moved the Court to allow the jury to only deliberate on the crime of voluntary manslaughter or at the worst, second degree murder, given the sudden actions of the Petitioner as portrayed from the evidence. The State objected arguing that it had presented a *prima facie* case for first degree murder with ample circumstantial evidence to support the same. (Id.).

The Court denied the Petitioner's motions finding that in the light most favorable to the State,

a *prima facie* case for first degree murder had been presented. The Court noted that the hammer apparently used in the offense, appeared to be weathered and that the State could argue that the Petitioner had to retrieve the same from his truck prior to the crime, during which time frame premeditation and deliberation could have occurred. The Court noted the Petitioner's objection to its ruling. (A.R. 930-31).

In the Petitioner's closing argument, counsel pointed out to the jury the nature of the text messages between the Petitioner and the victim admitted into evidence. The Defense argued that said texts clearly showed the Petitioner was a caring individual for his family's welfare. Counsel pointed out that the Petitioner's texts revealed his fear that his children could be exposed to detrimental influences from their mother's extra-marital relationships as well as possible physical harm. Counsel pointed out that the Petitioner's daughter was already exhibiting signs of anxiety by wetting her pants and inquiring if he was her daddy and if Jill was her mommy. Counsel directed the jury to texts from the Petitioner expressing concerns that Jill was moving too fast in her new relationships and that his children were truly suffering as a result. Counsel pointed out these facts and many others (the Petitioner's concern that the decedent had enough money to buy the family groceries, the Petitioner's purpose for stopping by Jill's apartment that evening to balance her checkbook, his concern for Jill getting her car fixed or obtaining another one, his attempts to get his daughter a Shrek coloring book, etc.) which demonstrated the lack of any malice in his heart.

The Defense then argued to the jury that there was ample evidence from Amanda Kellett and from the text messages between the decedent, Patrick Chrisman and Michael Stotler for them to easily believe that Jill Greenfield had in fact told the Petitioner on the night of her death that she would "fuck anyone she wanted in front of his kids," and that such would easily support a sudden

heat of passion response from the Petitioner resulting in Mrs. Greenfield's death.

The Defense also countered the suppositions of the State as to how the crime occurred noting that there was absolutely no evidence to support the State's theory of the case. Specifically, the Defense pointed out to the jury that the evidence failed to support any argument for adequate reflection, premeditation and deliberation.

Lastly, the Defense pointed out to the jury that should they disagree with the Petitioner's theory of the case, to-wit, manslaughter, and find the him guilty of first degree murder, the facts overwhelmingly supported a recommendation of mercy given the Petitioner's lack of criminal history, and his devotion to his family prior to the break-up of his marriage. The Defense pointed out that Rickie Greenfield was just a normal person like anyone else and that his crime was an aberration.

Thereafter the jury retired to begin their deliberations and returned a verdict after approximately 70 minutes or less. Nevertheless, in that short time span, they found the Petitioner guilty of first degree mercy and failed to recommend mercy. (A.R. 1059).

Sentencing

A pre-sentence investigation and report was ordered by the Court and sentencing was had on April 3, 2015. (A.R. 1101). At that time the Court, in accordance with the jury's verdict and no recommendation of mercy, sentenced the Petitioner to life in prison without eligibility for parole. (A.R. 1067).

SUMMARY OF ARGUMENT

The Petitioner argues that the Trial Court committed plain and prejudicial error by: (1) failing to set aside the jury's verdict and grant him a new trial when the jury only deliberated for 70

minutes on the issues of first and second degree murder, manslaughter, mercy, guilt and innocence after a four day trial with 21 witnesses, hundreds of documents and multiple exhibits to consider; (2) by failing to allow the Petitioner to inquire into a material State's witness' prior felony conviction under Rule 613 of the Rules of Evidence; (3) by allowing the State to present the video taped statement of Kristin Strong when a transcript from that statement was used to impeach her during her testimony; (4) by allowing the State to use a color photograph of the decedent from the crime scene when its prejudicial effect to the Petitioner obviously outweighed any probative value offered by the State under Rule 403; (5) by not granting Petitioner a new trial when the State intentionally elicited irrelevant information from its own witness, Kristin Strong, that the Petitioner signed his correspondences to her as "the hammer," which question was obviously designed to insight the jury; (6) by failing to grant Petitioner's Motion for Directed Verdict of Acquittal at the close of all of the evidence, or in the alternative, the jury's verdict was contrary to the evidence presented; and (7) that the cumulative effect of all errors assigned deprived the Petitioner of a fair trial.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

None of the issues presented are of first impression to the Court. The facts and legal arguments appear to be adequately presented in the briefs filed and the record presented. Therefore oral argument under Rev. R.A.P. 18(a) may not be 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 argument and disposition by memorandum decision. Nevertheless, the Appellant would request being allowed to present an oral argument to the Court.

