IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 21-0764

STATE OF WEST VIRGINIA,

Plaintiff Below/
Respondent,

v.

AARON GLENN HOARD,

Defendant Below/
Petitioner.

Appeal from the Circuit Court of Preston County
Criminal Action No. 20-F-92

PETITIONER'S REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

I. DISCUSSION

In its response, the State glosses over or outright ignores the mountain of evidence introduced at trial that supported Mr. Hoard's defense. Particularly, the State attempts to wholly divert the Court's attention from the video of the incident which clearly depicts Mr. Hoard being harassed, badgered, and assaulted by an angry mob, which included Grant Felton. The State further failed to mention that one of its own main witnesses, Khristina Andrews, testified that there were "at least three hands over top of" Mr. Hoard's hands at the time the gun went off. App. 02203. Despite the evidentiary support for Mr. Hoard's defense, the jury nonetheless found him guilty of second-degree murder. The verdict was the natural consequence of improper and unconstitutional actions by the State.

The most egregious error by the State occurred during opening when it set the tone for the rest of the trial by suggesting that Mr. Hoard's decision not to be interviewed by police regarding the incident was evidence of his guilt. Although the State now attempts to chalk its error in this respect as a "misstep" which resulted in "harmless error," the sidebar that followed the State's "misstep" shows it was anything but:

Ms. Haynie:	I'm going to move for a mistrial. She can't talk about the fact that he didn't interview Aaron Hoard.
Ms. Fields:	Yes, I can.
Ms. Haynie:	No, you can't.
Ms. Fields:	Yes, I can.
Ms. Hanie:	You cannot comment on the defendant's—
Ms. Fields:	Yes I can. He wasn't—he wasn't interviewed.
The Court:	Ms. Fields, calm down. Calm down. Okay, go ahead, Ms. Haynie.
Ms. Haynie:	Well, she cannot comment on the defendant's right to stay—right to remain silent and she just did with the jury. I move for a mistrial.
The Court:	No, she did not say that he did not give a statement. She said he was unable to interview Mr. Hoard.
Ms. Haynie:	That's a comment on his right to remain silent.
Ms. Fields:	No, he has a right to remain silent at trial.
Ms. Haynie:	No.
Ms. Fields:	And to not testify.

Ms. Haynie: You cannot talk about his refusal to talk.
The Court: Well, I'm going to note—I'm going to note your objection. I'm going to overrule it right now.

App. 01223–22. Indeed, the record reflects that the State knew precisely what it was doing when it commented on Mr. Hoard's constitutional right to remain silent. And because the Court permitted the State's unconstitutional tactics, the State later continued its effort to draw the jury's attention to Mr. Hoard's decision to remain silent by cross examining him regarding the decision. And again, the sidebar that follows shows that the State's repeated "misstep" was anything but:

Ms. Fields: Your Honor, he has taken the stand now. He has to answer questions that I ask him.
The Court: All right.
Ms. Fields: Go ahead. Make your objection.
Ms. Haynie: My objection is that she can's [sic] ask him about him speaking to the police or not speaking to the police. He still maintains his Fifth Amendment privilege, and even if he testifies, I can't be used against him. And I'm going to, once again, move for a mistrial on this issue. That's my objection.
Ms. Fields: Your Honor, he takes the stand. I'm allowed to ask him if he's made any prior statements.
The Court: Yeah, I'm going to permit that. Basically she's not telling it to the jury that he did not—if he did not testify, she's not allowed to say that to the jury, but he has taken the witness stand and she's allowed to ask him what he did. Now, he does a right to remain silent [sic], okay, and he's exercised that right. He—you know, I don't know what took place down Morgantown.
Ms. Haynie: Well, he exercised his right to remain silent on advice of counsel.
Ms. Fields: Then he needs to say that.
The Court: Then that needs to be said. It's already been stated that counsel told him that he was to shutdown his Facebook account, so, therefore, he has counsel.
Ms. Haynie: Well, just for the record, I move for a mistrial for asking the defendant—
The Court: I would note your objection.

