

In the Magistrate Court of Kanawha County  
West Virginia

Magistrate Court Case No. 13 M 3079-81

Circuit Court Appeal No. \_\_\_\_\_

State of West Virginia - PLAINTIFF  
Police Officers Vernon and Yost  
Kanawha County Sheriff's Department  
Virginia Street  
Charleston, West Virginia

Tami L. Stainfield – DEFENDANT  
847 Lower Chester Road  
Charleston WV 25302  
(304) 344-9460

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PETITION FOR APPEAL OF JURY VERDICT

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The Appellant, Tami L. Stainfield, pursuant to West Virginia Code 50-5-12 or 50-5-13 hereby files this petition for appeal with the Circuit Court/ This appeal is from an order entered by Magistrate Sisson, of Kanawha County Magistrate Court on July 3, 2014 for the appeal of May 2014 Jury Trial and June 9, 2014 Motion for Mistrial and Sentencing hearing.

\_\_\_\_\_  
Appellant

The issues to be presented on appeal are the Magistrate Court erred in judgment for the following grounds and repetitive unconstitutional decisions and/or judgments. Magistrate Court of Kanawha County and the State employees violated the defendant's right to Common Law and the Constitutional Rights and Process mandated in the West Virginia Constitution and United States Constitution. The defendant asks for immediate appeal of the Jury Verdict, for the State violated her Constitutional right to Due Process of the 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> amendments and with malice.

- A. Ground One: Defendants Constitution Right to due process of the law within Amendment 5, Amendment 6 and Amendment 14<sup>th</sup> of United States Constitution. "The right of an accused in a criminal trial to due process is, in essence, the right to a fair

opportunity to defend against the States accusation”. Chambers v Mississippi (1972). In addition West Virginia Article III and VIII uphold the United States Constitutional rights of due process and common law.

Supporting FACT: The collective behavior of the State since the arrest thru to the sentencing has been a violation of “due process of the law’ the evidence submitted shows a consistent prejudice and bad faith from the State of West Virginia on the mandated procedures required to maintain fairness. The evidence attached 1.a – 1.x is to be reviewed under the prism of “abuse of power” and violating the defendants Constitutional right to due process of the law and fairness.

1. Failure of State to respond to complaints and statements of defendant 1.c -1.d
2. Failure of State to respond to motions 1.a-1.n
3. Failure to admit evidence that was admissible and would prove innocence – All evidence collected from subpoenas exhibit 3.a was deemed inadmissible except for the photographs entered into the Jury Trial record and found in exhibit 3.d
4. Failure of the Magistrate to warn police officers and clerks of court to not show prejudice to the Jury by with prejudice told defendant she could not approach the witness box; and they would deliver the evidence in physical form to the accuser. Magistrate violated the defendant’s right to innocence.
5. Failure to force State Authorities to respond to subpoenas that could provide exculpatory evidence of defendant’s innocence. Officer Vernon Arrest Statement and Defendants Complaint Statement both report evidence that the State failed to provide; 911 Metro; names of officers, video, photographs of injuries, towing company, illegal search of car. (Violations of Brady v Maryland). Exhibit 3.a also provides evidence that the defendant used proper and excessive procedures in asking the Court to force the Charleston Police and Kanawha Sheriff Department to respond to subpoenas for by law the STATE is mandated to provide evidence as required by law under discovery whether of harm or benefit to the accused or accusers. Within Exhibit 3.b the evidence the defendant retained from the State Prosecutor, Charleston Police Department and Kanawha Sheriff Department is in total; the Defendant will call notice to the inadmissible July 2013 altered Police statement and the suppression of the original police statement dated April 20, 2013. Furthermore the Magistrate denied the admission of the original police statement and stopped the defendant from confronting the witness against her regarding the conflicting statements; which violates WV Rule 611. Furthermore exhibit 3.b evidence will show bad faith of the Prosecuting Office for the Defendants 3.c exhibits show evidence she retained and the Prosecutor suppressed or altered. The State never provided one statement, testimony, or deposition from the accuser of battery; and there after the Magistrate failed to dismiss the case when the accuser of battery never was confronted by the defendant for Prosecutor in bad faith refused to have him testify at the Jury Trial, violation of Due process and “right to face the accuser”

In addition to the State gross violation of not allowing the defendant to face her accuser of battery and to challenge officer Vernon credibility and to impeach his testimony on fleeing and obstructing. The State allowed a public defender without consent of defendant to have contact with defendant's witnesses/accusers. The State influenced her witnesses 1.n to not attend as overheard at the Jury Trial; this also evidence of prejudice and malice for their testimony and many of them STATE EMPLOYEES could of proven prejudice for failure to investigate why videos, names of police officers on the scene were withheld. Magistrate also denied the admittance and scrutiny of the defendant's statement, complaint and Sherriff Department response, this behavior is also malice and violation of Brady v Maryland. The court has ruled testimonial evidence is complaints and defendants statements offered to the Court, therefore the defendant was denied her right to put on a defense and face those witness against her.