ARGUMENT

1. IT WAS PLAIN AND PREJUDICIAL ERROR FOR THE TRIAL COURT TO DENY

THE PETITIONER'S MOTION FOR NEW TRIAL WHEN THE JURY RETURNED ITS VERDICT OF GUILTY FIRST DEGREE MURDER WITHOUT A RECOMMENDATION OF MERCY AFTER DELIBERATING FOR ONLY 70 MINUTES AFTER FOUR DAYS OF TRIAL AND THOUSANDS OF PAGES OF EXHIBITS.

Rule 33 of the West Virginia Rules of Criminal Procedure provides in pertinent part: “[t]he court on motion of a Petitioner may grant a new trial to that Petitioner if required in the interest of justice.”

The jury sat through a four (4) day trial. It listened to the testimony of twenty-one (21) witnesses. It had access to multiple documents comprised of hundreds if not thousands of pages including cell phone records, text messages, Face Book accounts, forensic reports and tangible evidence including video statements, video recordings, cell phones, clothing and it had the instructions of the Court on the issues of first and second degree murder, manslaughter, premeditation and deliberation, mercy and the court's general charge. Nevertheless, the jury took only seventy (70) minutes, or so, to consider volumes of this in reaching its verdict of guilty to first degree murder without mercy.

The jury also had ample evidence of the Petitioner's lack of criminal history, his devotion to his children, the bond with his daughters, his work ethic, his pastoral training and his concern for the welfare of not only his children but his deceased wife before the incident in question. Obviously, the jury failed to undertake any meaningful review of the evidence admitted. From their lack of interest in this evidence, it can be assumed that they based their decision, not on a rational examination of the same, but from their own heated passions provoked by the State in its closing argument. They failed head counsel's pleas that they analytically review only the evidence before them and not engage in conjecture and speculation.

There appears to be very little case law on this issue in West Virginia. Counsel has found a non-published decision in the Fourth Circuit from the Western Division of North Carolina in *United States v. Ward*, 2008 WL 248-5587 (2008), wherein the Court citing *U.S. v. Cunningham*, 108 F.3d 120, 124 (7th Cir. 1997), stated:

If we trust our jury system we must trust our jurors. Before attaching great significance to the short time the jury took her deliberations, we must have reason to suspect the jury in some way disregarded its instructions or otherwise failed in his duty. A brief deliberation cannot, alone, be a basis for an acquittal. The court went on to cite *Guar Service Corporation v. American Employers' Insurance Company*, 893 F.2d 725, 729 (5th Cir. 1990) a fifth circuit opinion which states "we cannot hold an hourglass over the jury. If the evidence is sufficient to support the verdict the length of time the jury deliberates is immaterial."

The jury was entrusted with the duty to review all of the evidence and to render a verdict based upon the evidence. First, it is impossible to fathom that the jury considered even a substantial portion of the evidence presented given the volumes of documents in its custody when it deliberated for only 70 minutes. Second, even if the jury did touch upon all of the evidence presented, it is just as hard to understand how it could reach its decision regarding mercy in such a short period of time given all the issues to be addressed in the instructions, i.e., the elements of the charged indicted, the merits of any lesser included offenses especially given the Petitioner's case for voluntary manslaughter. Obviously, the jury was so enraged with the crime charged that they based their verdict, not on rational review of the evidence presented, but instead on their own emotional response to the situation. Accordingly, such an obvious conclusion was ignored by the trial court and a new trial should have been granted.

2. **IT WAS PLAIN AND PREJUDICIAL ERROR AND AN ABUSE OF DISCRETION FOR THE COURT NOT TO ALLOW THE PETITIONER TO INQUIRE INTO THE NATURE OF A PRIOR FELONY CONVICTION OF A STATE'S WITNESS FOR IMPEACHMENT PURPOSES UNDER RULE 609 OF THE RULES OF EVIDENCE.**

Rule 609 of the West Virginia Rules of Evidence provides:

For the purpose of attacking the credibility of a witness other than the accused:

(A) evidence that the witness has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, . .

