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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

State ex rel. Lincoln Stuart Taylor,
Petitioner

v.

Hon. David R. Janes,
Judge of the Circuit Court of Marion County,
Respondent

Petition for a Writ of Prohibition
and a Writ of Mandamus
Including Memorandum of Law

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PETITION FOR A WRIT OF PROHIBITION AND FOR A WRIT OF MANDAMUS INCLUDING MEMORANDUM OF LAW

I. OVERVIEW

Lincoln Stuart Taylor was acquitted of the charge of conspiracy to murder Derrick Osborne while the same jury was unable to reach a decision on the substantive charge of murder. To claim collateral estoppel, a component of double jeopardy, on issues necessarily decided by the acquittal, Mr. Taylor filed a motion in limine to preclude all evidence and argument that suggested, in any way, that Mr. Taylor, shot and killed Derrick Osborne. In the alternative, Mr. Taylor moved, on the same grounds, to preclude all evidence that suggested in any way that Mr. Taylor had participated as a member of group of individuals to murder Mr. Osborne. All relief requested by Mr. Taylor has been denied, and this petition for a writ of prohibition, and for a writ of mandamus has now been filed to claim the rights guaranteed to Mr. Taylor as part of the double jeopardy clauses of the State and Federal constitutions.

II. Jurisdiction

A. Writ of Prohibition

The West Virginia Supreme Court of Appeals has jurisdiction to issue a writ of prohibition and/or a writ of mandamus to an inferior court pursuant to W.Va. Code § 53-1-1. Issues involving claims of double jeopardy are particularly well suited to review by such writs.[1]

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[1] The federal courts, which generally have appellate jurisdiction only from final orders, have adopted the view that denial of double jeopardy claims is within a collateral order exception to the final order rule. This view has been adopted to vindicate the essential protection of the double jeopardy clause, avoiding being twice placed in jeopardy. See Abney v. United States, 431 U.S. 651 (1977) (Failure to review double jeopardy claims would subject a defendant to embarrassment, expense, anxiety and insecurity and the increased possibility that an innocent man might be convicted, if a defendant were forced to "run the gauntlet" of retrial before

In State ex rel. Zirk v. Muntzing, 146 W.Va. 878, 122 S.E.2d 851 (1961) a writ of prohibition was used to review a claim of double jeopardy. Zirk was cited favorably in State v. Lewis, 188 W.Va. 85, 422 S.E.2d 807 (1992). Double jeopardy issues were reviewed by a writ of prohibition in both State ex rel. Watson, v. Ferguson, 166 W.Va. 337, 274 S.E.2d 440 (1980) and State ex rel. Johnson v. Hamilton, 164 W.Va. 682, 266 S.E.2d 125 (1980) although the double jeopardy claims were ultimately rejected.

B. Writ of Mandamus

Since, at least 1948, when the United States Supreme Court decided Sealfon v. United States, 332 U.S. 575 (1948) it has been clear that res judicata, and its sister doctrine, collateral estoppel, are components of the protections afforded by the double jeopardy clause of the United States Constitution. In Sealfon, the Supreme Court considered a claim of double jeopardy interposed on the substantive charge of defrauding the United States after a defendant had been acquitted for conspiracy to defraud the United States. The Court acknowledged that ordinarily the substantive charge and the conspiracy charge were different, and a defendant could be prosecuted for both offenses. However, the Court observed that when there were separate trials, res judicata could be a defense at the second trial. Id. at 578. Collateral estoppel required the Court to look whether the "verdict in the conspiracy trial was a determination favorable to petitioner of the facts essential to conviction of the substantive offense." Id. at 578-79. (Emphasis added.) Upon

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vindicating a claim of double jeopardy on appeal). The United States Court of Appeals for the Fourth Circuit had earlier reached the same conclusion. United States v. Lansdown, 460 F.2d 164 (4th Cir. 1972). See also, Harris v. Washington, 404 U.S. 55 (1971). There the Supreme Court held the denial of a motion to dismiss on double jeopardy grounds by a State Court was a final order which could be immediately appealed because it was within the jurisdiction of the United States Supreme Court under 28 U.S.C. § 1257.

examination of the record, the Court determined that the essential factual issue, in the first trial, was whether a particular letter written by the defendant had been written as part of a criminal scheme with a co-defendant. Ruling that the acquittal had determined such a nexus did not exist, the United States Supreme Court concluded that the prosecution was prohibited from making a second attempt to prove the letter had a criminal purpose. Id. at 580.

In Ashe v. Swenson, 397 U.S. 436 (1970) the Supreme Court considered whether the acquittal of an individual for participating in robbing one of the poker players at a card game, barred prosecution of the same defendant for robbing another player at the same game, at the same time. The Court held:

> . . . The question is no longer whether collateral estoppel is a requirement of due process, but whether it is a part of the Fifth Amendment's guarantee against double jeopardy. And if collateral estoppel is embodied in that guarantee, then its applicability in a particular case is no longer a matter to be left for state court determination within the broad bounds of 'fundamental fairness,' but a matter of constitutional fact we must decide through an examination of the entire record. Cf. New York Times Co. v. Sullivan, 376 U.S. 254, 285 , 728-729d 686; Niemotko v. Maryland, 340 U.S. 268, 271 , 327; Watts v. Indiana, 338 U.S. 49, 51 , 1348; Chambers v. Florida, 309 U.S. 227, 229 , 473-474; Norris v. Alabama, 294 U.S. 587, 590 .
>
> 'Collateral estoppel' is an awkward phrase, but it stands for an extremely important principle in our adversary system of justice. It means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit. Although first developed in civil litigation, collateral estoppel has been an established rule of federal criminal law at least since this Court's decision more than 50 years ago in United States v. Oppenheimer, 242 U.S. 85 . As Mr. Justice Holmes put the matter in that case, 'It cannot be that the safeguards of the person, so often and so rightly mentioned with solemn reverence, are less than those that protect from a liability in debt.' 242 U.S., at 87 , 37 S.Ct. at 69.7 As a rule of federal law, therefore, '(i)t is much too late to suggest that this principle is not fully applicable to a former judgment in a criminal case, either because of lack of 'mutuality' or because the judgment may reflect only a belief that the Government had not met the higher burden of proof exacted in such cases for the Government's evidence as a whole although not necessarily as to every link in the chain.' United States v. Kramer, 289 F.2d 909, 913.
>
> The federal decisions have made clear that the rule of collateral estoppel in

> criminal cases is not to be applied with the hypertechnical and archaic approach of a 19th century pleading book, but with realism and rationality. Where a previous judgment of acquittal was based upon a general verdict, as is usually the case, this approach requires a court to 'examine that record of a prior proceeding, taking into account the pleadings, evidence, charge, and other relevant matter, and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration.' 8 The inquiry 'must be set in a practical frame and viewed with an eye to all the circumstances of the proceedings.' Sealfon v. United States, 332 U.S. 575, 579, 240. Any test more technically restrictive would, of course, simply amount to a rejection of the rule of collateral estoppel in criminal proceedings, at least in every case where the first judgment was based upon a general verdict of acquittal. Straightforward application of the federal rule to the present case can lead to but one conclusion. For the record is utterly devoid of any indication that the first jury could rationally have found that an armed robbery had not occurred, or that Knight had not been a victim of that robbery. The single rationally conceivable issue in dispute before the jury was whether the petitioner had been one of the robbers. And the jury by its verdict found that he had not. The federal rule of law, therefore, would make a second prosecution for the robbery of Roberts wholly impermissible.

Id. at 442-445 (Footnotes omitted.)[2]

More recently, in Yeager v. United States, __ U.S. __, 129 S.Ct. 2360 (2009) the Court reemphasized that collateral estoppel continues to be a component of double jeopardy analysis. The Court held that a which trial ended in an acquittal on one charge and a hung jury on other charges, the trial court was obligated to give collateral estoppel effect. The inability of the jury to decide was described as a non-event. The jury's inability to decide on another charge had no part of the collateral estoppel analysis.[3]

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[2] The West Virginia Supreme Court of Appeals has adopted the reasoning of Ashe for interpreting the State Constitution. State v. Porter, 182 W.Va. 776, 392 S.E.2d 216 (1990).