App. 02682–83.

Likewise, many other aspects of the trial were undertaken in an impermissible effort to force the jury to find Mr. Hoard—an outsider to the community—guilty. As fully briefed, the

circuit court impermissibly denied an unopposed request for a survey to determine whether the local jury pool would be able to render an unbiased verdict. The State focuses on nuances in the Change of Venue Media Research Report, App. 00012–00020, to distract from the fact that the circuit court judge denied an unopposed request for a safety measure to ensure a fair trial.

The miscarriage of justice continued during jury selection when the circuit court seated multiple jurors with ties to the case. In the final phases of trial, the circuit court gave instructions that were unsupported by the State's evidence and refused to fully instruct the jury regarding Mr. Hoard's claim of self-defense.

Each of these errors alone denied Mr. Hoard his right to a constitutional, fair trial. Taken together, they represent a cumulative, egregious miscarriage of justice that cannot be permitted to stand. Mr. Hoard is entitled to a new trial.

A. The State's statements regarding Mr. Hoard's pre-trial silence unduly prejudiced Mr. Hoard and affected his substantial constitutional rights

The State devotes a considerable portion of its brief attempting to assuage this Court that the prosecutor's statements about Mr. Hoard's pre-trial silence were "innocuous," "passing," and so "brief and isolated" that they constituted harmless error. Resp't Br. 21–24. The State's attempt to gloss over what are unquestionably among Mr. Hoard's most fundamental constitutional rights is unsettling and flies in the face of some of the best-established principles of American jurisprudence.

As thoroughly developed in Mr. Hoard's brief, both the United States and West Virginia Constitutions make plain that a criminal defendant's pre-trial silence cannot be used against him or her as evidence of guilt. *See* Syl. Pt. 1, *State v. Walker*, 207 W. Va. 415 (2000) ("Under [the West Virginia Constitution], it is reversible error for the prosecutor to cross-examine a defendant in regard to his pre-trial silence or to comment on the same to the jury") (citations omitted). In

Doyle v. Ohio, the United States Supreme Court held that the constitutional right to remain silent carries with it the principle that a defendant cannot be impeached at trial by his pre-trial silence. *See* 426 U.S. 610, 619 (1976) (describing the rule prohibiting comment on a defendant's pre-trial silence as "block[ing] *any* attempt of the State to infer from the silence of the defendant that such silence is motivated by guilt rather than the innocence which the law presumes") (emphasis added). This Court has explained that the purpose of the holding in *Doyle* is twofold:

> First, because it is constitutionally mandated that a person be advised immediately upon being taken into custody that he has the right to remain silent, the warning itself can create the act of silence. It would, therefore, be unfair to permit the State to obtain an advantage by being able to utilize the silence to impeach the defendant.
>
> The second reason is that one of the purposes of a Miranda warning is to assure the defendant that if he asserts his privilege to remain silent no harmful consequences will flow from such assertion. Therefore, it would be wrong to permit the State to attack the defendant over his pre-trial silence.

State v. Boyd, 160 W. Va. 234, 239–40 (1977).

The State emphasizes that *Doyle* and its progeny "leave room for a harmless error analysis when such missteps are made by the State." Resp't's Br. 22. However, given the extraordinarily important constitutional issues at stake under such circumstances, Courts must exercise a great deal of caution when reviewing for harmless error. This is especially true in the criminal context. *See Sullivan v. Louisiana*, 508 U.S. 275, 279 (1993) ("Harmless error analysis in the appeal of a criminal case asks . . . whether the guilty verdict actually rendered . . . was surely unattributable to the error."); *State v. Marple*, 197 W. Va. 47, 53 (1996) ("Harmless error inquiry in criminal cases is significantly more stringent than in civil cases."). Again, the State in this case not only set the tone for the entire case by commenting broadly on Mr. Hoard's silence during opening, but it continued its effort to draw attention to his silence by cross-examining him on the issue.