Rule 609 further imposes a ten (10) year limitation on evidence of such a conviction using the later of the conviction date or a person's release from confinement, and evidence of such conviction is admissible only if the Court determines in the interests of justice, that:

- (1) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and
- (2) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

Prior to trial the State had provided to the Petitioner the criminal conviction for its witness, Michael Stotler, of a prior felony in 1986 for arson (setting fires) in the Commonwealth of Virginia. He was also a firefighter. (A.R. 787). The Petitioner sought to elicit the conviction and its details from Mr. Stotler on cross-examination for impeachment. At that time in the trial, there was still considerable doubt as to whether or not Mr. Stotler was a suspect in the crime. Stotler was down-playing any motive he might have had for killing the decedent by his testimony that he really wasn't upset, angry or devastated when the decedent broke-up with him, only two days prior to her death, by text message. Before seeking to elicit such evidence of prior conviction during cross-examination, counsel requested a side bar and gave notice of his intent to so inquire. The State objected due to the age of the conviction, however, the Court in the exercise of its discretion, allowed the Defense to inquire as to whether or not he had a felony conviction, but not what that

conviction was for.

Realizing that the Court did not have to allow the evidence of Stotler's prior felony conviction but did so anyway, Rule 609 contains no such prohibition against disclosure for what the prior felony conviction was for. In fact, the relief granted in Rule 609 is largely worthless unless the actual crime of conviction can be elicited especially if it is actually relevant to the issues to be tried as it was in this case.

Accordingly, the Court was clearly wrong in prohibiting the Defense from eliciting the actual crime of conviction for the witness and such prohibition had a material effect on the outcome of the trial.

3. IT WAS PLAIN AND PREJUDICIAL ERROR AND AN ABUSE OF DISCRETION FOR THE COURT TO ALLOW THE STATE TO PLAY THE VIDEO RECORDED STATEMENT OF KRISTIN STRONG FOR IMPEACHMENT PURPOSES WHEN SHE HAD ALREADY BEEN IMPEACHED BY THE STATE USING A TRANSCRIPT FROM THE VERY SAME VIDEO TAPED STATEMENT.

It was obvious that Ms. Strong was an uncooperative witness for the State, not testifying as expected per her prior statement to police on the night of the crime. The State moved the Court to declare Strong a hostile witness so as to continue its examination as on cross. The Court granted the motion and the State extensively used the transcript from Strong's video statement to impeach her prior loss of memory and evasive responses. The State then moved to play the actual video statement, and the Court granted the motion over the Petitioner's objection.

Rule 403 of the West Virginia Rules of Evidence provides that "the Court may exclude relevant evidence if its probative value is substantially outweighed by danger of one or more of the following: . . . undue delay, wasting time or needlessly presenting cumulative evidence." Strong was thoroughly impeached by the State's examination and there was no need for the pointless

presentation of her video statement which the jury all but heard verbatim.

Accordingly, the Court committed error by allowing the State to bolster its case by playing such video.

4. IT WAS PLAIN AND PREJUDICIAL ERROR AND AN ABUSE OF DISCRETION FOR THE COURT TO ALLOW THE STATE TO PRESENT A COLOR PHOTOGRAPH OF VICTIM AS FOUND AT THE CRIME SCENE.

Given the holding in *State v. Mongold*, 220 W.Va. 259, 647 S.E.2d 539 (2007) and Syllabus point 10, of *State v. Derr*, 192 W.Va. 165, 451 S.E.2d 731 (1994) and followed by *State v. Mongold*, 220 W.Va. 259, 647 S.E.2d 539 (2007), sets out the test for the admissibility of photographs:

Rule 401 of the West Virginia Rules of Evidence requires the trial court to determine the relevancy of the exhibit on the basis of whether the photograph is probative as to a fact of consequence in the case. The trial court then must consider whether the probative value of the exhibit is substantially outweighed by the counter-factors listed in Rule 403 of the West Virginia Rules of Evidence. As to the balancing under Rule 403, the trial court enjoys broad discretion. The Rule 403 balancing test is essentially a matter of trial conduct, and the trial court's discretion will not be overturned absent a showing of clear abuse.

The sole photograph in question is the color photograph of the decedent found at the crime scene, on her bed, face up, eyes open and with obvious blunt force trauma to her face, State's Exhibit 55. (A.R. 1100). Obviously it is relevant. The issue is prejudice vs. probative value balancing under Rule 403. Not evident in the record was the jury's gasps of shock and horror when State's Exhibit 55 was published on the overhead screen in the courtroom. The Exhibit would have been just as relevant and just as effective to demonstrate the degree and manner of injury in black and white as was the Court's preferred mode in *Mongold supra*.