[3] In Ashe, we squarely held that the Double Jeopardy Clause precludes the Government from relitigating any issue that was necessarily decided by a jury's acquittal in a prior trial. . . . . We explained that "when an issue of ultimate fact has once been determined by a valid and final judgment" of acquittal, it "cannot again be litigated" in a second trial for a separate offense. Id., at 443.4 To decipher what a jury has necessarily decided, we held that courts should "examine the record of a prior proceeding, taking into account the pleadings, evidence, charge,

There is an oft repeated maxim that "Not to decide, is to decide." In the written ruling denying relief to Mr. Taylor in this case, the Circuit Court Judge said, "Upon its thorough review of the record in this case, the Court is unable to determine which issue was necessarily decided in Mr. Taylor's favor by the jury in its verdict of acquittal of the conspiracy charge against him, and, accordingly, which issue should be precluded in Mr. Taylor's impending trial as a component of double jeopardy." See Appendix at Exhibit K pages 4-5.

In State v. Sears, 196 W.Va. 71, 468 S.E. 2d 324 (1996) the West Virginia Supreme Court of Appeals held that when a non-frivolous claim of double jeopardy is made, the burden shifts to the prosecution to prove by a preponderance of the evidence that the double jeopardy claim does not apply. When the Circuit Court held that it could not determine which of the two factual issues should be precluded, it decided to deny the Mr. Taylor, the defendant, relief on his double jeopardy claim. Effectively, this ruling permits the State to re-litigate at least one issue which must have been determined in the prior trial. The State will be allowed to attempt to contradict the conclusions of the earlier jury panel in violation of Mr. Taylor's double jeopardy

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> and other relevant matter, and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration." Id., at 444 (internal quotation marks omitted). We explained that the inquiry "must be set in a practical frame and viewed with an eye to all the circumstances of the proceedings." Ibid. (quoting Sealfon v. United States, 332 U. S. 575, 579 (1948) (internal quotation marks omitted)).
>
> Unlike Ashe, the case before us today entails a trial that included multiple counts rather than a trial for a single offense. And, while Ashe involved an acquittal for that single offense, this case involves an acquittal on some counts and a mistrial declared on others. The reasoning in Ashe is nevertheless controlling because, for double jeopardy purposes, the jury's inability to reach a verdict on the insider trading counts was a nonevent and the acquittals on the fraud counts are entitled to the same effect as Ashe's acquittal.

Yeager, at ___.

rights.[4] In failing to reach a conclusion about which issue has been foreclosed, the Circuit Court Judge has failed to decide an issue of law which is his to decide. He should choose one of the alternatives identified by Mr. Taylor. The only other logical conclusion is that having been presented with a non-frivolous claim of double jeopardy, the State has failed to prove by a preponderance of the evidence that the claim is invalid. That conclusion leads to dismissal, not to trial without limitations on the evidence. Mandamus would be the proper remedy to require a decision. See State ex rel. United Fuel Gas Co. v. De Berry, 130 W.Va. 418, 43 S.E.2d 408 (1947); and State ex rel. Cockowska v. Knapp, 147 W.Va. 699, 130 S.E.2d 204 (1963).

III. Kind of Proceeding and the Nature of the Ruling in the Lower Tribunal

Lincoln Stuart Taylor was indicted in Marion County, West Virginia on October 2, 2007 in a case designated as 07-F-204. The grand jury charged Mr. Taylor, along with Lafayette Jenkins , Donell Lee and Steven Podolsky with the murder of Derrick Osborne in violation of W.Va. Code § 61-2-1 and §61-2-2. The grand jury also charged Mr. Taylor, along with Lafayette Jenkins, Donell Lee and Steven Podolsky with conspiracy to commit the murder of Mr. Osborne in violation of W.Va. Code §61-10-31.

Mr. Taylor moved to dismiss the charge of conspiracy to commit murder for failure to allege a specific overt act. That motion was resolved by order entered on April 15, 2008. Subsequently, Mr. Taylor was re-indicted on June 6, 2008 for conspiracy to commit the murder of Derrick Osborne. The new indictment, designated case number 08-F-77, charged Mr. Taylor

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[4] The Yeager Court has observed that "the fact that petitioner has already survived one trial should be a factor cutting in favor of, rather than against, applying a double jeopardy bar." Id. at __.

and Mr. Lee with having conspired with Lafayette Jenkins and Steven Podolsky to murder Mr. Osborne, and alleged as the single overt act that Mr. Taylor had shot Mr. Osborne with a firearm causing his death.

The first trial of Mr. Taylor, begun on September 15, 2008, ended in a mistrial on September 21, 2008. His second trial, concluded on November 21, 2008, resulted in his acquittal on the charge of conspiracy to commit murder, and a hung jury on the charge of murder. See Appendix at Exhibits E and F.

The Court instructed the jury, at the request of the State, that Mr. Taylor could have been guilty of the murder as a principal in the first degree, i.e. as the shooter, and alternatively, as an accessory before the fact. See Appendix at Exhibit M at 1666-67. The jury acquitted Mr. Taylor on the charge of conspiracy and was unable to reach a verdict on the charge of murder.

On July 6, 2009, Lincoln Stuart Taylor filed a motion in limine asserting that his acquittal for conspiracy to commit murder established either a) that there was no meeting of the minds between Mr. Taylor and any other person about killing Mr. Osborne, or b) that the alleged overt act, that Mr. Taylor had shot and killed Mr. Osborne, had not occurred. Mr. Taylor advocated that the second of these two alternatives was the more likely, in light of the alibi evidence which had been offered. Mr. Taylor asserted that principles of collateral estoppel, which are part of the protections contained in the double jeopardy clauses of the state and federal constitutions, prohibited the State from contesting any fact necessarily determined as part of the jury verdict.

There was a hearing on July 14, 2009 at which argument on the motion was heard. During the hearing, the Circuit Judge observed, ". . . I believe that the motion would effectively probably be a motion to dismiss. . . ." Appendix Exhibit L at page 2. The State of West Virginia filed a

brief acknowledging that the only possible meaning of the acquittal were the two alternatives suggested by Mr. Taylor. Otherwise, the State opposed the relief sought. Mr. Taylor filed a reply brief. After the period for briefing concluded counsel for Mr. Taylor submitted a letter with a citation to State ex rel. Zirk v. Muntzing, 146 W.Va. 878, 122 S.E.2d 851 (1961). By written order dated, August 13, 2009, the motion was denied in its entirety. On August 17, 2009, an agreed order was tendered to the Circuit Court continuing the trial to permit the filing of a writ of prohibition. That order was entered.

IV. Statement of Facts

At the completed trial, the central focus of the State's case surrounded an alleged disagreement between the decedent, Derrick Osborne, and a former roommate, Donell Lee. There was some evidence that there had been a falling out between these two individuals, and that the friends and acquaintances of these individuals divided into two camps.[5] It was the State's theory that Donell Lee was associated with Lafayette Jenkins in the illegal distribution of drugs. It was alleged that Lincoln Taylor had become a customer of one, or both of them. Purportedly Steven Podolsky had access to illegal drugs through Lincoln Taylor.

The State of West Virginia asserted that knowing Mr. Lee and Mr. Jenkins, Mr. Taylor had become involved in the dispute between the former friends. It was asserted that Mr. Taylor

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[5] The trial transcript is almost 1800 pages long. There are numerous witnesses, and the kind of inconsistency that comes from having multiple points of view represented exists. While not strictly evidence, a review of the opening statement and closing arguments is a convenient summary of the views of the parties about their cases.

Part of the evidence offered at the trial included several tape recorded statements of Donell Lee, who did not appear as a witness. These were objected to on hearsay and Confrontation Clause grounds, but were admitted at that trial. The Circuit Court has since reconsidered its ruling and has ruled such statements will not be admitted at a retrial.

