

COMES NOW, the Appellant, Ronald Reed, Sr., by counsel and respectfully submits the following reply pursuant to Rule 10(c) of the Rules of Appellate Procedure before the Honorable West Virginia Supreme Court of Appeals:

1) In its brief, the Appellee asserts that the first time that the Appellant raised the Sixth Amendment as an issue with the Deposition of Detective Brown was in his Rule 33 Motion filed after the Trial. (See Reply of Appellee at page 16) This assertion is incorrect. The Appellant raised the Sixth Amendment's right to counsel free from conflict as a ground in his "Motion to Suppress the Deposition of Detective Keith Brown," which was received by the Circuit Clerk's Office on May 13, 2005. (See Record Vol. III at pages 125-127).

2) The first time that the Appellant asserted that his rights to confrontation under the Sixth Amendment were being violated by failure of the Appellee to call J.L.R. as a witness was in his Motion for Judgment for Acquittal orally made at the close of the State's evidence. (See Record Vol. II., Trial Transcript, July 8, 2005 at pages 156-157).

3) In his arguments section, the Appellant failed to additionally attribute the Court Order regarding the disclosure of the psychological records regarding A.P. and J.P. to a transcript from the February 26, 2001 hearing below. In his brief, the Appellant cites this February 26, 2001 hearing in the Kind of Proceedings and Nature of the Rulings in the Lower Tribunal Section, but the Appellant failed to also cite the hearing in the Arguments section of his Brief (See Brief at page 5; *c.f.* Brief at page 39).

The transcripts from the February 26, 2001 hearing indicated that the Court received educational records from Wheeling Park High School and medical records from Dr. Bontos and the Court intended to put the same under seal until the Court could review

the same to determine their relevancy as evidence pursuant to request by then counsel, Mr. Yannerella. (See February 26, 2001 Transcript at pages 10-11).

In his March 22, 2001 "Motion to Continue," Mr. Yannerella represented unto the Trial Court in support of his motion, "Further, it is defense's understanding that J.L.R., through the recommendation of the Wheeling Police Department has sought counseling at the sexual assault center. Further, the defense has filed a motion to request psychological, medical, school and juvenile counseling records and juvenile records of complaining witnesses J.P. and of the adult complaining witness J.L.R. and that said records may affect the credibility of a material witness and also may contain exculpatory material. Defendant has previously subpoenaed records that he was aware of for the hearing on February 26, 2001, and was supplied to the court in-camera. Defendant has also requested during the hearing on February 26, 2001, if the State would get all records in their constructive possession regarding their complaining witnesses that occurred in the State of Ohio, by signed authorizations so that the Court could made [sic] an expedient determination." (See Record Vol. I at page 428 [Paragraph 7, in part, of Motion to Continue]).

The November 1, 2002 Order, is the first written Order located in the Trial Court file that specifically demands production of records of A.P.

The Appellant contends that the Court's actions on February 26, 2001 and November 1, 2002 indicate that Mr. Yannerella's motions from February 2001 requesting psychological, medical, school, juvenile counseling records and juvenile records for the victims were granted.

The Appellant is without actual knowledge of what if any such records are in the possession of the Appellee. However, based upon testimony before the January 2001 Grand Jury by Detective Brown, it is not unreasonable to conclude that the Appellee may possess such records. Detective Brown testified in response to a question by a Grand Juror regarding A.P., "...until this girl gets the counseling and the medical help she needs to realize that things were not supposed to be like that, we probably don't have a crime." (See Record Vol. II, January 8, 2001 Transcript at page 20, lines 15-18). On May 10, 2004, the Appellee sought and obtained Indictments of the Appellant for crimes against A.P.

The Wheeling Police Department recommended psychological treatment for J.L.R. The Wheeling Police Department believed that A.P. needed psychological treatment in order that she may decide to bring charges against the Appellant. A.P. later decided to bring charges against the Appellant. It is logical to conclude that A.P. at the request of the Wheeling Police Department underwent psychological treatment.

However, if the Appellee does not possess or have any control over any such records, then whether or not the Trial Court Ordered the Appellee to disclose records is irrelevant. Logically, the Appellee cannot disclose what it does not possess or can constructively control. This was the argument that the Appellee made on February 23, 2001 (See Record Vol. I at pages 396-399). However, this is not the argument that the Appellee makes in its Reply Brief. The argument in the Reply Brief is that production of these records by the Appellee was never specifically Ordered by the Trial Court.

The Appellant asserts that production of these records was Ordered either by the Trial Court pursuant to Mr. Yannerella's Motion or by the Trial Court's granting of the

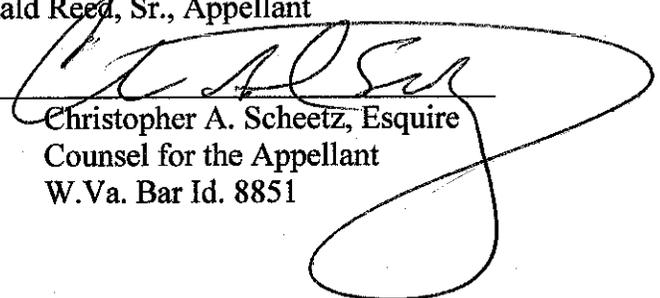
Appellant's discovery motion or by both and said production did not occur specifically in regards to the records of J.P. and A.P.

4) For all other arguments, the Appellant respectfully asks leave to rest on his previously filed Brief.

Respectfully Submitted,

Ronald Reed, Sr., Appellant

By:

A large, stylized handwritten signature in black ink, which appears to read "C. A. Scheetz". The signature is written over a horizontal line and extends significantly to the right and downwards.

Christopher A. Scheetz, Esquire
Counsel for the Appellant
W.Va. Bar Id. 8851

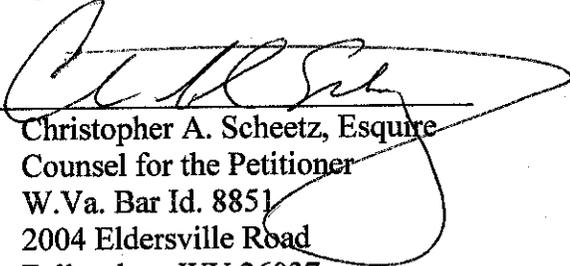
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA,)
)
 Appellee,)
)
 v.) Supreme Court No.34136
)
)
 RONALD REED, SR.,)
)
 Appellant.)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of the foregoing Appellant's Reply Brief was had upon the Appellee State of West Virginia this 10th day of November 2008 by placing a true and correct copy thereof in the U.S. Mail, postage pre-paid, and addressed to Scott Smith, Esquire Prosecuting Attorney, Office of the Ohio County Prosecuting Attorney, 1500 Chapline Street, Wheeling, WV 26003.

By: _____


Christopher A. Scheetz, Esquire
Counsel for the Petitioner
W.Va. Bar Id. 8851
2004 Eldersville Road
Follansbee, WV 26037
ph. (304) 527-2801