Accordingly, the Trial Court committed prejudicial error by allowing the color photograph

of the victim to be admitted into evidence.

5. IT WAS PLAIN AND PREJUDICIAL ERROR AND AN ABUSE OF DISCRETION FOR THE COURT TO NOT GRANT THE PETITIONER A NEW TRIAL BASED UPON THE UNWARRANTED INFORMATION ELICITED BY STATE FROM KRISTIN STRONG THAT THE PETITIONER SIGNED HIS CORRESPONDENCE TO HER AS “THE HAMMER.”

When it became apparent that the State’s witness Kristen Strong was not cooperating in her direct examination, the State was undoubtedly allowed under the Rules of Evidence to impeach her with her prior inconsistent statement. Nevertheless, the State chose to introduce the fact, unknown to Defense counsel, that the witness had received a letter or letters from the Petitioner signed “the hammer.”

This bit of information was not disclosed in discovery and never addressed between counsel and the Petitioner. Counsel was dumbfounded at trial as to this remark, not knowing the particulars or factual basis therefore.

Obviously the State had received correspondence from the Petitioner to Ms. Strong either from her directly (doubtful given her demeanor at trial) or from officials at the Eastern Regional Jail who must have intercepted the Petitioner’s outgoing mail.

In *State v. Sugg*, 193 W.Va. 388, 456 S.E.2d 469 (1995) Syllabus Points 5 and 6 provide:

5. A judgment of conviction will not be set aside because of improper remarks made by a prosecuting attorney to a jury which do not clearly prejudice the accused or result in manifest injustice.

6. Four factors are taken into account in determining whether improper prosecutorial comments are so damaging as to require reversal: (1) the degree to which the prosecutor’s remarks have a tendency to mislead the jury and to prejudice the accused; (2) whether the remarks were

isolated or extensive; (3) absent the remarks, the strength of competent proof introduced to establish the guilt of the accused; and (4) whether the comments were deliberately placed before the jury to divert attention to extraneous matters.

First, the remark was improper and clearly prejudiced the Petitioner. The remark was so flagrant, the jury could have been easily enraged by it, which is certainly borne out in their brief time for deliberation. The jury could have easily thought the Petitioner was proud of such moniker and thought it a joke.

Next, the remark had a high degree and tendency to inflame the jury and prejudice the Petitioner. While the remark was isolated, it was nevertheless designed to enrage the jury. It is entirely possible that absent the remark, the jury may have granted the Petitioner mercy or even seriously considered a lesser included offense. The remark weighed less on the issue of guilt or innocence but hugely upon the issue of mercy. Lastly, the remark was deliberately placed before the jury to divert attention not to matters of guilt or innocence, but to extraneous matters which had no bearing upon the ultimate issue.

Accordingly, the Trial Court committed prejudicial error by failing to grant him a new trial as a result of such remark which at the very least prejudiced him against consideration of mercy by the jury.

6. IT WAS PLAIN AND PREJUDICIAL ERROR FOR THE COURT TO FAIL TO DIRECT A VERDICT IN FAVOR OF THE PETITIONER AT THE CLOSE OF THE STATE'S CASE-IN-CHIEF AND AT THE CLOSE OF ALL OF THE EVIDENCE, OR IN THE ALTERNATIVE, THE JURY'S VERDICT WAS CONTRARY TO THE EVIDENCE PRESENTED.

At the close of the State's case-in-chief and again at the close of all of the evidence, the Petitioner moved the Court for a Judgment of Acquittal based upon the State's failure to prove the

Petitioner's guilt as alleged beyond a reasonable doubt. The Petitioner's motion was made pursuant to Rule 29 of the West Virginia Rules of Criminal Procedure. The State did not present any rebuttal case.

