

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. _____

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**STATE EX REL. TIMOTHY KENNEDY,
Petitioner,**

v.

**HON. JOSHUA BUTCHER,
Judge of the Circuit Court of Mingo County,**

and

**STATE OF WEST VIRGINIA,
Respondents.**

**(An original jurisdiction action
pertaining to an order of the
Circuit Court of Mingo County,
Case No.: CC-30-2024-F-1)**

PETITION FOR WRIT OF PROHIBITION

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PETITION FOR WRIT OF PROHIBITION

The Petitioner, Timothy Kennedy, by counsel, Steven K. Mancini, and G. Todd Houck, petitions this Honorable Court pursuant to Rule 16 of the West Virginia Rules of Appellate Procedure, and W. Va. Code §53-1-1, *et seq.*, for a Writ of Prohibition, prohibiting the Hon. Joshua Butcher, Judge of the Circuit Court of Mingo County, West Virginia, from effectuating his repeated orders continually holding in abeyance the Petitioner's request for a trial outside of Mingo County.

QUESTION PRESENTED

1. Did the Circuit Court exceed its legitimate powers by repeatedly failing to grant the Petitioner's motion for a change of venue, when the expert opinion in this case unequivocally shows the existence of a present, hostile sentiment in Mingo County, and when efforts to impanel a jury in Mingo County already once resulted in a mistrial directly resulting from the existence of that pervasive hostile sentiment within the courtroom?

STATEMENT OF THE CASE

This matter began on June 2, 2023, based on the following facts subsequently alleged in the Report of Criminal Investigation. App., at 3-6. Officers responded to an address in Mingo County where Benjamin Baldwin reported having been shot by the Petitioner, Timothy Kennedy. App., at 3. Mr. Baldwin claimed that the Petitioner had flagged him down from a truck while he was riding a four-wheeler, then exited the truck and shot Mr. Baldwin repeatedly. *Id.* Trooper C.K. Johnson and Trooper Cory Maynard then proceeded to search for the Petitioner based upon this report. *Id.* After noticing fresh tire impressions on a nearby dirt road, the troopers continued up that road until a shot was fired, striking Trooper Maynard, and then additional shots rang out. *Id.* Trooper Johnson returned fire until withdrawing to his cruiser to obtain an AR-15 rifle and a plate carrier, and to call for backup. *Id.* Trooper Johnson, along with five other officers, proceeded back towards the Petitioner's position, and were able to get Trooper Maynard into the back seat of a police cruiser, where first aid was administered while he was transported to a waiting ambulance. Trooper Johnson accompanied Trooper Maynard in the ambulance on its journey to Logan Regional Medical Center. App., at 3-4. Trooper Maynard was pronounced dead at the hospital. App., at 5. Later in that evening, the Petitioner was apprehended in a sedan matching the description of a vehicle he was reported to have stolen. App., at 6.

During the January, 2024 Term of the Mingo County Grand Jury, the Petitioner was indicted for the murder of Trooper Maynard, first-degree robbery of Trooper Maynard's service weapon from his person, felony disarmament of a law-enforcement officer pursuant to W. Va. Code Section 61-5-17(b), attempted murder of Trooper Johnson, and attempted murder of Benjamin Baldwin. (A.R., at 1-2).

Relevant to the instant petition, the Petitioner filed a motion for change of venue in August of 2025, alleging a present, hostile sentiment in Mingo County, and disclosing as an expert witness Bryan Edelman, Ph.D., of Oakland, California. App., at 7-10. The Circuit Court ordered the production of all relevant reports of Dr. Edelman relevant to this motion at a subsequent motion hearing on October 3, 2025. App., at 11-15.

The Petitioner then submitted a Memorandum in support of the motion, to which Dr. Edelman's declaration was attached. App., at 16-85. Dr. Edelman conducted an extensive study of the media environment surrounding the death of Trooper Maynard and the Petitioner's arrest. Fifteen articles were published on the subject between June of 2023 and August of 2025, which included not only a recitation of the facts alleged in the case, but numerous collateral allegations, including prior allegations of the sexual assault of a minor and copper theft. App., at 32-35. The media environment also included significant amounts of grief and anger concerning the loss of Trooper Maynard in the community. App., at 36-41. Dr. Edelman also documented the social-media environment, showing pervasive commentary, and second-order approval of that commentary by means of “likes,” of an extremely hostile and malevolent attitude toward the Petitioner by members of the community. App., at 41-42.