The statement of facts is an overview of the major issues presented at trial.

wanted to ingratiate himself to Mr. Lee and Mr. Jenkins. It was contended that Mr. Taylor claimed that he would be able to kill Mr. Osborne as a result of training he received at the United States Military Academy at West Point . Steven Podolsky testified that he, Donell Lee, Lafayette Jenkins and Lincoln Taylor drove past the Osborne residence so that Mr. Taylor would know where it was. Appendix Exhibit M at 409-411. Mr. Podolsky also testified that he drove Lincoln Taylor to near that residence on May 28, 2007, and thereafter he heard shots. Appendix Exhibit M at 422-432.

In contrast to this testimony, Carrie Short testified that she was with Lincoln Taylor at the time of the shooting on Memorial Day. Appendix Exhibit M at page 1516. Mr. Taylor testified he was with Ms. Short at this time. Appendix Exhibit M at page 1621.

As noted above, Mr. Taylor was acquitted of the conspiracy to murder Mr. Osborne. The acquittal establishes, at a minimum, that one of the essential elements of that offense did not occur. The only two elements of a conspiracy is the meeting of the minds and the commission of the overt act.

Consequently, the acquittal established that Mr. Taylor had no meeting of the minds with anyone else, or the sole overt act alleged in the indictment, that Lincoln Taylor shot and killed Mr. Osborne, did not happen.[6] Mr. Taylor has suggested in his motion in limine the greater likelihood was that his alibi was believed, and that the jury verdict now precludes any effort to prove he did shoot Mr. Osborne. Unequivocally, one of these two conclusions was reached. Double jeopardy prohibits the re-litigation of matters determined adversely to the State.

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[6] It is of course possible that the jury concluded that there was no meeting of the minds, and that the overt act was not committed.

V. Assignments of Error and the Decision Below

A. The Circuit Court Was Obligated to Reach a Conclusion under Double Jeopardy Principles of the Preclusive Effect of the Acquittal

The written ruling of the Circuit Court Judge is contained in the Appendix Exhibit K at page 4-5. The Judge concluded:

> This Court acknowledges that Mr. Taylor's acquittal of conspiracy leads to issue preclusion as a component of double jeopardy. . . .
>
> Upon its thorough review of the record in this case, the Court is unable to determine which issue was necessarily decided in Mr. Taylor's favor by the jury in its verdict of acquittal of the conspiracy charge against him, and, accordingly, which issue should be precluded in Mr. Taylor's impending trial as a component of double jeopardy.

Mr. Taylor contends that the Circuit Court was required to determine the impact of the acquittal of conspiracy to commit murder on the remaining charge of murder under the double jeopardy clause of the state and federal constitutions, and that the failure to do so was error. By failing to reach a conclusion on what facts have been determined by the prior jury, the Circuit Court is effectively allowing the State to re-litigate issues on which Mr. Taylor was acquitted. Such an approach clearly violates the interests protected by principles of double jeopardy. If the outcome is truly unknowable, then the case must be dismissed under State v. Sears, supra. That case assigns the burden of proof to the State to disprove the double jeopardy claim.

B. By Not Granting Any Relief under Principles of Double Jeopardy, the Circuit Court Failed to Honor the Controlling Decision in State ex rel. Zirk v. Muntzing, 146 W.Va. 878, 122 S.E.2d 851 (1961)

In its written ruling, the Circuit Court found State ex rel. Zirk v. Muntzing, 146 W.Va. 878, 122 S.E.2d 851 (1961) to be distinguishable from the instant case. Zirk is virtually on point. Mr. Zirk was indicted for murder with several others. His individual murder trial ended in a hung

jury. Thereafter he was indicted for conspiracy to murder the same person, with the same other individuals. He was acquitted of conspiracy to commit murder. When the State sought to retry the dormant murder charge, prohibition was granted to prevent such a trial on double jeopardy grounds.

In the instant case Mr. Taylor had a single trial on murder and conspiracy to commit murder. He too was acquitted on the conspiracy and had a hung jury on the murder. Under Yeager v. United States, __ U.S.__, 129 S.Ct. 2360 (2009) the distinction between having a separate trial for conspiracy and murder was clearly held to be immaterial.

Still the Circuit Court denied relief. It focused on the difference between the punishment proscribed for a conspiracy to commit murder under W.Va. Code § 61-6-7, and conspiracy to commit murder under W.Va. Code § 61-10-31. This has no relevance to understanding what facts were previously resolved. Tthe Circuit Court did not apply the principles of collateral estoppel to the factual issues that were resolved by the prior verdict, even though the Circuit Court had recognized the applicability of such principles. This focus possible punishment caused the Circuit Court to misperceive the applicable principles of double jeopardy. The Court erroneously denied Mr. Taylor any relief.

C. The Denial of Any Relief on the Defendant's Motion in Limine Denied His Rights Under the Double Jeopardy Clause of the State and Federal Constitutions

In Sealfon v. United States, supra, the defendant, inter alia, objected to the introduction of evidence at his second trial. These objections were the functional equivalent of the motion in limine filed by Mr. Taylor in the underlying case. Clearly, Mr. Taylor is entitled to some relief under the State and Federal constitutions. By affording no relief, the Circuit Court has denied Mr.

Taylor's rights.

VI. Points and Authorities Relied Upon

A. The Circuit Court Was Obligated to Reach a Conclusion under Double Jeopardy Principles of the Preclusive Effect of the Acquittal

In Emich Motors Corp., v. General Motors Corp., 340 U.S. 558 (1951) the United States Supreme Court was considering what collateral estoppel effect a criminal conviction for antitrust violations should have in a subsequent civil case. The Court explained,

> A general verdict of the jury or judgment of the court without special findings does not indicate which of the means charged in the indictment were found to have been used in effectuating the conspiracy. And since all of the acts charged need not be proved for conviction, United States v. Socony-Vacuum Oil Co., 310 U.S. 150 (1940), such a verdict does not establish that defendants used all of the means charged or any particular one. **Under these circumstances what was decided by the criminal judgment must be determined by the trial judge hearing the treble-damage suit, upon an examination of the record, including the pleadings, the evidence submitted, the instructions under which the jury arrived at its verdict, and any opinions of the courts.** Sealfon v. United States, supra; cf. Oklahoma v. Texas, 256 U.S. 70 (1921).
>
> In the criminal case it was the Court of Appeals' undisturbed determination, which we accept here, that the jury verdict was firmly rooted in a finding of coercive conduct on the part of respondents toward General Motors dealers to force the use of GMAC facilities. That court, in commenting on the sufficiency of the evidence, said that "the jury finding of coercion is supported by the evidence. The coercive practices were many and varied . . . and directly aimed to compel dealer-purchasers to use GMAC in financing the wholesale purchase and retail sale of General Motors cars. . . . Undoubtedly the jury was warranted in attaching the coercion label to the action thus adopted by the appellants." United States v. General Motors Corp., 121 F.2d 376, 397 (C. A. 7th Cir. 1941). The same conclusion was reached by this Court in Ford Motor Co. v. United States, 335 U.S. 303 (1948), where it was required for another purpose to determine what was necessarily found by the jury verdict in the criminal proceeding against General Motors and GMAC.
>
> . . . .
>
> **What issues were decided by the former Government litigation is, of course, a question of law as to which the court must instruct the jury**. . . . As to the manner in which such explanation should be made, no mechanical rule can be laid down to control the trial judge, who must take into account the circumstances of each case. He must be free to exercise "a well-established range of judicial discretion." Nardone v. United States, 308 U.S. 338, 342 (1939). . . .

> In summary the trial judge should **(1) examine the record of the antecedent case to determine the issues decided by the judgment**; (2) in his instructions to the jury reconstruct that case in the manner and to the extent he deems necessary to acquaint the jury fully with the issues determined therein; and (3) explain the scope and effect of the former judgment on the case at trial. The court may, in the interest of clarity, so inform the jury at the time the judgment in the prior action is offered in evidence; or he may so instruct at a later time if, in his discretion, the ends of justice will be served.

Id. at 569-72. (Emphasis added.) Clearly the United States Constitution requires the trial court to analyze the double jeopardy claim, based on collateral estoppel as an issue of law. That the application of the law is difficult is no excuse.

The proper analysis of the West Virginia Constitution is the same. In State v. Porter, 186 W.Va. 776, 392 S.E. 2d 216 (1990) the Supreme Court remanded a claim of double jeopardy for analysis of the claim of double jeopardy by the Circuit Court in the first instance. State v. Sears, supra, puts the burden of proof to show the inapplicability of the double jeopardy claim on the State.

