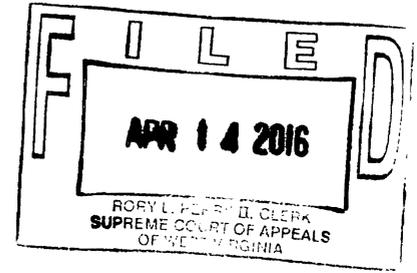


IN THE SUPREME COURT OF APPEALS  
OF  
WEST VIRGINIA



STATE OF WEST VIRGINIA,  
Plaintiff Below, Respondent

VS. NO. 15-0933

BRIAN DANIEL HAYSLETT,  
Defendant Below, Petitioner

RESPONDENT'S OBJECTION TO APPENDIX AND MOTION  
TO TOLL TIME FOR FILING RESPONDENT'S BRIEF

Comes the respondent, State of West Virginia, by Kristen Keller, Raleigh County Prosecuting Attorney and objects to the petitioner's appendix and moves this Court for an Order tolling the time to respond to the petitioner's brief, for the following reasons.

1. By Order entered April 6, 2016 this Court issued a Rule to Show Cause detailing the petitioner's failure to perfect the appeal and providing that the Rule would be "mooted by the filing of a petitioner's brief and an appendix that fully comply with the Rules of Appellate Procedure."
2. On April 12, 2016 petitioner's counsel telephoned a staff member at the Raleigh County Prosecuting Attorney's Office and advised her to check the gas grill in the rear exterior of the building: for a second time, (*see State v. Donald*

3. *Dunn*, No. 14-1037), counsel had deposited petitioner's brief and an appendix and two motions into the outdoor grill in lieu of serving the respondent.
4. The appendix found in the grill is mislabeled a "Joint Appendix" and the petitioner's repeated Rule 7(c)(2) certifications, attached to each volume, erroneously assert that the petitioner conferred with the respondent about the contents of the appendix and that the respondent "requires the inclusion of all items associated with the case in every case appealed. . . ."
5. Petitioner's counsel never conferred with respondent's counsel concerning the appendix and never served a Rule 7(e) list upon the respondent.
6. Respondent's counsel has no authority to "require" anything in an appendix, and instead abides by the Rule 7(e) prohibition against unnecessary parts of the record in the appendix and the Rule 6(f) admonition against inclusion of unnecessary material in the appendix, and never would promote the "inclusion of all items associated with the case" in the appendix.
7. Initial review of the misnamed "Joint Appendix" reveals over 450 unnecessary pages of *voir dire*: petitioner's brief includes no assignment of error concerning *voir dire* or jury selection.
8. The "Joint Appendix" fails to comply with Rule 7 format and sequential page numbering requirements and instead contains only single-sided pages, most of which are "fastened" by rubber bands. The Table of Contents does not match the contents, making proper citation to the appendix impossible. For example: Volume I's Table of Contents lists at page 12 "CD of all Docket

Entries,” but there is no page 12 and no CD; “Page 13” is a transcript of several pages, left unnumbered; “Page 14” is a 32 page transcript, left unnumbered and “Page 15” is an 89 page transcript, also left unnumbered.

9. The “Joint Appendix” fails to comply with the Rule 7(d)(6) requirement that the appendix contain copies of critical exhibits, including but not limited to the transcript of the petitioner’s confession, the transcript of the petitioner’s interview with defense psychiatrist Dr. Bobby Miller, the reports of forensic evaluations by Dr. Bobby Miller and David Clayman and Associates and photographs of the victim, all of which are material to the petitioner’s claims of error and either were admitted into evidence at trial or were admitted into the record for appellate review.

Wherefore, the respondent objects to the “Joint Appendix” and moves this Court for an Order compelling the petitioner to comply with the Rules of Appellate Procedure and tolling time for the filing of respondent’s brief until the petitioner has complied.

Respectfully submitted by:



KRISTEN KELLER

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing *Respondent's Objection to Appendix and Motion to Toll Time for Filing Respondent's Brief* has been served upon the petitioner herein by **MAILING and delivering by FedEx Overnight** true copies thereof to David White, Esquire, 179 Summers Street, Suite 314, Charleston, WV 25301, by United States Mail, postage pre-paid, this the 13<sup>th</sup> day of April, 2016.



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