Dr. Edelman also conducted a scientific survey of 304 eligible venirepersons in Mingo County to gauge the local sentiment. App., at 42. 75% of respondents were already familiar with the case, with 59% of those following the case either “somewhat” or “very” closely. App., at 43. Out of the 75% of respondents who were familiar with the case, a full 86% believed that the Petitioner is “guilty of intentional, first-degree murder.” *Id.* Among those, 61% believed he was “definitely” guilty. *Id.* Among survey respondents who had been exposed to news coverage,

71% claimed that the Petitioner would have difficulty convincing them that he is not guilty. *Id.* 65% of respondents already possessed a negative opinion of the Petitioner. App., at 43. 81% held “very” positive opinions of Trooper Maynard. App., at 43-44. Among those with very positive opinions of him, 95% already believed that the Petitioner was guilty of murder. App., at 44.

A key portion of the study involved interview questions of the survey respondents concerning particular hypothetical scenarios. One scenario presented to the respondents concerned the anticipated community reaction if the Petitioner were to be acquitted. Responses included the following:

- They would go after him their self.
- They would be very upset. Everyone believes he is guilty. It would be a disgrace.
- They would go after him their self.
- They would hang him.
- They would string him up.
- I would be worried for his life. Someone would be out to be in a sniper position and take him out.
- They would tear the courtroom apart.
- They would be ready to turn the jail over.
- They better put a vest on that boy. It would be a very tense situation. I would fear for him.
- They are crooks themselves if it's a not guilty.
- There's not one person that would uphold the kid with all the evidence they have on him.
- Then they are fucking retarded.
- That's fucking bullshit.
- That ain't gone happen, he's definitely going to die in there.
- Somebody would probably kill him.
- Oh Lord, I don't think that's going to happen. I think they will find him guilty because everybody knows him, even in the courthouse.
- A lot of people would be upset.
- Angry
- An uproar
- Everyone would be very upset.
- Here they would be very mad.

- Highly upset.
- Horrible, it would be horrible.
- How can they do that when the boy actually shot him?
- I don't believe they'd like it, wouldn't like it a bit.
- I don't see how he could not be found guilty of first degree murder, because he done it.
- I don't see how they couldn't find him guilty.
- I don't see it happening.
- I don't think it would go very good.
- I don't think that they would respond very well to that.
- I don't think they would be happy.
- I think everyone would be very upset.
- I think everyone would be really upset.
- I think there would be an outrage.
- I think they would be appalled.
- I think they would be disappointed.
- I think they would be outraged and upset.
- I think they would be outraged.
- I think they would be shocked.
- I think they would be pissed. I know I would be. The last thing they need are people that aren't cops being police.
- I think they would be very upset and mad.
- I think they would be upset.
- I think they would be very upset.
- I think they would react negatively.
- I think they would be very upset.
- I think they would really be upset.
- I think they would say he is definitely guilty.
- I think they'd be upset.
- I'd say it would be pretty bad. They would all be pissed off.
- I'd say there'd be a lot of angry Mingo County people to put it mildly I guess, I'd be one of them.
- I'm sure it's going to be a lot of people upset and outraged about the outcome.
- I'm sure they would probably be upset.
- If he was set free, I don't know how long he would live.
- It would be a heart breaker.
- It would be a risk of life for him.
- It would be an outrage.
- It would be bad all around.
- It would be bad and everybody would be upset. He killed Cory, so it wouldn't be justified for him to get away with it. Cory had a mom and some kids and it wouldn't be right.
- It would be bad.

- It would be devastating.
- It would be pretty devastating, I would say.
- It would be very bad.
- It would make a lot of people angry.
- It would really upset us.
- Most of them would be in an outrage.
- Oh gosh! They would be very upset, really, really, mad and upset. I sure would too, I think they would be also.
- Oh, there would be an uproar.
- Outraged.
- Outraged.
- Really mad.
- Shocked and upset.
- That won't happen.
- That would not go over well here.
- The community would be very upset and I would too.
- There will be an uproar.
- There would be a lot of people upset.
- There would be a riot.
- There would be an uproar.
- There would be an uproar.
- There would be an uproar.
- There would be an uproar.
- They would be mad.
- They would be outraged.
- They would be sad and upset.
- They would be stunned! They would not know how to act. They would be very upset.
- They would be very angry.
- They would be very hurt.
- They would be very upset and angry.
- They would very pissed.
- Very disappointed.
- Very pissed off.
- Very shocked.
- Very unhappy.
- Very upset, outrage.
- Worried sick about it.