The Circuit Court Judge recognized in his order that issue preclusion was implicated by the prior verdict. Still he failed to decide what issues were precluded. This appears to have been his duty in the first instance. Mandamus[7] is the appropriate remedy to require a proper decision.

B. By Not Granting Any Relief under Principles of Double Jeopardy, the Circuit Court Failed to Honor the Controlling Decision in State ex rel. Zirk v. Muntzing, 146 W.Va. 878, 122 S.E.2d 851 (1961)

The instant is factually indistinguishable from State ex rel. Zirk v. Muntzing, 146 W.Va. 878, 122 S.E.2d 851 (1961). Collateral estoppel is a doctrine that depends on what fact issues were previously determined. The Circuit Court distinguished Zirk on the grounds that the

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[7] In State ex rel. McLaughlin v. West Virginia Court of Claims, 209 W.Va. 412, 549 S.E.2d 286 (2001) this Court held mandamus was appropriate where there (1) a clear legal right to relief, (2) a legal duty to the petitioner to give relief, and (3) the absence of another remedy.

conspiracy statute involved in Zirk is a different statute than the statute involved in the instant case. This is not a meaningful difference. The distinction drawn by the Circuit Court Judge was, consequently, immaterial.

C. The Denial of Any Relief on the Defendant's Motion in Limine Denied His Rights Under the Double Jeopardy Clause of the State and Federal Constitutions

Lincoln Stuart Taylor has been to trial. A jury has determined either that he did not have an agreement with others to commit the murder of Mr. Osborne, or that he did not shoot and kill Mr. Osborne. Mr. Taylor believes the jury accepted his alibi defense, and consequently determined he did not shoot Mr. Osborne.[8] Under Sealfon, Ashe, Yeager, Zirk, and Porter he is entitled to prohibit the State from contradicting that alibi and suggesting he shot and killed Mr. Osborne, or was in Fairmont at the time of the shooting.[9] He is entitled to this relief.

Alternatively, Mr. Taylor is entitled to limit the State to a theory that he did shoot Mr. Osborne, but that he acted entirely, alone. This would result from a finding that the jury believed there was no agreement between Mr. Taylor and anyone else to kill Mr. Osborne. Being an accessory before the fact necessarily requires there to have been a principal who is the actual perpetrator. The accessory and perpetrator would have had to have been in agreement to commit

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[8] In State v. Sears, 196 W.Va. 71, 468 S.E.2d 324 (1996) Syl. pt. 2 the Court held, "In order to establish a double jeopardy claim, the defendant must first present a prima facie claim that double jeopardy principles have been violated. Once the defendant proffers proof to support a nonfrivolous claim, the burden shifts to the State to show by a preponderance of the evidence that double jeopardy principles do not bar the imposition of the prosecution or punishment of the defendant." The State has made no such effort.

[9] Liability as an accessory before the fact depends on not being present at the time of the offense. State v. Ellison, 49 W.Va. 70, 38 S.E. 574 (1901); State v. Roberts, 50 W.Va. 422, 40 S.E. 484 (1901);

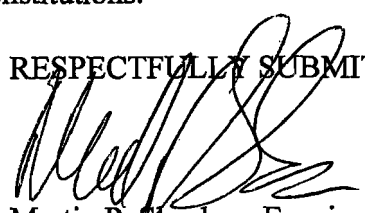
the crime of murder. The lack of agreement is as fatal to the conspiracy as the allegation of having been an accessory. See State ex rel. Brown v. Thompson, 149 W.Va. 649, 142 S.E.2d 711 *cert. denied,* 382 U.S. 940 (1965) *overruled on other grounds,* State v. Petry, 166 W.Va. 153, 273 S.E.2d 346 (1980); State v. Ashcraft, 172 W.Va. 640, 309 S.E.2d 346 (1980).

While the first alternative seems more likely to Mr. Taylor, he is indifferent to how his rights under the principles of double jeopardy are vindicated. The observation of the Circuit Court Judge that the motion in limine is tantamount to dismissal is correct. The State will have so little case remaining regardless of what theory it proceeds on, that it likely cannot win. The earlier trial proceeded on the single idea that at the behest of others, Mr. Taylor killed Mr. Osborne. That theory is at a logical end given the acquittal.

VII. Conclusion

WHEREFORE Lincoln Stuart Taylor prays for issuance of a writ of prohibition and a writ of mandamus and for entry of an order vindicating the rights protected under the double jeopardy clauses of the State and Federal Constitutions.

RESPECTFULLY SUBMITTED



Martin P. Sheehan, Esquire
WV Bar No. 4812

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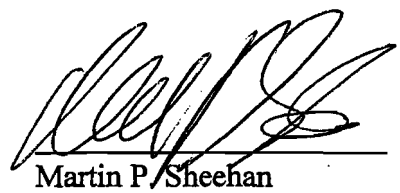
CERTIFICATE OF SERVICE

I, Martin P. Sheehan, do certify that service of the within and foregoing was served upon the following by mailing a true copy thereof, by United States Mail, postage prepaid, this 26th day of August, 2009.

Hon. David R. Janes,
Judge of the Circuit Court of Marion County
P.O. Box 1611
Fairmont, WV 26555-1611

Dan Dotson, Esq.
Special Prosecuting Attorney for Marion County
Office of the Jackson County Prosecutor
PO Box 811
Ripley, WV 25271



Martin P. Sheehan
41 Fifteenth Street
Wheeling, WV 26003

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

State ex rel. Lincoln Stuart Taylor,
Petitioner

v.

Hon. David R. Janes,
Judge of the Circuit Court of Marion County,
Respondent

APPENDIX

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EXHIBIT A

CASE NO. 07-F-204 OPENED 10/02/2007

JUDGE... DAVID R. JANES

PLAINTIFF. STATE OF WEST VIRGINIA
VS DEFENDANT. LINCOLN STUART TAYLOR

PRO ATTY.. ROGER WILLIAMS/DAN DOTSON SPA
DEF ATTY.. MARTIN SHEEHAN

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00001	10/02/07	INDICTMENT-MURDER IN THE 1ST DEGREE;CONSP.TO COMMIT MURDER
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00006	10/02/07	MAGISTRATE COURT'S JAIL COMMITMENT ORDER(RANDOLPH COUNTY)
00007	10/02/07	JAMES FOX'S DEMAND FOR A PRELIMINARY HEARING (MARION CO)
00008	10/02/07	MAGISTRATE COURT'S(MARION)SEARCH WAARRANT/AFFIDAVIT;PROP.RCP
00009	10/02/07	MOTION FOR BAIL PENDING TRIAL
00010	10/02/07	ORDER DENYING MOTION FOR BAIL PENDING TRIAL
00011	10/02/07	MAGISTRATE COURT'S AFFID/COMPLAINT FOR SEARCH WARRANT 8/8/07
00012	10/02/07	MAGISTRATE COURT'S DISPOSITION SHEET
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00015	10/10/07	state's rule 16 disclosure
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00017	10/10/07	motion for pretrial discovery
00018	11/09/07	affidavit & complaint for search warrant
00019	11/09/07	affidavit and complaint for search warrant
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00023	12/28/07	GRAND JURY Transcript from 10/2/07
00024	1/02/08	def's memo of law in support of motion to quash subpoenas
00025	1/02/08	COS of motion to quash GJ subpoenas to PA
00026	1/03/08	ltr fr paul harris w/demand for speedy trial
00027	1/03/08	def's motion to quash 3 GJ subpoenas
00028	1/03/08	Order denying def's motion to quash GJ subpoena
00029	1/04/08	state's witness & exhibit list & Notice of expert witnesses
00030	1/04/08	rtn sub duces tecum to NCRJ 1/2/08
00031	1/07/08	rtn sub SEE VIEW 1/4/08
00032	1/07/08	NOH to James Fox for 1/14/08
00033	12/14/07	motion to suppress statements of non-testifying co-def.
00034	1/07/08	state's motion for a jury view of the crime scene
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00037	1/09/08	state's motion in limine regarding defense witnesses
00038	1/09/08	amended state's witness list
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DEF ATTY.. MARTIN SHEEHAN

