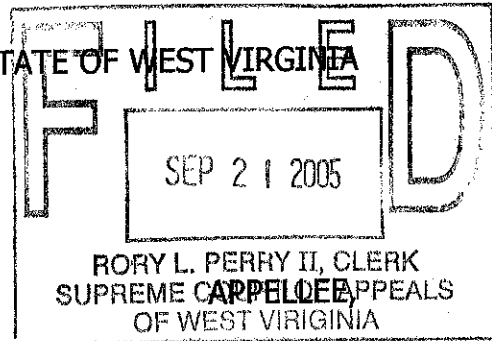


IN THE SUPREME COURT OF APPEALS FOR THE STATE OF WEST VIRGINIA



STATE OF WEST VIRGINIA,

VS.

CASE NO.: 32694

LARRY G. DINGER,

APPELLANT.

APPELLANT'S REPLY TO STATE'S BRIEF

R. Thomas Czarnik, WWSB #916
205 S. Walker Street
Princeton, WV 24740
(304) 487-1212
Counsel for Appellant

STATEMENT OF FACTS

The States interpretations of the evidence at trial distort the evidence of record and are argumentative. Appellant asks the Court of review the testimony and represented in the record.

REPLY TO ARGUMENT OF THE STATE

Appellant will rely on his argument in Brief regarding State's arguments A and B.

Regarding Issue C: The State lately designated the entire record in this case. The Clerk replied that she omitted the Judge's charge, which was in the possession of the Court Reporter, and sent it in. Appellant had already in February, 2005 designated the entire record (copy attached). Appellant did not as insinuated by the State's Attorney, purposely omit proffered, refused and given instructions. Appellant's counsel has requested the Clerk of the Circuit Court supplement the record to include the omitted records. Appellant was entitled to both instructions on evidence admitted.

Regarding Issue D: Appellant will reply upon his argument in his brief.

Regarding Issue E: The State prevented by negligence, the gunshot residue testing. The State's brief misstates several points:

- a) The test kit although "lost" was not the evidence, the results of analysis were, which were unavailable due to the State's misplacing the kit. Even after trial it failed to follow the Court's ordered testing protocol and its

supposed expert (who the State never called to testify at any time), misinterpreted or misstated their test results.

- b) Upon a request for discovery, a Motion to Compel, and order to produce, a State's pretrial memorandum of its intent to use the gunshot residue kit test result, and the State's negligent misrepresentation that the kit was lost--there's not much more a defendant can do to obtain the evidence, unless Circuit Courts can issue search warrants to defense counsel.
- c) The test kit was found by the Sheriff at the last hour of the trial. Appellant made no "choice" as characterized in the State's brief, to have pretrial tests run.
- d) The State mischaracterizes the "evidence" which is the test results, not the kit samples; as well as State v Osakalumi, 194 WVa 758, 461S. E. 2d 504(1995). In Osakalumi, because the couch had been sent to the landfill no ballistics or trajectory tests could be done.

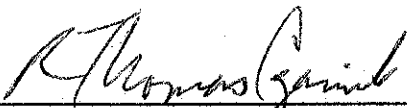
Regarding Issue F: The State did not rebut the defenses of Appellant particularly that of self-defense/defense of family. In fact the State's own witnesses although they perjuringly differed from Sgt. Rocky Lane's analysis of how the shot was fired, admitted they went to cause serious harm, they would not desist, and they blocked appellant and his son's

retreat. It was the assailants who ignored that Appellants girlfriend said she was going to call the Police, and she did.

The State's argument entirely mischaracterizes the evidence and speculates, and Appellant will rely on the testimony as this Court reads it.

WHEREFORE Appellant requests he be granted the relief he requests.

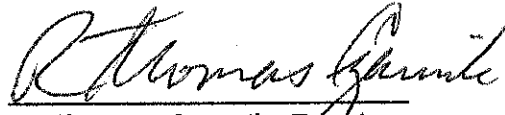
Larry Dinger
By Counsel



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CERTIFICATE OF SERVICE

I, R. Thomas Czarnik hereby certify that I mailed U. S. postage paid a copy of the foregoing Reply to Robert D. Goldberg, Deputy General, State Capitol, Room 26E, Charleston, WV 25305; dated this the 20th day of September, 2005.


R. Thomas Czarnik, Esquire