Brady v Maryland US (1963)  
United States v Bagley (US 1985)  
Strickler v Greene (US 1999)  
United States v Pelullo 3d Cir (1997)  
United States v Matthews (2nd Cir 1994)  
Disimone v. Phillips (2nd Cir 2006)  
Cone v Bell (US 2009)  
Illinois v Gregory Fisher 03-374 (2004)  
Moore v Illinois 408 Us 786, 810 (1972)  
United States v Keogh 391 (1968)  
United States v Agurs 75-491 (1976)  
Dugan v Ohio 277 US 61 (1928)  
Bullcoming v New Mexico 09-10876 US (2011)  
Kyles v. Whitley (93-7927), 514 Us (1995)  
Portuonda, Fishkill v Agard 98-1170 US (2000)

- B. Ground Two: Violation of United States Amendment Six "In all criminal prosecutions the accused shall enjoy the right...to be confronted with the witnesses against him". Furthermore West Virginia Constitution mandates that the accused has the right to "be confronted with the witnesses against him"

Supporting FACTS: Furthermore during the trial and subsequent motion by the defendant for a mistrial the Magistrate erred in NOT dismissing the case for the defendant was not allowed to face the accuser due to prosecutor misconduct. Prosecutor knew the first witness against her had conflicting statements and the second accuser and witness against her would not be able to collaborate the detail cross examination. Transcript CD 1 and Exhibit 3.d photographs admitted into evidence during the Jury Trial; Officer Vernon drew on the photographs in regards to the location of the accused crimes, the distance established for fleeing, and his view of where obstructing occurred. Numerous Supreme Court cases have decided and overturned lower court rulings where the defendant did not

received the right to face those witnesses against them. The rulings have included sensitive subjects of children and the use of one way tv, wife impeachment, and the right to face any witness against a defendant that has offered testimonial statements. However, the Constitution is firm; the defendant must have the right to face their accuser during a deposition, trial hearing before a defendant can be charged. The defendant repeated subpoena for additional witnesses for or against her were denied when the original testimonial statements by both defendant and accuser Vernon stated numerous officers arrived within seconds of the 911 call.

Cases: Right to face accuser and witness against defendant

Coy v Iowa: Maryland v Craig jurisprudence that defendants maintain their constitutional right to face those witnesses against them even in conditions of children.

Crawford v. Washington – overturn Ohio v Roberts, 448 U.S. 56 which granted judicial authority to weigh the reliability of evidence in place of the defendants Constitutional right to face witness with testimonial statements against them. “Confrontation clause of the Sixth Amendment applied to any ‘witnesses’ against the defendant, meaning any person, statement, or document whose purpose was to ‘bear testimony’”

Maryland v Craig, 497 US 836 (1990)

Coy v Iowa 487 US 1012 (1988)

Crawford v Washington, 541 US 36, 43 (2004)

- C. Ground Three: Failure of State to uphold the right to a speedy trial a violation of West Virginia 3-17 “shall have remedy by due course of law; and justice shall be administered without sale, denial or delay” This right is also protected by the United States Constitution Sixth Amendment “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial” In Baker v Wingo, 407 US 514 established a four part balancing test to determine if the defendants rights have been violated. The facts of this case meet Length of delay, Reason for delay and Degree of prejudice to the defendant which the delay has caused.

Supporting FACTS: The pleadings, transcripts and exhibits prove that the State had malice in delaying the defendants Jury Trial, therefore impacting her chance to run a US Senate Campaign. Facts Magistrate Aaron Letter delayed the Jury trial however thereafter a public defender got involved. The three police officers arrested the defendant without warrant in hand in February 2014 and entered her house without cause. Today there remains no evidence that a court notice of trial was ever sent, the 1.k-1.l letters to AG of WV and Prosecutor demonstrate BEFORE the arrest that the defendant was not aware of any pending trial. This another incident of malice by the STATE for the letters prove the defendant did not know of an upcoming trial and with malice they arrested the defendant when till this day there is no record of a Jury Trial scheduled in Jan/Feb 2014. Four Magistrates and failure of all of them to force the State to provide evidence that could prove innocence or significant doubt in the accuser’s statements resulted in the defendant being hindered and violated of her right to a speedy and fair trial. Furthermore the excessive ‘abuse of power in/on procedural due process demonstrates extreme malice and

bad faith for prejudice. The assumption for mistrial and double jeopardy also weigh on for one year the names of officers were withheld – over six were at the point of the crime and the same holds true of the delay of testimony on why the videos were not reviewed if State is not prejudiced and upholds due process.