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00054	1/14/08	rtn sub srvd on Tonni Rocue for Sgt Utt 1/4/08
00055	1/14/08	rtn sub NOT srvd on Ladon Garrett (not found)
00056	1/22/08	def's memo of law in opposition to state's motion in limine
00057	1/24/08	def's memo of law in opp to state's motion in limine
00058	1/25/08	rtn sub srvd- moran,stevens,stewart,pigott,arnett,murray1/25
00059	1/29/08	state's response to def's memo of law
00060	1/30/08	rtn sub NOT srvd on James Merrill (out of town)
00061	1/30/08	rtn subs Utt srvd 1/26 Brady 1/25
00062	2/06/08	rtn sub srvd on Nancy for Denny Taylor
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00082	3/06/08	CLERK'S NTOES:MOTION TO CONTINUE TRIAL/COMPEL DISCOVERY
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00084	3/11/08	transport order for steven podolosku on 3/18/08

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00113	3/25/08	DEFENDANT'S TAYLOR'S AMENDED WITNESS LIST
00114	3/26/08	STATE'S MOTION DETERMINE LEGALITY OF OATHS ADMIN.BY PI
00115	3/26/08	state's fourth amended witness lsit
00116	3/26/08	def's memo in opposition to state's motion/limine exclude st
00117	3/27/08	verdict form
00118	3/27/08	charge to the jury
00119	3/27/08	defendant taylor's proposed voir dire
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00138	4/04/08	order denying motion for bail
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00151	8/05/08	f/c subopena for Latoshia Stevens
00152	8/05/08	f/c subpoena for Danielle Allen
00153	8/05/08	f/c subopena for Deputy Ray
00154	8/05/08	f/c subopena for SHanda Ross
00155	8/05/08	f/c subpoena for Toshia Hebb
00156	8/05/08	f/c subpoena for Kenneth Richardson
00157	8/05/08	f/c subpoena for William Bickerstaff
00158	8/05/08	f/c subpoena for Paul Howard
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00160	8/05/08	f/c subpoena for Misty Taylor
00161	8/05/08	f/c subpoena for Alex Taylor
00162	8/05/08	f/c subpoena for Jodi Marsanopoli
00163	8/05/08	f/c subpoena for Michelle Cook and Phillip Cochran
00164	8/05/08	f/c subpoena for James Kaplan
00165	8/05/08	f/c subpoena for Ken Grace
00166	8/05/08	f/c subpoena for Nicole Johnson
00167	8/05/08	f/c subopena for Courtney Howard
00168	8/05/08	f/c subpoena for Frank Streets

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00172	8/05/08	f/c subpoena for Denny Taylor faxed to Randolph Co.
00173	8/05/08	f/c subpoena for Deputy Brady faxed to Randlph Co.
00174	8/05/08	f/c subopena for Trooper Utt (faxed to Randolph Co.)
00175	8/05/08	f/c subpoena for Matthew Currence (faxed to Randolph Co.)
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00187	8/06/08	clerks notes Pre trial motions
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00209	8/12/08	rtn sub srvd on Thomas Cale 8/11/08
00210	8/12/08	rtn sub srvd on Shanda Ross 8/8/08

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00212	8/12/08	rtn sub srvd on ptlm arnette, stevens 8/6/08
00213	8/12/08	rtn sub srvd on moran,pigott,speakman,stewart,murray 8/6/08
00214	8/12/08	rtn sub srvd on ron tucker 8/6/08
00215	8/12/80	rtn sub srvd on william bickerstaff8/6/08
00216	8/12/80	rtn sub NOT srvd on kenneth richardson (not living there)
00217	8/12/80	rtn sub srvd on deputy ray 8/6/08
00218	8/12/80	rtn sub NOT srvd on jimmie thompson (Moved)
00219	8/12/08	rtn sub srvd on Lloyd White 8/6/08
00220	8/12/80	rtn sub srvd on Toshia Hebb 8/6/08
00221	8/12/08	rtn sub NOT srvd on danielle allen (made 3 attempts)
00222	8/13/08	RETURNED SUBPOENA SETH MILLER IN PERSON 8/11/08
00223	8/18/08	f/c subopena for Jimmie Thompson
00224	8/18/08	file copy supboena for Kenneth Richardson
00225	8/18/08	file copy subpoena for Ladon Garrett
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00239	8/25/08	file copy subpoena for Denny Taylor
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00244	8/24/08	rtn sub srvd on Thomas Cale 8/22/08
00245	8/25/08	rtn sub srvd on Jessica Smith 8/18/08
00246	8/25/08	rtn sub srvd on Eric Finkenbinder for Trooper Casto 8/20/08
00247	8/26/08	file copy subpoena for Joann lee
00248	8/26/08	rtn sub srvd on Joann Lee 8/26/08
00249	8/26/08	rtn sub srvd on Jimmie Thompson 8/22/08
00250	8/25/08	DEF OBJ/BEING CALLED AS WITNESS FOR STATE & PROPOSD JURY INS
00251	9/02/08	F/C SUBPOENA FOR DET'S K MORAN, M PIGOTT, B STEWART
00252	9/02/08	F/C SUBPOENA FOR SGT JAMES MERRILL

CASE NO. 07-F-204 OPENED 10/02/2007

JUDGE... DAVID R. JANES

PLAINTIFF. STATE OF WEST VIRGINIA
VS DEFENDANT. LINCOLN STUART TAYLOR

PRO ATTY.. ROGER WILLIAMS/DAN DOTSON SPA
DEF ATTY.. MARTIN SHEEHAN

PAGE#	DATE	MEMORANDUM.....
00253	9/02/08	RETURN SUBPOENA JAMES MERRIL SERVED THROUGH FAX
00254	9/03/08	rtn sub srvd on Sgt James Merrill NOT MARION COUNTY
00255	9/03/08	rtn sub srvd on Det. Moran,Pigott,Stewart 9/3/08
00256	9/03/08	praexipe for subpoenas with file copies
00257	9/04/08	transport order for Jason Jones on 9/5/08
00258	9/04/08	praecipe for subpoenas with file copies
00259	9/05/08	rtn sub srvd on Melissa Jones 9/4/08
00260	9/05/08	rtn sub srvd on Roxanne Greynolds 9/4/08
00261	9/05/08	rtn summons srvd on Eva Gower 9/4/08
00262	9/05/08	rtn summons (NO PROOF OF SERVICE)
00263	9/05/08	rtn summons srvd on Eva Gower 9/5/08
00264	9/05/08	rtn summons srvd on Roxanne Greynolds 9/5/08
00265	9/05/08	rtn sub srvd on Melissa Jones 9/5/08
00266	9/05/08	rtn sub srvd on Erin Finkenbinder 9/3/08
00267	9/05/08	clerks notes Evidence on pending motions
00268	9/02/08	rtn sub srvd on Sgt Merrill 9/3/08
00269	9/08/08	amended transport order for Lafayette jenkins 9/17/08
00270	9/08/08	amended transport order for Ralph Boston for 9/17/08
00271	9/09/08	f/c subpoena for Clint Taylor 9/15/08
00272	9/10/08	file copy subpoena for Paul Howard 9/15/08
00273	9/10/08	praecipe for subpoenas (with file copies attached)
00274	9/10/08	defendant's Exhibit list
00275	9/10/08	defendant's witness list
00276	9/10/08	def's memo of law regarding assertion of 5th amendment (Lee)
00277	9/11/08	Original transcript from 9/5/08 SEE FILE
00278	9/15/08	f/c subpoena for Misty Taylor
00279	9/15/08	rtn sub srvd on Miranda Nau 9/15/08
00280	9/15/08	rtn sub srvd on Michael Todd Cross 9/15/08
00281	9/15/08	rtn sub srvd on Rebekkah Sharp 9/13/08
00282	9/15/08	rtn sub srvd oN Carrie Short 9/13/08
00283	9/15/08	rtn sub srvd on Charles Ross 9/12/08
00284	9/15/08	rtn sub srvd on Juanita Kemp 9/12/08
00285	9/15/08	rtn sub srvd on Chanda Ross 9/11/08
00286	9/15/08	rtn sub srvd on Albert Sigley 9/11/08(srvd on Weekley)
00287	9/15/08	rtn sub srvd on Amy Weekley 9/11/08
00288	9/15/08	rtn sub srvd on Susan Ross 9/11/08
00289	9/15/08	rtn sub srvd on Thomas Cale 9/11/08
00290	9/15/08	rtn sub srvd on Wendy Glover 9/11/08
00291	9/15/08	transport order for Steven Podolosky for 9/16/08
00292	9/15/08	rtn sub srvd on Misty Taylor 9/15/08
00293	9/15/08	praecipe for subp.to Gilmore,Allen,Stevens,Hebb,Kush w/ f/c
00294	9/16/08	rtn of service on Sherrie Gilmore 9/15/08