App., at 48-52.

Dr. Edelman cited extensively to relevant academic work in his field in support of his ultimate conclusions. App., at 28-34, 52-62. He concluded that:

In conclusion, given the nature of the pretrial publicity and its negative impact on the jury pool in Mingo County, it is my opinion that the burden of proof has shifted toward the defendant. Prospective jurors enter the courtroom with a “presumption of guilt” which appears to be intransient. Based on the findings from the media analysis and community attitude survey, is my opinion that remedial measures—including a change of venue—are necessary to protect the defendant’s constitutional right to a fair and impartial trial.

App., at 64.

The Circuit Court did not grant the motion, and a multi-day jury selection commenced in Mingo County with a Mingo County venire. It ended in a mistrial on December 4, 2025, due to juror misconduct, in the form of communication among prospective jurors regarding the details of the allegations while the Court and parties were conducting individual voir dire in camera. The Circuit Court granted a mistrial based upon this misconduct but continued to hold the change-of-venue request in abeyance. (App., at 93-96).

At a December 19, 2025, status hearing, the Circuit Court determined that it would hold the motion for change of venue in abeyance once again pending voir dire at retrial. The State continued to oppose the motion, although the Circuit Court indicated that if the State stopped its opposition it would be inclined to grant the change-of-venue:

DEFENDANT'S MOTION FOR VENUE CHANGE. The Court held this motion would continue to be held in ABEYANCE pending further voir dire. The Court again noted an inclination to deny the Motion but would reserve ruling pending the outcome of the voir dire process. The Court held that the prior attempt to seat a jury was nearly successful and likely would have been successful but for the noted juror misconduct resulting in a decision to deem the entire panel potentially tainted. The Court found that only approximately 65 of the jurors had been examined and - despite taking extra caution and delivering some strikes out of an abundance of caution, rather than as a legal requirement - 21 jurors had been qualified. Therefore, the Court believes the requisite

number would have been reached. As such, with proper safeguards and procedure, the Court FINDS that it is appropriate to attempt to seat a jury in Mingo County. However, the Court noted that if the State withdrew its objection to the Motion, the Court would be inclined to grant it.

App., at 86-87.

In anticipation of the retrial, the Petitioner again reasserted the motion, with the same result. In its order stemming from hearings held on April 14 and 15, the Circuit Court stated:

1. DEFENDANT’S MOTION FOR VENUE CHANGE. The Court held this motion would continue to be held in ABEYANCE pending further voir dire. The Court again noted an inclination to deny the Motion but would reserve ruling pending the outcome of the voir dire process. The Court held that the prior attempt to seat a jury was nearing success and likely would have been completed but for the noted juror misconduct resulting in a decision to deem the entire panel potentially tainted. The Court noted that a good portion of the jurors that were dismissed for cause was based upon grounds other than pretrial publicity. The Court noted that it has continued to hold and opine that the standard for a venue change has not been established.

(App., at 89).

The Petitioner continued to raise the issue at the subsequent pretrial hearing, this time requesting a stay of the trial to permit the instant original jurisdiction action to be filed and considered by this Court. The Circuit Court denied the request. (App., at 91).

Voir dire for the retrial commenced on April 28, 2026, with the trial itself scheduled to begin on May 4, 2026. The Petitioner, now mid-voir dire, has renewed his motion for relief during the course of voir dire and the same was once again held in abeyance, although there is no written record of that yet. The Petitioner seeks relief in prohibition from the Circuit Court's failure to grant a change of venue, and a stay of the trial while this Court considers the petition.

SUMMARY OF ARGUMENT

The Circuit Court committed clear error and exceeded its legitimate powers by declining to grant a motion for change of venue, despite the clear evidence in the record of pervasive hostile sentiment throughout the Mingo County pool of eligible jurors. A scientifically-rigorous study performed by the Petitioner's expert has demonstrated that overwhelming proportions of community members harbor intense negative sentiments toward the Petitioner, and largely fixed perceptions of his guilt. When the Circuit Court previously attempted to seat a jury, only about a third of prospective jurors who had been subjected to individual voir dire were able to be seated, and a mistrial was declared because of misconduct among the jury pool in the form of improperly communicating to one another about their prior knowledge of the case, a factor that is wholly inseparable from the hostile sentiments that pervade the community.

