

IN IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO. 26-308

SCA EFiled: Jun 30 2026
10:45AM EDT
Transaction ID 79909325

STATE OF WEST VIRGINIA *ex rel.*
STATE OF WEST VIRGINIA,

Petitioner,

v.

THE HONORABLE C. RICHARD WILSON,
Judge, Second Judicial Circuit, Circuit
Court of Tyler County, and JEREMY
MICHAEL WEEKLEY,

Respondents.

SUMMARY RESPONSE TO THE PETITIONER'S
PETITION FOR WRIT OF PROHIBITION

George J. Cosenza, West Virginia Bar No. 833
1130 Market Street - Post Office Box 4
Parkersburg, West Virginia 26102
(304) 485-0990
e-mail: cosenza@wvdsi.net

Counsel for Respondent,
Jeremy Michael Weekley

**SUMMARY RESPONSE TO THE PETITIONER'S
PETITION FOR WRIT OF PROHIBITION**

NOW COMES the Respondent, **JEREMY MICHAEL WEEKLEY**, by and through his attorney, **GEORGE J. COSENZA**, pursuant to Rule 16(h) of the West Virginia Rules of Appellate Procedure and for his Summary Response to the Petition for a Writ of Prohibition filed by the Petitioner, **STATE OF WEST VIRGINIA**, *ex rel.* **STATE OF WEST VIRGINIA**, states as follows:

FACTS

On February 11, 2025, the Respondent, Jeremy Michael Weekley was indicted by the Tyler County, West Virginia Grand Jury. (App. Pg. 22). (Count three (3) of the indictment was dismissed prior to trial). There were two (2) alleged victims, A.R.M. and D.R. The Respondent requested discovery and was provided with same. Trial began on January 13, 2026. (App. pg. 27). A.R.M. was called as a witness by the Tyler County Prosecutor. During direct examination the Assistant Prosecutor, Kyle Elliott, asked what the Respondent, Jeremy Michael Weekley, did to her “in the morning of February 24, 2018.” Obviously, by asking the question referring to a specific date, the prosecutor had information prior to trial as to when A.R.M. had alleged the sexual assault took place. (App. pg. 87). The undersigned, representing the Respondent, Jeremy Michael Weekley, began cross examination of A.R.M. (App. pg. 93). During cross examination, it was revealed that A.R.M.’s mother had disclosed the exact date of the alleged sexual assault to the prosecutor sometime in 2024. (App. pg. 97). Such

information was not provided to the undersigned prior to the trial date. This was an egregious violation of the prosecutor's duty to provide discovery, and potentially exculpatory evidence to the defense. The defense promptly moved for a dismissal of the counts of the indictment related to A.R.M. During argument, outside the presence of the jury, the prosecutor admitted he knew the exact date A.R.M. was alleging she was sexually assaulted by the Respondent, Jeremy Michael Weekley, but did not provide it because the exact date was not an element of the crime. (App. pgs. 99 – 106). However, the prosecutor later changed his position and claimed he was never told the exact date A.R.M. claimed the sexual assault had occurred. (App. pgs. 107 – 119).

Ultimately, the court denied the Respondent, Jeremy Michael Weekley's motion to dismiss, but granted a mistrial. (App. pgs. 119 – 121).

On April 6, 2026, the Respondent, Jeremy Michael Weekley, filed a motion to disqualify the Tyler County Prosecutor from further prosecuting the case against the Respondent, Jeremy Michael Weekley. (App. pg. 10). The basis of the motion was that the prosecutor was a potential witness for the Respondent to refute the testimony of A.R.M. as to whether she disclosed the exact date of the sexual assault to assistant prosecutor Kyle Elliott. The credibility of witnesses in a trial is paramount to a jury's determination of guilt or innocence. This is especially true in cases involving the sexual assault of a minor. If the victim, A.R.M., would testify that information was provided to the prosecutor as to the exact date she was sexually assaulted by the Respondent, Jeremy Michael

Weekley, and the prosecutor refuted such testimony, the jury could conclude A.R.M. was not credible and, therefore, acquit the Respondent, Jeremy Michael Weekley.

The court denied the Respondent's motion, but disqualified the Tyler County prosecutor's office from further prosecuting the Respondent, Jeremy Michael Weekley, because of the issue regarding the propriety of the disclosure of exculpatory evidence to "ensure the fair and efficient administration of justice...". (App. pg. 8).