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DEF ATTY.. MARTIN SHEEHAN

PAGE#	DATE	MEMORANDUM.....
00295	9/16/08	rtn of srvd on Michael Gilmore 9/15/08
00296	9/16/08	rtn of srvc on Jessica Smith 9/15/08
00297	9/16/08	rtn of srvc on Toshia Hebb 9/15/08
00298	9/16/08	rtn of srvc on Rebekkah Currence 9/15/08
00299	9/16/08	transport order for Gary Tacy 9/17/08
00300	9/16/08	transport order for Josh Richards for 9/17/08
00301	9/17/08	rtn sub srvd on Ricky truman 9/17/08 w/ f/c
00302	9/17/08	rtn sub srvd on Trooper Utt 9/17/08
00303	9/17/08	rtn sub srvd on Danielle Allen 9/16/08
00304	9/17/08	rtn sub srvd on Latasha Stevens 9/16/08
00305	9/17/08	transport order for Lafayette Jenkins 9/17/08
00306	9/18/08	f/c subpoena for Tooper Wince on 9/19/08 faxed
00307	5/27/08	Petition for writ of mandamus
00308	9/18/08	rtn sub srvd on WVSP for Trooper Wince 9/18/08
00309	9/18/08	SEALED Jury List
00310	9/15/08	Clerks notes Trial (Day One)
00311	9/16/08	Clerks notes Trial Day 2
00312	9/17/08	clerks notes Trial day 3
00313	9/18/08	clerks notes Trial day 4 (Mistrial)
00314	9/15/08	state's trial exhibits List
00315	9/15/08	defendant's trial exhibit list
00316	9/25/08	f/c subpoena for NCRJ (phone records)
00317	9/26/08	f/c subpoena for Officer Stevens 9/15/08
00318	9/30/08	f/c subpoena for Jimmie Thompson for 11/10/08 9:00 am
00319	9/30/08	rtn sub srvd on Jimmie THompson 9/30/08
00320	9/10/08	DEF. MEM. OF LAW REGARDING ASSERTION OF 5TH AMENDMENT
00321	9/11/08	PRABCIPE FOR SUBPOENA
00322	9/11/08	STATES UPDATED WITNESS AND EXHIBIT LIST
00323	9/12/08	STATES MEM IN SUPP OF ITS MOT IN LIMINE TO EXC. STATEMENT
00324	9/12/08	PRABCIPE FOR SUBPOENAS
00325	9/29/08	ORDER GRANTING IN PART STATES MOTION
00326	10/15/08	transport order for Donnell Lee 11/10/08
00327	10/15/08	transport order for Lafayette Jenkins 11/13/08
00328	10/15/08	transport order for Ralph Boston for 11/13/08
00329	10/15/08	transport order for Gary Tacy on 11/13/0/8
00330	10/15/08	transport order (wrong date) NOT PROCESSED
00331	10/15/08	request for subpoena for sara barrickman for 11/12/08 9:00
00332	10/16/08	AMENDED TRANSPORT ORDER TO C/HOUSE 11/12/08 AT 9:00
00333	10/21/08	motion in limine (Prohibit defense misleading jury . . .
00334	10/21/08	transport order for Lafayette Jenkins for 10/22/08
00335	10/20/08	transport order for Josh Richards for 11/13/08
00336	10/22/08	clerks notes Pre-trial motions

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PRO ATTY.. ROGER WILLIAMS/DAN DOTSON SPA
DEF ATTY.. MARTIN SHEEHAN

PAGE#	DATE	MEMORANDUM.....
00337	10/23/08	transport order
00338	10/27/08	subpoena: served Mark Brady 10/16/08
00339	10/27/08	subpoena: served Matthew Currence 10/20/08
00340	10/27/08	subpoena: served Denny Taylor 10/25/08
00341	10/27/08	subpoena: Brian Utt served for Toni Rowe 10/25/08
00342	10/27/08	subpoena: served Marion Taylor, Misty Taylor 10/25/08
00343	10/20/08	subpoena: seth miller 10/17/08
00344	10/16/08	subpoena: criss casto 10/15/08
00345	10/22/08	subpoena: James Merrill 10/15/08
00346	10/27/08	Order (Granting Mistrial) bk 142 pg 531
00347	11/06/08	f/c subpoena for Cprl Wilson (faxed to pleasants co.)
00348	11/06/08	f/c subpoena for Trooper Wince(faxed to Randolph Co.)
00349	11/10/08	rtn sub for Alex Neville (No date-stamp-signature)
00350	11/10/08	Rtn sub for Ken Grace (no date-stamp-signature)
00351	11/10/08	transport order for Gary Tacy on 11/13/08
00352	11/10/08	rtn sub srvd on Ricky Truman 11/10/08
00353	11/10/08	rtn sub srvd on Nancy Cummings 11/10/08
00354	11/10/08	Rtn sub srvd on Shanda Ross 11/10/08
00355	11/10/08	rtn sub srvd on Crpl Wilson 11/10/08
00356	11/10/08	state's motion to exclude evidence/alt cont trial
00357	11/12/08	f/c subpoena for Linda Hattersly
00358	11/12/08	amended transport order for Stephen Podolosky
00359	11/12/08	rtn sub NOT srvd on Danielle Allen (attempted)
00360	11/12/08	transport order for Stephen Podolosku
00361	11/13/08	praescipe for subpoenas
00362	11/13/08	Return of Service
00363	11/13/08	Request for subpoenas
00364	11/13/08	Transport Order
00365	11/13/08	Transport Order: Josh Richards
00366	11/13/08	subpoena: cprl. dustin s. wilson
00367	11/13/08	subpoena: JR Wince
00368	11/13/08	subpoena: albert sigley
00369	11/13/08	subpoena: amy weekley
00370	11/13/08	subpoena: charles ross
00371	11/13/08	subpoena: linda hattersly
00372	11/13/08	subpoena: michael gilmore
00373	11/13/08	subpoena: sherry gilmore
00374	11/13/08	subpoena: rebekkah sharp
00375	11/13/08	subpoena: rebekkah currence
00376	11/13/08	subpoena: carrie short
00377	11/13/08	subpoena: Michael Todd Cross
00378	11/13/08	subpoena: marian taylor

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JUDGE... DAVID R. JANES

PLAINTIFF. STATE OF WEST VIRGINIA
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PRO ATTY.. ROGER WILLIAMS/DAN DOTSON SPA
DEF ATTY.. MARTIN SHEEHAN