This Court should grant a writ of prohibition and prevent the Circuit Court from enforcing its orders to repeatedly prevent the change of venue for the Petitioner's trial. Of the factors governing whether to grant a writ of prohibition, the most important is clear legal error; in this case, the Circuit Court's attempt to seat a jury among a population so intensely biased against the Petitioner is unsustainable in light of this Court's precedents. Any attempt by the Petitioner to correct this issue in a hypothetical direct appeal will leave him in a worse position than he presently occupies, with stale evidence and inevitable additional media coverage, likely across a wide portion of the state, in the event of a conviction. By imposing corrective action at the present procedural posture, this Court can both spare the unnecessary prejudice to the Defendant of an imminent defective trial, while providing guidance to other trial courts by clearly addressing a perennial, recurring issue. The Petitioner respectfully requests the issuance

of a writ of prohibition with the ultimate result of moving the venue of his trial.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The Petitioner asserts that this matter involves an unsustainable exercise of discretion by the lower court in light of settled principles of law, and clear error outside the bounds of the lower court's legitimate powers. Accordingly, this matter would be suitable for Rule 19 Oral Argument, and for resolution by signed opinion reversing the order of the lower court.

ARGUMENT

I. Standard of Review

The final argument section of this brief describes the standard for the granting of a writ of prohibition, as set forth in Syl. Pt. 4, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996). The most important *Hoover* factor is whether or not the lower court committed a clear error of law.

The standard of review for the substantive issue of a motion for change of venue is as follows:

“Whether a change of venue is warranted rests in the sound discretion of the trial court, and its ruling thereon will not be disturbed, unless it clearly appears that such discretion has been abused.” Syl. Pt. 2, *State v. Gangwer*, 169 W. Va. 177, 286 S.E.2d 889 (1982).

State v. Hoard, 248 W.Va. 428, 437-38, 889 S.E.2d 1 (2023).

II. The Circuit Court exceeded its legitimate powers by denying the Petitioner's motion for change of venue in light of the clear record of a present, hostile sentiment in the community combined with the failure to seat a jury for reasons that are indicative of that very sentiment.

The Legislature has provided a process by which a change of venue may be effectuated.

A court may, on the petition of the accused and for good cause

shown, order the venue of the trial of a criminal case in such court to be removed to some other county. When the venue is so changed, the court making the order shall recognize the witnesses and the accused (if the offense be bailable and bail be given) to appear on some certain day before the court to which the case is removed; if the offense be not bailable, or the bail required be not given, the court shall remand him to its own jail, and order its officer to remove him thence to the jail of the court to which the case is so removed, so that he shall be there before the day for the appearance of the witnesses. The clerk of the court that orders a change of venue shall certify copies of such recognizance, and of the record of the case, to the clerk of the court to which the case is removed; and such court shall proceed with the case as if the prosecution had been originally therein, and for that purpose the certified copies aforesaid shall be sufficient.

W. Va. Code § 62-3-13.

This Court, in propounding the Rules of Criminal Procedure, has also anticipated the use of this procedural mechanism by trial courts:

The circuit court upon motion of the defendant shall transfer the proceedings as to that defendant to another county if the circuit court is satisfied that there exists in the county where the prosecution is pending so great a prejudice against the defendant that he or she cannot obtain a fair and impartial trial at the place fixed by law for holding the trial.

W. Va. R. Cr. P. 21(a).

The burden is upon a criminal defendant to demonstrate the “good cause” contemplated by the statute:

1. "To warrant a change of venue in a criminal case, there must be a showing of good cause therefor, the burden of which rests on the defendant, the only person who, in any such case, is entitled to a change of venue. The good cause aforesaid must exist at the time application for a change of venue is made. Whether, on the showing made, a change of venue will be ordered, rests in the sound discretion of the trial court; and its ruling thereon will not be disturbed, unless it clearly appears that the discretion aforesaid has been abused." Syl. pt. 2, *State v. Wooldridge*, 129 W.Va. 448, 40

S.E.2d 899 (1946)." Syl. pt. 2, *State v. Williams*, W.Va., 305 S.E.2d 251 (1983).

Syl. Pt. 1, *State v. Ginanni*, 328 S.E.2d 187, 174 W.Va. 580 (1985).

2. " 'A present hostile sentiment against an accused, extending throughout the entire county in which he is brought to trial, is good cause for removing the case to another county.' Point 2, Syllabus, *State v. Dandy*, 151 W.Va. 547, 153 S.E.2d 507 (1967), quoting Point 1, Syllabus, *State v. Siers*, 103 W.Va. 30, 136 S.E. 503 (1927)." Syllabus Point 2, *State v. Sette*, 161 W.Va. 384, 242 S.E.2d 464 (1978).