As evidenced below, this Court's prior rulings on harmless error make abundantly clear that the circuit court erred below and that Mr. Hoard is entitled to a retrial as a matter of law.

1. The facts at issue in the present appeal are virtually indistinguishable from those in *State v. Walker*, in which this Court held that the defendant was entitled to a retrial as a result of the State's reference to the defendant's pre-trial silence

In *State v. Walker*, the Court reversed a criminal conviction and remanded the matter for retrial under circumstances which are virtually identical to those at issue in the present appeal. Indeed, to the extent that *Walker* consists of slight factual differences from the instant action at all, those differences weigh only in Mr. Hoard's favor and should counsel this Court in finding that the reversible errors in the trial below were even more egregious than those which merited a retrial in *Walker*.

In *Walker*, the defendant went to a nightclub armed with a handgun. *See* 207 W. Va. at 418. While at the nightclub, Mr. Walker got into an altercation with another patron, Mr. Belcher, concerning $20 that Mr. Belcher apparently owed to Mr. Walker. *Id.* During the altercation, Mr. Belcher approached Mr. Walker, cut him on the arm with a knife, and threatened that "he was going to gut [Mr. Walker] like a hog," to which Mr. Walker responded by shooting the patron in the shoulder. *Id.* At that point, multiple other patrons from the nightclub attacked Mr. Walker. *Id.* During the struggle, the firearm was discharged a second time, fatally striking Mr. Belcher in the chest. *Id.*

Mr. Walker was hospitalized following the incident as a result of injuries he sustained during the "severe beating" at the hands of the nightclub patrons. *Id.* During his hospitalization, Detective Westfall from the Charleston Police Department read Mr. Walker his *Miranda* rights before asking whether Mr. Walker wanted to make a statement, which Mr. Walker declined to do.

Id. However, as Detective Westfall was leaving, Mr. Walker stated to him that "I'm sorry I shot the old man. It was an accident." *Id.*

At trial, Mr. Walker took the stand in his defense, arguing that the first shot was fired in self-defense immediately after being cut on the arm and that the second shot was fired accidentally as the other patrons were attacking him. *Id.* On cross-examination, the State engaged in the following colloquy:

> Q. Then, of course, you were at the hospital and Detective Westfall, who was investigating the shooting, came to see you, didn't he?
> A. Yes, him and Tommy Ransom.
> Q. And you didn't tell him a day afterwards that Mr. Belcher had pulled a knife on you, did you?
> A. It was two days. No, I couldn't talk to him.
> . . .
> Q. You recall Detective Westfall testifying that you told him that this was all an accident, don't you?
> A. Right.
> Q. You didn't tell him that Harold Belcher threatened to gut you like a hog, did you?
> A. No.
> Q. You didn't show Detective Westfall the cut, did you?
> A. No, I didn't. I meant to do that for a reason.

Walker at 420. Later, during closing arguments, the State again commented on Mr. Walker's pre-trial silence:

> He never said anything to the police officers that he was cut by Harold Belcher. He never said anything to the police officers that Harold Belcher had a knife to his groin. He never said anything to the police officers that Harold Belcher threatened to gut him like a hog. He never said that stuff because it didn't happen.
>
> Why wouldn't he tell—why wouldn't he tell the police officers that Harold Belcher did these things. It doesn't make sense. If it happened, he would have told them. He would have said that to the police officers.

Walker at 421.

On appeal, this Court looked to the *Sugg* factors and held as follows:

> We have little difficulty in finding reversible error in the State's closing argument remarks concerning Mr. Walker's post-*Miranda* silence. Not only was the State's attack on Mr. Walker's post-*Miranda* silence improper, the attack was highly prejudicial. Mr. Walker's defense was self-defense. The state told the jury, in essence, that the shooting was not in self-defense. Had it been self-defense, according to the State, Mr. Walker would have so advised the police. To permit the State to do what occurred in this case, would effectively make *Miranda* warnings meaningless.

Id.