PAGE#	DATE	MEMORANDUM.....
00379	11/13/08	subpoena: shanda ross
00380	11/13/08	subpoena: susan ross
00381	11/13/08	subpoena: tiffany sellers
00382	11/13/08	subpoena: miranda nau
00383	11/13/08	order: ralph ronald boston/transported
00384	11/14/08	return of service: danielle allen
00385	11/14/08	return of service: melissa jones
00386	11/14/08	return of service: roxanne greynolds
00387	11/14/08	return of service: eva gower
00388	11/14/08	return of service: latasha stevens
00389	11/14/08	return of service: toshia hebb
00390	11/06/08	transcripts from 9/15—18/08 Vols. 1 & 2
00391	11/18/08	rtn sub srvd on L.Poctor for James Kaplan 10/16/08
00392	11/18/08	rtn sub srv don Cook, S.ALlen 10/16/08
00393	11/17/08	praecipe for subpoena for Denny taylor w/ FC
00394	11/17/08	transport order for Jason Jones
00395	11/17/08	transport order for Larry Shaver
00396	11/17/08	transport order for Steven Podolosky
00397	11/14/80	transport order for Lafayette Jenkins
00398	11/17/08	rtn sub srvd on Brian Utt 11/14/08 w/request & f/c
00399	11/18/08	rtn sub srvd on Denny Taylor 11/17/08
00400	11/18/08	rtn sub srvd on Lenny Yokum 11/17/08
00401	11/18/08	rtn of service on Heather Lambert for Lenny Yokum
00402	12/10/08	Charge to the Jury
00403	12/09/08	rtn sub srvd on NCRJ (records-noone signed)
00404	10/14/08	f/c subpoenas
00405	11/06/08	f/c subpoena for Danielle ALlen
00406	10/20/08	PRAECIPE FOR SUBPOENAS
00407	10/23/08	RETURN SUBPOENA SARA BARRICKMAN SERVED 10/20/08
00408	10/14/08	RETURN SUBPOENA MATTHEW CURRENCE SERVED 10/20/08
00409	10/21/08	STATES MOTION IN LIMINE
00410	10/21/08	STATEMENT OF LOCAL ATTORNEY
00411	10/21/08	MOTION FOR ADMISSION PRO HAC VICE OF J SPIVEY III AS COUNSEL
00412	10/28/08	DEF. MEMORANDUM IN OPPOSITION TO STATES MOT IN LIMINE
00413	10/29/08	return subpoena JESSICA SMITH SERVED 10/15/08
00414	10/29/08	RETURN SUBPOENA NICOLE JOHNSON SERVED 10/23/08
00415	10/31/08	RETURN SUBPOENA DEP. RAY MCSD SERVED 10/15/08
00416	10/29/08	RETURN SUBPOENA NICOLE JOHNSON SERVED 10/23/08
00417	10/29/08	RETURN SUBPOENA JESSICA SMITH SERVED 10/15/08
00418	10/31/08	RETURN SUBPOENA PTLM STEVENS SERVED 10/11/08
00419	10/31/08	RETURN SUBPOENA PTLM MURRAY SERVED 10/11/08
00420	10/31/08	RETURN SUBPOENA PTLM SPEAKMAN SERVED 10/11/08

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PLAINTIFF. STATE OF WEST VIRGINIA
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PRO ATTY.. ROGER WILLIAMS/DAN DOTSON SPA
DEF ATTY.. MARTIN SHEEHAN

PAGE#	DATE	MEMORANDUM.....
00421	10/31/08	RETURN SUBPOENA DANIELLE ALLEN SERVED 10/16/08
00422	10/31/08	RETURN SUBPOENA DET. MATT PIGOTT SERVED 10/11/08
00423	10/31/08	RETURN SUBPOENA THOMAS COLE SERVED 10/16/08
00424	11/05/08	STATES FIFTH SUPPLEMENTAL WITNESS LIST
00425	11/06/08	ORDER
00426	11/06/08	PRAECIPE FOR SUBPOENAS
00427	11/06/08	ORDER TO FILE UNSIGNED
00428	11/06/08	STATES SIXTH SUPPLEMENTAL WITNESS LIST
00429	11/06/08	STATES SUPPLEMENTAL DISCLOSURE OF EXPERT WITNESS
00430	11/07/08	ORDER
00431	11/07/08	STATES MOT TO EXCLUDE EVIDENCE OR IN ALTERNATIVE CONTINUE TR
00432	11/10/08	NOTICE OF APPEARANCE
00433	11/10/08	JURY LIST
00434	11/13/08	CLERKS NOTES TRIAL DAY 3
00435	11/14/08	CLERKS NOTES TRIAL DAY 4
00436	11/17/08	CLERKS NOTES TRIAL DAY 5
00437	11/18/08	CLERKS NOTES TRIAL DAY 6
00438	11/19/08	STATES PROPOSED SUPPLEMENTAL JURY INSTRUCTIONS
00439	11/19/08	CLERKS NOTES TRIAL DAY 7
00440	11/20/08	CLERKS NOTES TRIAL DAY 8
00441	11/21/08	CLERKS NOTES TRIAL DAY 9
00442	11/12/08	TRIAL EXHIBITS
00443	11/13/08	TRIAL EXHIBITS
00444	11/21/08	SEALED JURY NOTES
00445	11/21/08	VERDICT FORM MISTRIAL
00446	11/10/08	Clerks notes Trial Day two
00447	12/15/08	NOH 1/27/09 2:00 pm (All outstanding motions)
00448	11/50/80	def's motion for HC pending trial
00449	12/15/08	def's motion for change of venue
00450	12/15/08	def's renewed motion for judgment of acquittal
00451	1/09/09	Ord deny def's renewed mot.for judge of acquit. Bk143 pg144
00452	1/09/09	Order deny. motion for HC pend.trial Bk143 pg 142
00453	1/20/09	Motion in limine or to det. admissibility of evidence
00454	1/21/09	MEM.IN SUPPORT OF MOT.FOR CHANGE IN VENUE/EXH 1-81 VIEW FILE
00455	1/20/09	MOT IN LIMINE OR TO DETERMINE THE ADMISSIBILITY OF EVIDENCE
00456	1/20/09	LTR FROM P HARRIS TO JUDGE JANES - ENCLOSED JUDGEMENT ORDERS
00457	1/27/09	CLERKS NOTES
00458	1/27/09	Judgement Order: Mistrial: bk143 pg248
00459	1/28/09	Judgement Order: Not Guilty: bk143 pg249
00460	2/13/09	state's supplemental disclosure of witnesses
00461	2/13/09	def's supple. response to state's motion in limine
00462	2/22/60	def's sypple. response to state's motion in limine

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PRO ATTY.. ROGER WILLIAMS/DAN DOTSON SPA
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PAGE#	DATE	MEMORANDUM.....
00463	2/26/09	f/c subpoenas for 5/12-13/09
00464	2/26/09	f/c subpoenas for Marion County
00465	2/26/09	f/c subopenas for Monongalia Co.
00466	2/26/09	f/c subpoenas for Harrison Co.
00467	2/26/09	f/c subopenas for Kanawha Co.
00468	2/26/09	f/c subopenas for Randolph CO.
00469	3/02/09	REQUEST SUBPOENA-KEN GRACE,BOATF FOR 5/12/09 9:00
00470	3/03/09	TRANSPORT ORDER-STEVEN PODOLSKY 5/12/09 9:00
00471	3/03/09	TRANSPORT ORDER-RALPH BOSTON 5/14/09 9:00
00472	3/03/09	TRANSPORT ORDER - GARY TACY 5/13/09 9:00
00473	3/03/09	TRANSPORT ORDER - DONELL LEE 5/11/09 9:00
00474	3/03/09	TRANSPORT ORDER - JOSH RICHARDS 5/13/09 9:00
00475	3/03/09	RET.SUB.WALTER DANDRIDGE (FAXED) 3/3/09 FOR 5/13/09 9:00
00476	3/04/09	RETURNED SUBPOENA ALEX NEVILLE BY SECRETARY K.LANDIS 3/2/09
00477	3/06/09	rtn sub srvd Philip Cochran 3/3/2009
00478	3/06/09	rtn sub srvd on James Kaplan 3/3/09
00479	3/06/09	rtn sub srvd on S.Cole for Ken Grace 3/4/9
00480	3/12/09	Transcripts 1-4 from 11/10--21/08
00481	3/12/09	rtn sub NOT srvd on Danielle Allen (MOVED)
00482	3/12/09	rtn sub NOT srvd on Jimmie THompson (MOVED)
00483	3/12/09	rtn sub srvd on Deputy Ray 3/3/09
00484	3/16/09	rtn sub srvd on Lt. Moran 3/3/09
00485	3/12/09	rtn sub srvd on Ptlm Arnette 3/3/09
00486	3/12/09	rtn sub NOT srvd on Latoshia Stevens (3 attempts)
00487	3/12/09	rtn sub srvd on Det. Pigott 3/3/09
00488	3/12/09	rtn sub Thomas Cale 3/9/09
00489	4/03/09	state's motion to bifurcatethe trial
00490	4/03/09	(Judge Janes' copy) Motion to bifurcate trial
00491	4/10/09	order addressing pre-trial motions
00492	4/13/09	Motion in limine or alt.compel def to provide DNA
00493	4/13/09	NOH to Paul Harris 4/21/09 3:45 pm
00494	4/15/09	f/c subpoenas for 5/13/09
00495	4/17/09	Amended transport order for Lafayette Jenkins
00496	4/21/09	clerks notes Pretrial Motions
00497	4/21/09	rtn subpoenas for Currence,Brady,Barrickman,
00498	4/23/09	additional witness disclosure
00499	4/27/09	f/c subpoena for Jimmie Thompson
00500	4/27/09	f/c subpoena for Latoshia Stevens
00501	4/27/09	f/c subpoena for Danielle Allen
00502	4/27/09	f/c subopena for Dave Shreve
00503	4/27/09	f/c subpoena for Jessica Smith
00504	4/27/09	f/c subpoena for Brandon Armstrong (Faxed to Randolph)