3. One of the inquiries on a motion for a change of venue should not be whether the community remembered or heard the facts of the case, but whether the jurors had such fixed opinions that they could not judge impartially the guilt or innocence of the defendant.

Syl. Pts. 2 and 3, *State v. Derr*, 192 W.Va. 165, 451 S.E.2d 731 (1994).

The Petitioner has met his burden to demonstrate good cause for a change of venue. The result of the polling of a statistically significant portion of prospective Mingo County jurors, conducted by Dr. Edelman, is unequivocal that not only is there widespread knowledge about the case, but that there is inescapable, pervasive antipathy and prejudice against the Petitioner. Moreover, the survey respondents indicated immovable opinions at an extremely high rate. The respondents indicated a glowing set of attitudes concerning the fallen Trooper, and overwhelmingly negative attitudes toward the Petitioner. They expected an outcry, to the point of a probable extrajudicial execution, should the Petitioner be acquitted. (App., at 42-52).

Contrary to the view of the Circuit Court, the circumstances of the previous voir dire did not indicate the suitability of a Mingo County jury pool, but rather its futility and its inevitable bias given the attitudes measured by Dr. Edelman. The Circuit Court found that the juror misconduct – in the form of jurors speaking to one another about their prior knowledge of the

case – required a decision “to deem the entire panel potentially tainted.” App., at 89. With the levels of prior knowledge documented by Dr. Edelman, this was an entirely predictable occurrence. The jury pool did not become tainted because its members engaged in misconduct. The jury pool engaged in misconduct *because it was tainted* from the outset. Whether or not the members of the next jury pool will be so bold as to openly violate the court's instructions a second time, leading to a second mistrial, it is statistically beyond doubt that the Mingo County venire is tainted beyond remediation.

It is worth weighing the statistics in Dr. Edelman's report against those in a comparable situation from this Court's precedents. In *Derr, supra*, the following statistics were part of the record:

On the other hand, the prosecuting attorney submitted 112 affidavits in opposition to the defendant's motion. We find the statistical data composed from question numbers 12 and 14 especially revealing. Question number 12 asked the respondents if they knew "any reason why Thomas Derr could not receive a fair trial by a jury composed of citizens in Marshall County, West Virginia[.]" Out of the 112 answers, 108 of the answers were no, 3 were yes, and 1 was did not know. Likewise, question number 14 asked the respondents "[b]ased on what you know and have heard, is there a present hostile sentiment against Thomas Derr extending throughout the entire county[.]" The answer by 80 of the respondents was no.

Derr, 192 W.Va. at 171, 451 S.E.2d at 737.

Those statistics are not in the same universe as those revealed by Dr. Edelman's survey. To recall, 75% of respondents knew about the case, and of those, 86% had a pre-existing opinion of the Petitioner's guilt. App., at 42-43. 71% of those exposed to media coverage believed that it would be difficult to change their opinion; these respondents did not even possess a pretense of open-mindedness or impartiality. App., at 43. The survey recorded widespread admiration of

Trooper Maynard, and vitriolic antipathy against the Petitioner. App., at 43-44.

Moreover, in *Derr*, only one juror was stricken for cause during voir dire. *Id.*, 192 W.Va. at 172, 451 S.E.2d at 738. In this case, apparently 44 out of 65 prospective jurors who had been examined individually by the time the December 2025 mistrial was declared had been found to be unqualified for one reason or another. (App., at 86-87). For all the reasons this Court denied relief in *Derr*, it should grant relief here. The Petitioner cannot get a fair trial in Mingo County.

III. The Petitioner is entitled to relief in prohibition.

W. Va. Code §53-1-1 allows a petitioner to seek a writ of prohibition in the following circumstances: “The writ of prohibition shall lie as a matter of right in all cases of usurpation and abuse of power, when the inferior court has not jurisdiction of the subject matter in controversy, or, having such jurisdiction, exceeds its legitimate powers.” The Petitioner is not asserting an absence of jurisdiction, but is rather asserting that the Circuit Court exceeded its legitimate powers.

This Court's threshold standard for the consideration of a petition for writ of prohibition in cases alleging that a court exceeded its legitimate powers is well established:

In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ

of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.

Syl. Pt. 4, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996).