Like the defendant in *Walker*, Mr. Hoard did not wield his firearm until after he had been physically assaulted. Like in *Walker*, the fatal shot at issue occurred during a physical confrontation in which multiple people were assaulting the would-be defendant. Like Walker, Mr. Hoard presented a vigorous defense at trial centered on Mr. Hoard's contention that he did not intentionally shoot anyone and that the weapon was discharged accidentally during the struggle. And identically to *Walker*, the cross-examination questioning into Mr. Hoard's pre-trial silence consisted of inquiry into Defendant's contention that the victim's death was an accident.

The State's cross-examination of Mr. Hoard in this case, just like that of the State's in *Walker*, followed a pattern of restating the defense—that "it was a complete and total accident"—and using Mr. Hoard's silence on that topic to suggest that it could not be true because Mr. Hoard would have told the police if it were. Such tactics are nothing more than a siren's call designed to entice the jury to conclude that "well, if a suspect really believes that something was an accident, then he should waive his constitutional rights and say so." Such tactics lead to precisely the result that the Fifth Amendment was designed to prevent, and those tactics in this case unquestionably contributed to Mr. Hoard's conviction. *See Berger v. United States*, 295 U.S. 78, 88 (1935) (noting that the public's faith in prosecutors results in improper suggestions and insinuations by the same being "apt to carry much weight against the accused when they should properly carry none"). In *Walker*, the State's tactics led to the Court having "little difficulty in finding reversible error."

Walker, 207 W. Va. at 421. Here, the State's impermissible tactics were introduced at an even earlier stage of trial than they were in *Walker*, and the results permeated each remaining stage of the trial. Given the remarkable similarities and even more egregious errors in the instant appeal, the same result should follow here.

2. The facts at issue in the present appeal are readily distinguishable from those at issue in *Marple* such that its holding is inapposite to the instant action

In support of its position, the State relies almost exclusively on *State v. Marple*, in which this Court held that the State's improper solicitation of testimony regarding a criminal defendant's pre-trial silence was harmless error as a result of the weight of the evidence against him. *See* 197 W. Va. 47, 53 (1996). However, while the State did accurately restate the nature of the *Marple* holding, it glossed over the details which led the Court to its holding in the first place. A deeper analysis of *Marple* makes clear that it is wholly inapposite to determination of the instant action.

In *Marple*, the defendant and his girlfriend had been out for a night of barhopping when they were witnessed by several individuals having multiple heated arguments and physical confrontations. *See Marple*, 197 W. Va. at 49. Later that night, law enforcement officials responded to the defendant's home after receiving anonymous reports that there was a woman there bleeding from the head. *Id.* On arrival, the officers discovered the defendant kneeling over his girlfriend's body, which was covered in blood and had a large bump on the left temple area of her head. *Id* at 50. The defendant, too, was covered in the victim's blood, and there were blood smears and blood spots littered throughout the home. *Id.* For his part, the defendant told the officers that "he had tripped over [the victim] when he got out of bed to go to the bathroom and he surmised she must have fallen out of bed and hit her head. There was further evidence that the defendant stated he carried [the victim] down to the kitchen and placed her on the floor." *Id.* Upon arrival to the hospital, it was discovered that the "bump" on the victim's head was in fact the result of a

close-range gunshot to the victim's temple. *Id.* The defendant was charged and convicted of first-degree murder of the victim and sentenced to life in prison with a possibility of parole.

On appeal, the defendant argued that the prosecution's questioning of a state's witness violated the defendant's Fifth Amendment rights. Specifically, the defendant objected to the following line of questioning on direct examination between the prosecutor and an investigating officer:

> Q. Once you read James Marple his Miranda rights, would you describe his attitude or what he said at that time?
>
> A. He simply refused to acknowledge his rights. He wouldn't talk to us. He basically wasn't even paying attention to us. At that time we attempted not to talk to him or we did not attempt to talk to Mr. Marple.

Id. at 52–53.