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PAGE#	DATE	MEMORANDUM.....
00505	4/28/09	rtn sub srvd on Jessica Smith 4/28/09
00506	4/28/09	transport order for Gary Tacy for 5/13/09\
00507	4/29/09	petition for summoning out of state—Josh Richards
00508	4/29/09	petition for summongin out of state—Sparatacus Hutto
00509	4/29/09	f/c subpoena for Shanda Ross
00510	4/29/09	f/c subopena for Ralph Boston
00511	4/29/09	f/c sub. for Michelle Cook (Faxed to Kanawha Co.)
00512	4/29/09	f/c subpoena for Trooper Wince & Utt (faxed to Randolph Co>0
00513	4/29/09	f/c subopena for Trooper Kush)faxed to Brooke Co.)
00514	4/29/09	f/c sub for Kelly Services
00515	4/30/09	state's supplemental disclousre of witnesses
00516	4/30/09	rtn sub srvd on Brandon Armstrong 4/28/09
00517	5/01/09	praecipe for subpoenas with file copies
00518	5/04/09	rtn sub srvd on Ralph Boston 5/4/09
00519	5/04/09	stte's motion to schedule a status confernece
00520	5/04/09	SEALED Clerks notes (status conference)
00521	5/05/09	transport/housing order (5/8/09
00522	5/05/09	f/c subpoena for Brandon Flower (faxed to Mon Couunty)
00523	5/05/09	rtn sub srvdon Nancy Strope for Trooper Kush 4/30/09
00524	5/05/09	rtn sub srvdon Latoshia Stevens 5/4/09
00525	5/05/09	rtn sub srvd on Dave Shreve 5/4/09
00526	5/07/09	rtn subs for 5/12/09 trial (continued)
00527	5/11/09	order for DNA submission
00528	5/12/09	rtn subpoenas (continued)
00529	5/01/09	State's memo regarding admiss. of certain evidence
00530	5/01/09	motion in limine-exclude state's witness disclos.after 2/09
00531	5/01/09	Exhibit (state's supplemental disclosure of witness)
00532	5/08/09	SEALED CLerks notes (pretrial motions)
00533	5/08/09	SEALED Pretrial motions
00534	5/18/09	Order scheduling in camera hearing
00535	5/18/09	state's motion to schedule a status conference
00536	5/19/09	order regarding the admissibility of statements of d.lee
00537	5/22/09	transport order for Lafayette Jenkins for 5/28/09
00538	5/26/09	Order withdrawing counsel (Paul Harris & Joseph Wallace
00539	5/26/09	Order of Disqualification of Patrick Wilson
00540	6/04/09	Order of appointment of S.P.A. Roger Wiliams
00541	6/08/09	ltr to Judge Janes frm S.P.A. re: docketed for 8/24/09
00542	6/08/09	ltr to Taylor frm Judge Janes re: trial 8/24/09-not.of appr.
00543	6/22/09	Notice of appearance
00544	7/09/09	Order for grand jury transcript
00545	7/14/09	clerks notes Motion to dismiss
00546	7/13/09	NOH (MOtion to dismiss) 7/20/09 1:00 pm

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PAGE#	DATE	MEMORANDUM.....
00547	7/13/09	Motion to grant access to Grand Jury transcrip
00548	7/15/09	Moition in limine to preclude all evidence & arguements SEE
00549	7/16/09	Order for Grand Jury Transcripts
00550	7/30/09	state's response to defendant's motion in limine
00551	8/07/09	defendant's reply to state's response to motion in limine
00552	8/13/09	Transport order of Charles Robert Jones
00553	8/13/09	Order denying motion to preclude all evidence and arguement
00554	8/14/09	motion to continue trial from 8/24 to 8/31 or set bail & con
00555	8/13/09	state's proposed witness and exhibit lists
00556	8/06/09	defendant's reply to state's response to montion in limine
00557	8/12/09	ltr fr Sheehan to J/Janes re:case cites
00558	7/29/09	state's response to defendant's motion in limine
00559	8/10/09	motion to continue trial
00560	8/17/09	f/c subpoena duces tecum for NCRJ
00561	8/18/09	Original transcript from 7/14/09

AUG-21-2008 11:58AM FROM-MARION CO CIRCUIT CLERK 304 367 5374 T-483 P.014/014 F-546

EXHIBIT B

CASE NO. 08-F-77 OPENED 6/09/2008

JUDGE... DAVID R. JANES

PLAINTIFF. STATE OF WEST VIRGINIA
VS DEFENDANT. LINCOLN STUART TAYLOR

PRO ATTY.. PAT WILSON,PA
DEF ATTY.. PAUL J.HARRIS

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00002	6/18/08	clerks notes Arraignment
00003	6/18/08	arraignment order
00004	8/06/08	clerks notes Pre trial motions
00005	8/06/08	state's exhibit 1 (transcript of John Cave
00006	8/06/08	Transcript of Ronald Gilmore
00007	8/06/08	Transcript of Jessica Smith
00008	8/06/08	Transcript of Amy Weekley
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00010	8/06/08	Transcript of Rebekah Sharp
00011	8/06/08	Transcript of Albert Sigley Jr
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00013	8/06/08	state's motion to join offenses alleged in separate indict.
00014	8/25/08	L TAYLORS OBJ TO BEING CALLED AS WITNESS FOR STATE
00015	9/05/08	clerks notes Evidence on pending motions
00016	9/05/08	witness recipt for Eva Gower; Roxanne Greynolds
00017	9/15/08	SEALED Jury list
00018	9/15/08	Clerks notes Trial Day one
00019	9/16/08	clerks notes Trial day two
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00022	9/15/08	state's trial exhibits list
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00024	11/10/08	state's motion to exclude evidence/alt cont. trial
00025	10/14/08	F/C SUBPOENAS AND 1 RETURN SERVED UPON D ALLEN 11/7/08
00026	10/23/08	PRAECIPE FOR SUBPOENAS
00027	10/23/08	RETURN SUBPOENAS ALL SERVED **VIEW DOCUMENT**
00028	10/21/08	STATES MOTION
00029	10/21/08	STATEMENT OF LOCAL ATTORNEY FILED BY PAUL HARRIS
00030	10/21/08	MOTION FILED BY PAUL HARRIS
00031	10/21/08	VERIFIED STATEMENT FOR APP FOR ADM.PRO HAC VICE OF J SPIVEY
00032	10/28/08	DEF MEMORANDUM
00033	10/29/08	RETURN SUBPOENA TUGBAH DOE SERVED 10/20/08
00034	10/31/08	RETURN SUBPOENA KELLY MORAN SERVED 10/11/08
00035	10/29/08	RETURN SUPBOENA NICOLE JOHNSON SERVED 10/23/08
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00037	10/31/08	RETURN SUBPOENA PATROLMAN STEVENS SERVED 10/11/08
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00040	10/31/08	RETURN SUBPOENA DANIELLE ALLEN SERVED 10/8/08
00041	10/31/08	RETURN SUBPOENA LATOSHIA STEVENS SERVED 10/31/08
00042	10/31/08	RETURN SUBPOENA DET MATT PIGGOTT SERVED 10/11/08

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