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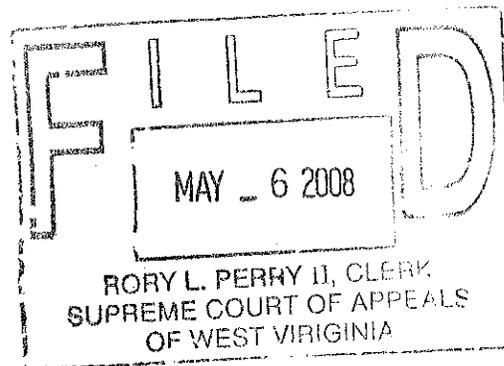
**IN THE SUPREME COURT OF APPEALS
OF
WEST VIRGINIA**

CHARLESTON, WEST VIRGINIA

STATE OF WEST VIRGINIA,
Plaintiff Below, Appellee,

VS.

ROBERT LEE SHINGLETON,
Defendant Below, Appellant.



An appeal from the Circuit Court of Kanawha County, West Virginia

REPLY BRIEF OF APPELLANT

Dennis R. Bailey, Esq.
WV Bar No. 8712
100 Capitol Street, Suite 808
Charleston, West Virginia 25301
(304) 342-2545
Counsel for Appellant

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APPELLANT'S REPLY ARGUMENT

I. The State Improperly Places the Burden of Proof on the Defendant

Initially, reading the State's Brief it appears that the State believes the Defendant has the burden of personally placing on the record evidence of self-defense. This is simply not the case. Although "sufficient evidence" must exist to create a reasonable doubt that the defendant acted in self-defense, this Court has not yet held that such evidence need be presented by the Defendant, or even presented in the Defense's case in chief. Syllabus point, State v. Kirtley, 162 W.Va. 249, 252 S.E.2d 374 (1978), and State v. Duncan, 168 W.Va. at 226, 283 S.E.2d at 856 (1981).

It is improper that throughout the State's Brief it is implied that the Defendant must place such evidence on the record. Such evidence that would raise a reasonable doubt must simply "exist" on the record, regardless of who stated or placed such evidence therein. To rule otherwise would place the Defendant in the position of a mandatory waiver of his Fifth Amendment rights against self-incrimination in order to pursue any specific defense. In other words, the failure of the Defendant to testify at his trial, or even to place any evidence on the record, is irrelevant to Appellant's argument.

It remains the Defendant's position that the evidence giving rise to the reasonable doubt requirement warranting a self-defense instruction existed in the testimony of the alleged victim himself, Mr. Ayers. Throughout the State's Brief, it is admitted repeatedly that Robert Shingleton reacted adversely to Mr. Ayer's placing his hand upon the Defendant's leg, and this fact was revealed from the direct testimony of Mr. Ayers. In

such case, and viewed through the very definition of "Battery" as found in West Virginia Code, Section 61-2-9, the reasonable doubt that Robert Shingleton acted in self defense to protect against an "unwanted touching of an insulting or provoking nature" then existed upon the record. At such point in the trial, it remains the Appellant's position, the State assumed the burden of proving that Mr. Shingleton did not act in self defense, and an instruction regarding this defense became warranted. The refusal to include such an instruction by the Trial Court evidences an abuse of discretion.

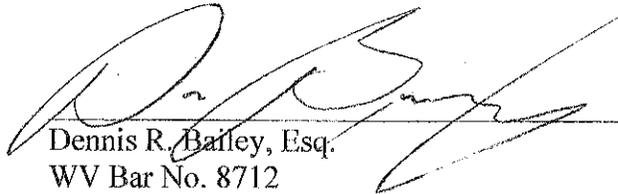
Furthermore and in conclusion, the foregoing error constitutes a wholesale and pervasive violation of Mr. Shingleton's constitutional rights as the same are secured by the Fifth, Sixth and Fourteenth Amendments to both the West Virginia and the United States Constitutions. West Virginia Constitution, Amend. V, VI, and XIV, and United States Constitution Amend. V, VI, XIV respectively.

RELIEF REQUESTED

For the foregoing reasons, Robert Lee Shingleton requests the Court reverse his conviction and sentence, set aside the verdict of the jury, and remand his case to the Circuit Court for a new trial.

Respectfully submitted,

ROBERT LEE SHINGLETON
By Counsel



Dennis R. Bailey, Esq.
WV Bar No. 8712
100 Capitol Street, Suite 808
Charleston, WV 25301
(304) 342-2545
Counsel for Appellant