The first of the five factors for determining a right to seek relief in prohibition under *Hoover* is whether there is another avenue for redress, such as appellate relief. The second factor is whether the Petitioner has been damaged in a way not correctable on direct appeal. It is true that the Petitioner would be able to assign error to this issue in a direct appeal if he is convicted. But the Circuit Court, in failing to grant the relief to which the Petitioner is straightforwardly entitled, has left him with no other procedural mechanism to prevent the violation of his rights that would occur in the event of a Mingo County jury being impaneled to hear his case. The direct appellate process is likely to last for upwards of two years; two years in which the memories of relevant witnesses will dim, and the quality of evidence available to the trier of fact will necessarily deteriorate. If he is convicted by a Mingo County jury, then an entire new round of media coverage will serve to further taint the prospective jurors at a subsequent retrial in the surrounding media market. At least one potential defense witness has already died; and another with a serious health problem is at risk of dying. So, while a direct appeal is available as an alternative avenue for redress, the Petitioner will be put in a clearly disadvantageous position by being forced to rely on it. While this Court could reverse the trial court on direct appeal, it would never be able to truly restore the Petitioner to the position that he currently occupies after the passage of time and proliferation of media coverage of an infirm conviction.

Forcing this issue to a direct appeal will prejudice the Petitioner beyond remediation in another way as well; his burden should only be to demonstrate the present hostile sentiment in the community before the trial court; yet if the writ is denied and he is convicted in Mingo

County, he will be compelled to show prejudice as to individual jurors to overturn his conviction once a jury has been seated. See, i.e., *Hoard, supra*. Having made the requisite showing to obtain a change of venue, he should not be placed behind the proverbial 8-ball in that manner.

The fourth and fifth *Hoover* factors concern whether the case involves an oft-repeated error, or a legal issue of first impression. The question of when a defendant is entitled to a change of venue is not a question of first impression, but it is one that appears repeatedly before this Court, and the Petitioner asserts that granting the relief he seeks in a signed opinion will serve to provide guidance to trial courts throughout the state that may serve to vindicate the rights of criminal defendants and prevent legal error in similar circumstances.

The third, and most important *Hoover* factor is whether the lower court committed clear errors of law. It is straightforward that the Circuit Court did clearly err. The basis for the Circuit Court's error is set forth in more detail in the preceding argument section of this petition, which is incorporated into this argument by reference. The Petitioner had met his burden to obtain the relief he sought from the lower court, through the extremely-thorough expert declaration, and by the events preceding the mistrial that are themselves indicative of the inescapable bias and prejudice present in Mingo County. It was clear error to persist in seeking to try him in Mingo County despite the overwhelming record demonstrating that he cannot be tried there fairly. This Court should grant the requested writ.

Petitioner especially refers this Court to *State v. Sette*, 161 W.Va. 384 (W. Va. 1978), 242 S.E.2d 464.

CONCLUSION

For the foregoing reasons, the Petitioners request that this Court grant the following relief:

1. That a writ be granted prohibiting the Circuit Court from effectuating its repeated rulings failing to grant the Petitioner's motion for change of venue;
2. That this matter be remanded for additional proceedings in accordance with the ruling of this Court;
3. That the Court grant any other relief the Court deems just and proper.

Respectfully submitted,

Timothy Kennedy, Petitioner,
by Counsel,

____/s/____ Steve Mancini
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State Bar ID#: 5921

G. Todd Houck
State Bar ID#: 5674

CERTIFICATE OF SERVICE

On this 1st day of May, 2026, I Steven K. Mancini, certify to this Court that I have delivered a true and exact copy of the foregoing Petition to Hon. Joshua Butcher, Mingo County Circuit Judge, Joshua Ferrell, Esq., and Brock Mounts, Esq., of the Mingo County Office of the Prosecuting Attorney by e-service via the West Virginia Supreme Court of Appeals File&ServeXpress filing system.

____/s/____ Steve Mancini
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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. _____

STATE EX REL. TIMOTHY KENNEDY,
Petitioner,

v.

HON. JOSHUA BUTCHER,
Judge of the Circuit Court of Mingo County,

and

STATE OF WEST VIRGINIA,
Respondents.

(An original jurisdiction action
pertaining to an order of the
Circuit Court of Mingo County,
Case No.: CC-30-2024-F-1)

VERIFICATION

I hereby swear or affirm that I have reviewed the foregoing Petition for Writ of Prohibition, and that the factual assertions contained therein are true, and that to the extent that any factual assertions are based upon information and belief, that I believe them to be true.

4-30-26
Date

Timothy Kennedy
Timothy Kennedy