ARGUMENT

West Virginia Code §7-7-8 states, in pertinent part, "...If, in any case, the prosecuting attorney and his assistants are unable to act, or if in the opinion of the court it would be improper for him or his assistants to act, the court shall appoint some competent practicing attorney to act in that case..."

Circuit courts unquestionably have the authority to disqualify a prosecuting attorney from acting in connection with the indictment or prosecution of a criminal case under the provisions of West Virginia Code §7-7-8. *State ex rel. Matko v. Ziegler*, 154 W.Va. 872, 179 S.E. 2d 735; *State v. Smith*, 117 W.Va. 598, 180 S.E. 621 (1936).

Before a prosecuting attorney may be disqualified from acting in a particular case and relieved of the duties imposed upon him by the Constitution and by statute, the reason for his disqualification must appear on the record, and where there is any factual question as to the propriety of the prosecutor acting in the

matter, he must be afforded notice and an opportunity to be heard. *State ex rel. Preissler v. Dostert*, 163 W.Va. 719, 260 S.E. 2d 279 (1979). The prosecutor can be disqualified from the obligation to fulfill the duties of his office if there is a clear and convincing showing of his failure to fulfill his official responsibilities. *Preissler, supra*.

While not addressing the disqualification of a prosecuting attorney, this court has addressed when an attorney should be disqualified from representing a client because the opposing party desires to call him/her as a witness. See *Smithson v. United States Fidelity & Guaranty Company*, 186 W.Va. 195, 411 S.E. 2d 850 (1991). In *Smithson*, the court stated that a motion for disqualification should not be granted unless the following factors can be met: First, it must be shown that the attorney will give evidence material to the determination of the issues being litigated; Second, evidence cannot be obtained elsewhere; and, Third, the testimony is prejudicial or may be potentially prejudicial to the testifying attorney's client. *Smithson*, Syl. pt. 3, *supra*, *Garlow v. Zakaib*, 186 W.Va. 457, 413 S.E. 2d 112 (1991).

In the case at bar, the Circuit Court of Tyler County, West Virginia found good cause existed for the removal of the Tyler County Prosecutor's Office to "moot any future argument that the State has withheld possible exculpatory evidence from the Defendant to ensure the fair and efficient administration of justice in this criminal prosecution." (App. pg. 8).

First, as stated herein, the West Virginia Code §7-7-8 gives the court

unquestionable authority to disqualify a prosecuting attorney if in the court's opinion it would be improper for the prosecuting attorney to act in a particular case.

Second, the Tyler County prosecutor was given notice of the hearing to disqualify him and had the opportunity to be heard.

Third, the court put on the record the reason for the prosecutor's disqualification, which were found by clear and convincing evidence.

The serious issue of the Tyler County prosecutor withholding potentially exculpatory evidence from the Respondent until the day of the trial justified the court's decision. Such a ruling is not without precedent. In *State ex rel. Kerr v. McCarty*, 87 W.Va. 201, 417 S.E. 2d 120 (1992), this court upheld the disqualification of the Prosecuting Attorney of Jackson County, West Virginia, where the prosecutor was a potential witness regarding the integrity of tape recordings to be used as evidence against the defendant.

CONCLUSION

Based upon the foregoing, the disqualification of Tyler County prosecutor should be upheld and the petition for a writ of prohibition be denied.

//s// George J. Cosenza

George J. Cosenza (WV Bar No. 833)

GEORGE J. COSENZA, PLLC

1130 Market Street - Post Office Box 4

Parkersburg, West Virginia 26102

(304) 485-0990

Counsel for Respondent

CERTIFICATE OF SERVICE

The undersigned Respondent, **JEREMY MICHAEL WEEKLEY**, hereby certifies that he served the foregoing **SUMMARY RESPONSE TO THE PETITIONER'S PETITION FOR WRIT OF PROHIBITION** upon the Plaintiff, **STATE OF WEST VIRGINIA**, by electronic filing, on this 30th day of June, 2026, addressed to:

Michele Duncan Bishop
Senior Assistant Attorney General
State Capitol Complex
1900 Kanawha Boulevard, East
Building 6, Suite 406
Charleston, West Virginia 25305-0220
E-mail: MBishop@wvago.gov

//s// George J. Cosenza
George J. Cosenza (WV Bar No. 833)
GEORGE J. COSENZA, PLLC
1130 Market Street - Post Office Box 4
Parkersburg, West Virginia 26102
(304) 485-0990
Counsel for Respondent