The standard upon which the Court is to consider this assignment of error can be found in the case of *State v. Guthrie*, 194 W.Va. 657, 461 S.E.2d 163 (1995), and is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt. In *Guthrie*, at page 174, S.E.2d edition, the Court summarized the standard for determining when a verdict of guilt should be set aside on the grounds that it is contrary to the evidence, relying heavily upon the United States Supreme Court case of *Jackson v. Virginia*, 443 U.S.307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979):

In summary, a criminal defendant challenging the sufficiency of the evidence to support a conviction takes on a heavy burden. An appellate court must review all the evidence, whether direct or circumstantial, in the light most favorable to the prosecution and must credit all inferences and credibility assessments that the jury might have drawn in favor of the prosecution. The evidence need not be inconsistent with every conclusion save that of guilt so long as the jury can find guilt beyond a reasonable doubt. As we have cautioned before, appellate review is not a device for this Court to replace a jury's finding with our own conclusion. On review, we will not weigh evidence or determine credibility. Credibility determinations are for a jury and not an appellate court. On appeal, we will not disturb a verdict in a criminal case unless we find that reasonable minds could not have reached the same conclusion. Finally, a jury verdict should be set aside only when the record contains no evidence, regardless of how it is weighed, from which the jury could find guilt beyond a reasonable doubt. To the extent that our prior cases are inconsistent with our decision announced today, they are expressly overruled.

The *Guthrie* Court, at page 176, went on to comment upon the requirements of the beyond a reasonable doubt standard:

The beyond a reasonable doubt standard does not require the exclusion of every other hypothesis or, for that matter, every other reasonable hypothesis. It is enough if, after considering all the evidence, direct and circumstantial, a reasonable trier of fact could

find the evidence established guilt beyond a reasonable doubt.

At page 173 of the opinion the Court also stated: “Appellate courts can reverse only if no rational jury could have found the defendant guilty beyond a reasonable doubt”.

The Defendant argues that even in the light most favorable to the State, i.e., giving the State the benefit of any evidence in doubt, and crediting the State with all inferences and credibility assessments which the jury could have drawn from the evidence, reasonable minds could have not reached the same conclusion as to the Petitioner’s guilt as to the charge against him.

No rational jury could conclude beyond a reasonable doubt that the demise of the decedent came about after the Petitioner considered and weighed a decision to kill thus establishing premeditation and deliberation for first degree murder. There was no evidence that the Petitioner had any opportunity for any reflection upon the intention to if it was first formed. There was no evidence that the Petitioner killed Jill Greenfield purposely after contemplating the intent to kill. The argument that the hammer was “weathered” and must have been retrieved from the Petitioner’s truck was rank speculation unsupported by any evidence to suggest the same. Of course reasonable inferences may be made by a jury from the evidence presented, however, there must be some link between the evidence and the inference which is lacking here. As the State said in its closing, no one knows what happened that night and the evidence presented did little to shed any light thereon.

Accordingly, the Court should have granted the Petitioner’s Rule 29 Motion and allowed the jury to deliberate only upon the lesser included offenses of second degree murder and involuntary manslaughter.

7. THAT THE CUMULATIVE WEIGHT OF ALL OF THE ERRORS SET FORTH ABOVE IS SUFFICIENT TO WARRANT THE GRANTING OF A NEW TRIAL.

In *State v. George W.H.*, 190 W.Va. 558, 439 S.E.2d 423 (1993), the Court reaffirmed its long-standing rule that the cumulative effect of numerous errors in a trial can warrant a reversal of a conviction. Citing earlier decisions, Syllabus Point 14 from *George W.H.*, provides as follows:

Where the record of a criminal trial shows that the cumulative effect of numerous errors committed during the trial prevented the defendant from receiving a fair trial, his conviction should be set aside, even though any one of such errors standing alone would be harmless error. Syl. pt. 5, *State v. Smith*, 156 W.Va. 385, 193 S.E.2d 550 (1972).

The circumstances of the case at bar gives rise to cumulative error. The errors recited combined to deprive the Petitioner of a fair trial and thus for all of the reasons above recited, the Petitioner should be granted a new trial.

CONCLUSION

WHEREFORE, the Petitioner, Rickie L. Greenfield, Jr., argues that for all of the above recited assignments of error, he was denied a fair trial and respectfully prays that this Court to reverse the Judgment of the Circuit Court of Berkeley County, West Virginia, affirming his conviction by verdict of the jury for first degree murder without mercy,, and remand the matter for new trial, and for such other relief as the Court may deem just, necessary and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, B. Craig Manford, hereby certify that on this 11th day of September, 2015, true and accurate

copies of the foregoing **Appellant's Brief** were personally hand-delivered to the Office of the Prosecuting Attorney for Berkeley County, West Virginia, Christopher C. Quasebarth, Esq., and Cheryl K. Saville, Esq., 380 W. South Street, Suite 1100, Martinsburg, West Virginia 25401.

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