- D. Ground Four: No testimonial, non-testimonial admissible; no videos, no photographs, no admissible evidence was ever provided by the State of West Virginia in discovery or during the entire process of Justice.

Supporting FACTS: Defendant has the right to attack the credibility and to impeach the testimony of the accusers or witnesses against her. The State suppressed the original testimonial statement of the police officer Vernon which is unconstitutional under Brady rule, and the second July statement remains inadmissible for no Miranda rights were given and its non-testimonial evidence of an accuser that is inadmissible, and if declared a deposition the defendant was not present therefore inadmissible. The weight of the case is one man without any material evidence just hearsay on the stand at a Jury Trial.

In bad faith the Prosecutor stated Accuser of Battery Yost would not testify after Officer Vernon finished his cross examination, the defendant objected and the Magistrate failed to force him or to dismiss the case. The court record shows CD 1 the Prosecutor did not want him to testify for he would challenge the testimony already given. That recognition is grounds for prosecutorial misconduct and immediate dismissal of case. Before the Jury Trial began the defendant filed motion with magistrate Sisson to dismiss the battery charge and to have the prosecution clarify who was making the statements in the July statement, therefore finalized the FACT that no testimony was ever offered by the accuser. Violation of the compulsory process of West Virginia and United States Constitution.

- E. Ground Five: Double Jeopardy for intent of State was Malice in not dismissing and declaring a mistrial. *Oregon v Kennedy*, 456 U.S. 667 (1982) “The Supreme Court held that only where the government conduct in question is intended to ‘goad’ the defendant into moving for a mistrial may a defendant raise the bar of double jeopardy to a second trial” Defendant asks for Court to reverse the Jury Trial of Guilty on all three counts and dismiss all charges. *United States v Jorn*, 400 US 470 (1971)

Supporting Facts: The Jury Trial ended in guilty and 1.v was the State opportunity to declare a mistrial, with prejudice. However void of any Constitution Laws the Magistrate refused to follow or protect the defendant's Constitutional Rights to due process of the law under Amendment 5, 6, and 14 of the United States Constitution and also West Virginia Constitution Articles III, VIII, IX 9-4 Malfeasance and misfeasance in Office.

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The following items are to be included in the record on appeal.

1. Pleadings. The Appellant designates the following pleadings – all Motions and Complaints: The following Motions and Statement entered into the Court Record by the Defendant under Self Representation.
  - a. April 20, 2013: Tami L. Stainfield (defendant) arrested place in garage where a Judge stood, “what happened” said “fuck” (I can fucking believe this) ; that was the end of conversation with the defendant, shortly after driven by Arresting Officer Vernon to prison where the prison guard informed the defendant of the charges.
  - b. April 21, 2013: Prison Court Defendant declined the need for a Public Defender.
  - c. April 24, 2013: Submitted to the Court and Kanawha Sheriff’s Department a Formal Complaint and Defendant Statement of her April 20, 2013 arrest.
  - d. May 3, 2013: Motion for Dismissal and Jury Trial - failure of State to read Miranda Rights, failure of State to operate its Police and Magistrate Judicial System under WV and US Constitutional due process laws. Court was also reminded of the defendant’s complaint and statement of the incident. (Brady violation of Judicial and State)
  - e. July 30, 2013: Trial Motion for Continuance and Failure of State to provide evidence to prepare for a defense.
  - f. July 30, 2013: Motion to remove the condition of travel outside of WV – notification of Defendants involvement in Politics.
  - g. September 20, 2013: Motion for Judge to review the evidence relating to charges before the October 2, 2013 Jury Trial. Notification that Charleston Police and Kanawha Police have repeatedly failed to provide any discovery and/or response to subpoenaed issued by the Court on July 15, 2013 and September 20, 2013.
  - h. September 24, 2013: Motion to revisit the September 20, 2013 Motion – Judge Aaron continually refused to meet with Self Representation Defendant or issue Motion Hearings or Written responses.  
----- September 26, 2013 Justice Aaron sent thru mail she will be sick on scheduled Jury date, therefore no trial.
  - i. November 15, 2013: Motion to dismiss – due to lack of evidence, delay of investigation after filing a formal complaint (Brady), failure of plaintiff to appear on July 30, 2013, failure of State to provide the evidence and essential elements relating to prove the statues charged, prejudice by State due to cancellation of the Jury Trial and the appointment of an attorney when defendant was prepared for Jury Trial.  
----- November 15, 2013: Circuit Court Hearing initiated by a public defender; Public defender stated he interviewed Defendants witnesses and accusers without defendant’s knowledge or need. Defendant stated he was not her attorney nor had consent.
  - j. November 19, 2013: Motion to dismiss to Circuit Court and filed in Magistrate Court. State allowing a Public Defender and State to tamper with defendant’s case and witnesses, and failure of the State to respond to Court issued subpoenas.
  - k. January 29, 2014: Complaint to WVAG and Prosecutor defendant received first correspondence from Prosecuting Office since arrest and from State since Nov 15, 2013 Circuit Court hearing.