And indeed, the Court found that the line of questioning was in error. *See id.* at 53 ("[T]here is no principled way we could suggest the error was not clear under current law. In the instant proceeding, it is obvious the State solicited testimony in a context that is barred under [*State v. Hamilton*, 177 W. Va 611 (1987)] and [*State v. Boyd*, 160 W. Va. 234 (1977)]"). However, the Court ultimately held that the error did not affect the defendant's "substantial rights" due to the overwhelming evidence that the defendant was the only possible culprit for the victim's murder:

> The evidence by the State in this case placed Tammy in the apartment of the defendant at the time she was shot. In fact, the State's evidence placed her in the defendant's bed, alongside the defendant when she was shot. There was evidence the defendant was heard stating: "I didn't want to kill her" and "I didn't want to hurt you." The State provided evidence that a gun was found 550 feet from the back door of the defendant's apartment. There was evidence the back door had been opened and blood was found on the doorknob. Expert testimony was provided that test firing of the gun and analysis thereafter established the bullet taken from Tammy's brain was fired from the weapon found near the defendant's apartment. The State called Ralph Robertson, a contractor who put in a new bathroom in the defendant's apartment prior to Tammy's death. Mr. Robertson testified that while he was in the defendant's apartment he saw and handled a gun that was in the defendant's bedroom, lying on the headboard of the defendant's water bed. Mr.

> Robertson testified that the gun introduced into evidence as the weapon which killed Tammy was the same weapon he saw and handled in the defendant's bedroom. There was expert testimony that gunshot residue was found on a sample taken from the defendant's right hand and from a sample of the pants worn by the defendant on the night of Tammy's death. Finally, the defendant did not put on any evidence; instead, he elected to rest at the conclusion of the State's case-in-chief.

Id. at 53–54.

Given the overwhelming evidence that the defendant's version of the events was wholly implausible under the circumstances, together with the defendant's decision not to present any evidence in his defense, the Court ultimately concluded that while the State's inquiry into the defendant's pretrial silence was in error, that error was harmless. Accordingly, the Court affirmed the conviction below.

Here, the circumstances could not be any different from those at issue in *Marple*. Most obviously, the defendant in *Marple* did not even bother to present any evidence in his defense. Indeed, the only statement the defendant made in his defense at all consisted of a wholly implausible pre-trial story about tripping over his girlfriend, whom he alleged must have fallen out of bed and hit her head. The defendant's story did not account at all for the close-range gunshot that ultimately took the victim's life. The State, on the other hand, introduced extensive evidence which undercut the defendant's position at every turn. Multiple witnesses testified that the defendant admitted to killing the victim. At least one witness testified to hearing a loud boom consistent with a gunshot, and others still testified to witnessing a series of heated arguments and physical confrontations leading up to the fatal event. When officers arrived at the scene, there were only two individuals present in the home: the victim, and the defendant, who was discovered hovering over the victim's body and covered in the victim's blood. The defendant did not allege that he shot the victim in self-defense, nor did he claim to have shot her by accident. There was no evidence of a struggle over the weapon which resulted in an accidental discharge. Indeed, the

defendant's guilt in *Marple* was plainly obvious, and he presented precisely *no* evidence to the contrary. Under such circumstances, the trial court was clearly justified in finding that any error resulting from testimony on the defendant's pre-trial silence was harmless.

Further, the State in *Marple* commented on the defendant's pre-trial silence only once throughout the proceeding, during its direct examination of the investigating detective. Although the line of questioning to which the defendant ultimately objected was certainly improper, as confirmed by the Court, the jury was at least armed by that point in the trial with information as to the context in which the defendant's pretrial statement was made. Here, the State put the jury on notice of Mr. Hoard's pre-trial silence at the earliest feasible opportunity and reminded the jury of the same during cross-examination. Each time the State called attention to Mr. Hoard's pre-trial silence, the proceedings were interrupted by a sidebar colloquy, serving only to heighten the jury's attention to Mr. Hoard's pre-trial silence. The State's tactics fly in the face of well-established principles of law and unquestionably prejudiced the jury to infer Mr. Hoard's guilt from his constitutionally protected silence.

