

In the Magistrate Court of Kanawha County
West Virginia

State of West Virginia

CASE NO. 13 M 3079-81

v.

Tami L. Stainfield

Motion to declare a mistrial

The defendant subpoenaed witnesses the State tampered with thru conversation and without the defendant present; this behavior contributed and resulted in no defendant witnesses appearing during the trial, thus one cause for mistrial. Under Section 14 of West Virginia Constitution this behavior is unconstitutional under the Compulsory Clause.

Additionally during the cross-examination of Officer Vernon the Prosecutor and Judge limited evidence and questioning of Vernon with REPEATED OBJECTIONS THAT QUESTIONS BY DEFENSE MUST BE RELATED TO THE DIRECT EXAMINATION ONLY. This is another cause for mistrial for the objections limited the cross examination and the ability to obtain information that was relevant to any issue in the case.

West Virginia Rule 611 - Mode and Order of Interrogation and Presentation; (1) Party witness – Any **Party may be CROSS-EXAMINED ON ANY MATTER RELEVANT TO ANY ISSUE IN THE CASE, including credibility.** In the interest of justice, **the judge may limit** cross-examination with respect to matters not testified to on direct examination. The objections by the Prosecutor that the Defendant could only ask questions relating to the direct examination was unfair and limited the scope of questioning relating to credibility and for establishing the framework to prove inconsistency with the States victim Vernon and Yost testimony (WHO FAILED TO APPEAR).

Failure of the State to deliver the subpoenas and / or having direct communication with defendant witness list without the defendant is also grounds for mistrial. 611 (2) Non-Party Witnesses. **Cross-examination should be limited to the SUBJECT MATTER OF THE DIRECT EXAMINATION** and matters affecting the credibility of the non-party witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination. The defendant had material evidence obtained by Court subpoena's from July and that evidence was not admitted due to the failure of the State to FORCE their attendance as is true of the victim / accuser failure to appear.

The due process clause of the Fifth and Fourteenth Amendments are clear in US Constitution and WV Constitution the right to confront witness or those deemed the victim by the State. In all criminal cases void of death the defendant has the right to confront the accusers.

It is the right to confront one's accuser means anything it means citizens should not be deprived of their liberty and have their reputation soiled solely on the basis of statement

made outside the legal system before uncritical listeners who relay those assertions to a jury which has no reliable basis for judging the credibility of the declarant and no other evidence to consider in determining guilt. *Naum v Halbritter* (1983)

West Virginia State Constitution (115-116) is clear Section 14 gives the accused the right to “be confronted with the witnesses against him.” This provision, which is framed in language virtually identical to the Confrontation Clause in the Sixth Amendment, guarantees a criminal defendant the subsumed right to be present at each critical stage of the proceeding *State v Boyd* (1977) to force his accusers to testify before him; and to cross-examine them. “By allowing the defendant an opportunity for a face-to-face confrontation with his or her accusers, the clause promote, the perception, as well as the reality, of fairness.

It is the right to confront one’s accuser means anything it means citizens should not be deprived of their liberty and have their reputation soiled solely on the basis of statement made outside the legal system before uncritical listeners who relay those assertions to a jury which has no reliable basis for judging the credibility of the declarant and no other evidence to consider in determining guilt. *Naum v Halbritter* (1983)

Section 14 is a Mandate that “the accused shall be fully and plainly informed of the character and cause of the accusation”The charge must also be sufficiently clear and complete to permit the accused to prepare a defense and to raise a double jeopardy bar in a subsequent prosecution.

Furthermore the Compulsory Process the final clause in sections 14, which confers the right of compulsory process, completes the set of devices defendants need to present an effective defense. While the Confrontation Clause gives defendants the right to cross-examine the government’s witnesses, the Compulsory Process Clause ensures that defendants can bring their own witnesses before the jury and offer the whole story. Rule 17 of the West Virginia Rules of Criminal Procedure implements the clause by providing the defendant with the ability to secure subpoenas to FORCE the appearance of witnesses and the production of document and things (subpoenas duces tecum).

The Jury Trial and the 13th months since the arrest has been continuous Prejudice by State as noted by Prosecutors comments during the trial - assumption of guilt therefore no need to respond to subpoenas or suppress the defendant from confronting the accuser Yost which is grounds for mistrial and abuse of power.

Magistrate Court Rule 26.3 provides Justice Sisson with the right and obligation to declare a mistrial. The behavior at the trial that constitutes a mistrial; failure to have States victims/accuser (Yost) appear; failure to have the right to cross-examination Yost, failure to provide or FORCE defendant witnesses that were subpoenaed in a proper manner and by WV regulation therefore failure to engage in direct-examination, failure to dismiss case upon Yost failure to appear; failure to re cross-examine Vernon after Yost direct-examination and cross-examination. These grave actions mandates Justice Sisson to declare a mistrial – thereafter declare a new trial or dismiss case for prejudice. (Inability to get a fair trial for State prejudice against the defendant and the withholding of subpoena information).

The defendant seeks an immediate hearing for the motion of mistrial.

Rule 26.3 Mistrial

Before ordering a mistrial, the court shall provide an opportunity for the state and for each defendant to comment on the propriety of the order, including whether each party consents or objects to a mistrial, and to suggest any alternative

50-4-12 Dismissal of actions for failure to appear, testify, etc

A magistrate may render judgment against the plaintiff dismissing his action with prejudice to a new action and awarding cost to the defendant when (a) the plaintiff fails to appear and prosecute his action at the proper time for appearance; (b) the plaintiff fails or refuses to testify when properly required to do so;