- l. January 31, 2014: AG and Prosecutor complaint for failure of WV Judicial System to operate under the principles of common law and procedural due process of good faith and fairness.  
----- February 10, 2014: State with three Sherriff arrest defendant at home for failing to appear at a Jury trial; however never notified. Officers entered home without consent and had no warrant in hand (stopped at Sheriff Office after arrest). Judge Aaron in Day Court rescued herself and Justice Halloran was appointed who later rescued himself, then another Justice (void of name) rescued
  - m. March 11, 2014: Motion for hearing to address why State has not provided or responded to Court issued subpoenas. (Brady)
  - n. April 30, 2014: Witness List Defendant ,
  - o. May 6, 2014: Motion Hearing – Magistrate Sisson – Motion to dismiss on due process, state prejudice, and failure of State to provide subpoena evidence or any admissible evidence.
  - p. May 6, 2014: Motion Hearing – Motion to remove July 2013 edited Police statement of Officer Vernon as inadmissible, for it was altered from the April 20, 2013 arrest statement that the State suppressed.
  - q. May 6, 2014: Motion Hearing – Motion to Correct Jury Instructions
  - r. May 16, 2014: Motion to Dismiss on Due Process and Prejudice
  - s. May 20, 2014: Motion Hearing – Motion to dismiss or Address why Charleston Police and Sheriff’s department has not responded subpoena evidenced.
  - t. May 21, 2014: Jury Trial – Motion to drop battery for State failed to provide the defendant with any statement, testimonial, disposition from the accuser Officer Yost.
  - u. May 21, 2014: Jury Trial – No witnesses from Defendants subpoena witness list appeared for State interference and prejudice (Brady, 6<sup>th</sup>, due process.) State failed to dismiss case when the prosecutor did not allow defendant to face her accuser, defendant objected. State failed to allow defendant evidence into the record or for Jury scrutiny. State had accuser being publically protected without any cause (prejudice innocent till proven) from the defendant in front of the Jury. Prosecutor called defendant “anti government”.
  - v. May 22, 2014: Motion for Mistrial
  - w. June 3, 2014: Motion for State to force the evidence from Public Defender
  - x. June 9, 2014: Sentencing Trial and Motion to declare Mistrial and with Prejudice Dismiss.
2. Transcript. The Appellant designates the following portions of testimony: entire transcript of Jury Trial (CD 1) and Motion for Mistrial and Sentencing Hearing (CD 2) are attached.
  3. Exhibits. The Appellant designates the following exhibits:
    - a. All subpoenas issued for Material evidence and Defendant Witnesses.
    - b. All evidence **provided by the State** from discovery and subpoenas.

- c. All evidence the Defendant retained and that constitutes State discovery, evidence from subpoenas issued by the Court and evidence of defendants. Prejudice and Misconduct in State.
- d. Evidence admitted into Jury Trial Record Photographs of Camera locations and locations Accuser Vernon marked on the photos of the incident.

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Appellant



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CERTIFICATE OF SERVICE

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I, \_\_\_\_\_, hereby certify that I have served a copy of the above petition for appeal on the attorneys for all parties, or if such parties are not represented by attorneys, to the parties themselves on the \_\_\_\_\_ day of \_\_\_\_\_.

by hand     by first-class mail to:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name and address of parties served:

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