3. The State's impermissible comments regarding Mr. Hoard's exercise of his Fifth Amendment privilege were not limited to pre-*Miranda* silence

To the extent that the Court is at all swayed by the State's apparent contention that it cannot be found to have implicated Mr. Hoard's constitutional right to remain silent because it did not explicitly reference Mr. Hoard's post-*Miranda* silence, that argument is a red herring. *See* Resp't Br. 23 ("The State's passing comment regarding Mr. Hoard's pre-trial silence made in its opening statement did not even reference Mr. Hoard's post-*Miranda* silence."). Courts throughout the country have recognized that where a prosecutor's statements as to a defendant's pre-trial silence do not make clear that the statements are in reference only to pre-*Miranda* silence, that testimony is improper. *See, e.g.*, *United States v. Baker*, 999 F.2d 412 (1993) ("Even if counsel for the

government intended his comments to refer only to post-arrest/pre-*Miranda* silence, the actual language used contains no such limitation and it is highly doubtful that the jury understood any such limitation.").

Here, the State's statements during both opening arguments and cross-examination made broad reference to Mr. Hoard's pre-trial silence without differentiating between whether Mr. Hoard had been advised of his *Miranda* rights at the time. Although the State now claims in retrospect that it intended its comments in opening arguments to be constrained to Mr. Hoard's pre-*Miranda* silence, that position is not at all clear in context, nor was it explicitly stated by the State at the time. To the contrary, the State chose to impermissibly interject a broad reference to Mr. Hoard's pre-trial silence—"the one interview we didn't get"—at the earliest possible moment of the trial, during opening arguments when the jury had just been seated and was least likely to be distracted. The State did not state or suggest, as it would lead this Court to believe, that it meant "the one interview we didn't get prior to the defendant's arrest," nor did the State clarify its position after the circuit court permitted it to continue its case in chief. Rather, the State took advantage of its error and allowed the results of the same to permeate every stage remaining in the proceedings.

4. Mr. Hoard's conviction must be overturned because the State has failed to establish that its repeated comments on Mr. Hoard's pre-trial silence was harmless error

As further developed above, the State has failed to establish that its "missteps" below were harmless error. Nor has the State, as the law requires, established that the guilty verdict rendered below was surely unattributable to the error. To the contrary, the record makes plain that (a) the circuit court below abused its discretion in failing to find that the State's comments regarding Mr. Hoard's pre-trial silence were improper and (b) that Mr. Hoard was very much prejudiced by the State's having been permitted to remark on Mr. Hoard's pre-trial silence. The State commented not once, but twice on Mr. Hoard's pre-trial silence, and both occasions were during the most

important parts of the trial at which the jury's attention was sure to be drawn to the presentation of evidence. Accordingly, the *Sugg* factors support finding that a new trial is warranted. Syl. Pt. 6, *State v. Sugg*, 193 W. Va. 388 (1995).

B. Mr. Hoard's conviction below should be reversed because the cumulative effect of the many errors in the proceedings below prevented him from receiving a fair trial

"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. 7, *State v. Tyler G.*, 236 W. Va. 152 (2015).

Without restating each and every of the arguments set forth in Petitioner's Brief which should warrant this Court in favor of finding that the cumulative effect of the many errors below prevented Mr. Hoard from receiving a fair trial, Mr. Hoard reiterates his position that the circuit court's decision to permit the State to repeatedly present evidence of Mr. Hoard's pre-trial silence permeated each and every of remaining stages of the trial below. The cascading effects of the cumulative errors in the trial of this matter are readily apparent from the record and grew exponentially at every successive stage. Mr. Hoard was prejudiced prior to the trial by the court's decision to permit the trial to be held in a county which was outwardly hostile to Mr. Hoard, and he was again prejudiced when the Court refused to strike four jurors whose connections to the case and sentiments resulting therefrom made readily manifest their inability to fairly and impartially hear the facts of this case and apply those facts to the law (assuming the law had been fairly presented to the jury, which it was not). In its brief, the State argues (for the first time) that Mr. Hoard never moved to strike Jurors 1, 21, 24, and 34 for cause. *See* Resp't Br. 37. This assertion is puzzling in light of the extensive record from the proceedings below, in which the prosecutor who tried the case acknowledged Mr. Hoard's efforts to do precisely what the State now contends

he did not do. *See* App. 02885–86 (prosecutor remarking "I believe that the Court appropriately denied those strikes, and that's the reason peremptory strikes are available . . . I would ask that the Court stand by its decision and I would also ask that all of my prior arguments that were made for each of these individuals strikes at the time that the strike was requested be preserved for appeal.").

Once the jury was empaneled and opening arguments began, Mr. Hoard was prejudiced when the State was permitted to imply to the already biased jury that Mr. Hoard's silence was indicative of his guilt. Later, on cross-examination, Mr. Hoard was yet again prejudiced when the State again insinuated that if the Mr. Hoard had a valid defense to his actions, then he should have waived his constitutional rights and made such defenses known to the State. Mr. Hoard was further prejudiced when the already biased jury began its deliberations, it was presented with jury instructions replete with references to malice and intent despite the State's having presented no evidence on either. In its brief, the State acknowledges that "jury instructions on possible guilty verdicts must only include those crimes for which *substantial evidence has been presented.*" Resp's Br. 30 (quoting Syl. Pt. 5, *State v. Demastus*, 165 W. Va. 572 (1980)) (emphasis added)). However, the State goes on to acknowledge that its scant evidence in support of intent merely "impl[ies] that Petitioner intended to shoot the victim." Resp's Br. 30–31. Indeed, the State conveniently glosses over testimony from one of its own witnesses, Khristina Andrews, who testified that Mr. Hoard was not able to let go of the firearm because there were "at least three hands" over top of Mr. Hoard's and that Mr. Hoard did not point the firearm anywhere but up in the air until Michael and Grant Felton attempted to "pull[] it down like towards themselves down trying to get the gun away from [Mr. Hoard]." This evidence does not—as the State suggests—"imply that Petitioner intended to shoot the victim." *Id.* To the contrary, it reinforces Mr. Hoard's position.

Finally, Mr. Hoard was prejudiced when the jury was not presented with full instructions on the doctrine of self-defense, which despite the State's contention to the contrary, was very much at issue in the trial below by virtue of the fact that Mr. Hoard's having secured his firearm in the first place was a self-defense tactic meant to drive away an approaching mob of angry, threatening, and intoxicated strangers. Because the jury was not presented with jury instructions encompassing the *full* law on self-defense in this state, the jury was not instructed on the fact that the benefits of hindsight and reflection played no role in their analysis. They were not instructed that it was the Mr. Hoard's perspective, not that of the jury's, that must guide their determination of reasonableness under the circumstances. Such instructions are not—as the State would lead this Court to believe—"duplicative." They are indispensable to the administration of justice, and the fact that the jury in the trial of this matter was not fully instructed on the issues of self-defense and accident after the trial unquestionably contributed to the guilty verdict that resulted.

Taken together, the cumulative errors below robbed Mr. Hoard of his right to a fair trial, and his conviction must accordingly be reversed.

II. CONCLUSION

For the reasons set forth above, multiple reversible errors occurred during the trial of this matter that denied Mr. Hoard his constitutionally protected right to a fair trial. Each of those errors warrants reversal, and most certainly, the cumulative effect of the errors resulted in an unconstitutional conviction which cannot stand. The State has failed to establish that its errors below were "harmless," and thus they are reversible. Mr. Hoard respectfully requests that this Court reverse his conviction, vacate his sentence, and remand the case for a new trial.

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AARON GLENN HOARD,
Defendant Below, Petitioner.

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of April 2022, a true and accurate copy of the foregoing **"Petitioner's Reply Brief"** was deposited in the U.S. Mail, contained in a postage-paid envelope, and addressed to counsel for all other parties to this appeal as follows:

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