In The

Court of Appeals

Of Virginia

Brian David Hill,

Appellant,

v.

Commonwealth of Virginia, City of Martinsville

Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF MARTINSVILLE

PETITION FOR APPEAL OF APPELLANT

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES/CITATIONS

Page(s)

CASES

CONSTITUTIONAL PROVISIONS

STATUTES

RULE

Brian David Hill, (the "Appellant" or "Petitioner") files this Petition for Appeal pursuant to Rule 5A:12 of the Rules of this Court, and this is the Second Direct Appeal case due to the first Appeal case (cases no. 0128-20-3, 0129-20-3) being dismissed due to lawyer John Ira Jones, IV ("Jones"), not filing any pleading or motion. Motions for delayed Appeal were filed by that lawyer for his mistakes and were granted, and the Appeals were allowed to be filed again. The appeal was timely appealed.

Since the Counsel Jones, has failed or refused to communicate with Appellant with the deadline fast approaching, Appellant had decided to file the Petition for Appeal on a pro se basis to prevent the Appeals from being dismissed again due to no filing by the deadline set by the Court.

There is no transcript as the Clerk of the Circuit Court had filed a record transmittal to the Court of Appeals of Virginia:

Citing from record: "Your record was submitted to be processed on: 01/29/2020 11:00:15" The record stated that "No transcript or statement of facts will be filed and therefore the record is being sent as is. THIS APPEAL WAS TRANSMITTED ELECTRONICALLY"". Petitioner had attempted to file a letter with this Court and the Lower Tribunal known as the Circuit Court of Martinsville (the "Trial Court"), asking the Trial Court to produce Transcripts of all criminal case hearings, but the Trial

Court does not seem to have any Transcripts for any of the hearings. Therefore, Appellant has done his part and will rely mainly on the Record on Appeal and the paper filings in Record for this Petition for Appeal.

The statement of the facts "statement of facts" that is in this "Petition for Appeal" to the Court of Appeals of Virginia as "II. STATEMENT OF THE FACTS" will cite the exact pages of the record in regards to the statement of the facts. Appellant is aware from the past filings of the Respondent that the Commonwealth of Virginia will disagree with the Appellant's statement of facts and produce their own. Well Appellant will produce his truthful and factual statement of the facts that will outweigh even the Commonwealth's statement of facts and will be proven by citing the exact areas of the record prior to the final judgment of the Trial Court. The Petitioner will show exactly from the record where the "Assignment of Errors" refers to.

I. STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

Brian David Hill, (the "Appellant" or "Petitioner") petitions for being allowed to perfect the appeal from a final judgment in a criminal case that had entered a final Judgment which had denied Petitioner's Motion to Vacate a Fraudulent Begotten Judgment (Pages 436-462), which such final judgment (Page 463) was filed on November 25, 2019, in the Circuit Court of Martinsville by the Honorable Judge Giles Carter Greer. The notice of appeal was timely filed (Page 891) on

November 12, 2020, after the Court of Appeals had granted the motion for delayed appeal after dismissing case no. 0129-20-3 for counsel not filing any pleading by the deadline that was set by Rule 5A:12(a). Appeal is authorized as timely pursuant to Virginia Code § 8.01-675.3, if the Petition for Appeal is granted by this court. Appellant will demonstrate the matters of judicial error (assignments of error) and abuses of discretion by the Trial Court that have resulted in Unconstitutional errors, defects, and evidence that was overlooked at the time of the Final Judgment by the Trial Court, constitutional issues and matters of law in the appealed case including a substantial issue for appeal concerning the denial of a constitutional right affecting the wrongful criminal case conviction or a debatable procedural ruling. Appointed Counsel Jones is failing again to properly file any pleading with the Court by the set due date and this could end up like the last dismissed Appeals, therefore Appellant proceeds pro se and had filed his initial "AFFIDAVIT OF INDIGENCE", so Appellant requests that the Appeals Court review the Record pages cited from the case in this Petition and Appellant confirms that he has reviewed over the Record in this Appeal thanks to the Deputy Clerk.

II. STATEMENT OF THE FACTS

The Commonwealth will have their "Statement of the Facts" as is their right, but the Appellant will present its Statement of the Facts based upon evidence on the record that was not impeached and was not suppressed as evidence prior to the Final Judgment. The pages cited in the Record are with three (3) pages included which is the "TABLE OF CONTENTS" produced by the Clerk: "CAV: 02-26-2021 07:00:37 EST". A three-page difference. So, if the page cited for example is 203, then the

Trial Court record should be 200 without the Table of Contents, but the PDF File of the Trial Court record will say 203 when it includes the Table of Contents which is 3 pages. Appellant is following the page of the entire PDF file record with the TABLE OF CONTENTS included, so the page count will be 3 pages more than the page number of the record, 3 pages off.

The facts that were presented to the Trial Court are as follows:

1. On September 21, 2018, Officer Robert Jones of Martinsville Police Department had charged Appellant Brian David Hill with the crime of Indecent Exposure under Virginia Code § 18.2-387. See pg. 4 of 961, ARREST WARRANT. Under Page 6 the CRIMINAL COMPLAINT was filed as an Affidavit supporting the criminal charge against Appellant. It said in part of the COMPLAINT: "He was medically and psychologically cleared. He was arrested for indecent Exposure." That was the basis for why his charge had stuck was that the Trial Court was given the impression that Brian was medically and psychologically cleared. That actually is not the facts here. Appellant had filed various pro se filings that were overlooked by the Trial Court and was never known to the General District Court on December 21, 2018, the TRIAL that was held in the General District Court where Appellant was found guilty and Appellant had timely appealed the case to the Circuit Court of Martinsville ("Trial Court"), the State Court of Record. Appellant had produced evidence to the Court and the Commonwealth Attorney proving that Appellant was not actually medically cleared but was

prematurely released by the Hospital while giving the impression that he was medically cleared. Simply releasing him from the Hospital is not enough to prove for a fact that Appellant Brian Hill was indeed medically cleared enough to have ever been put in a situation to be held culpable for the incident on September 21, 2018.

2. It is a fact on the record that Brian Hill was released from the Hospital on September 21, 2018 from 4:04AM to 5:11AM under pages 199 through 205 of 961. Appellant was not at the Hospital for a lengthy time to make a decent determination on whether Brian was in fact medically cleared or not. The Commonwealth who prosecuted the case did not know that for a fact that they filed a Motion for Reciprocal Discovery (Pages 243 through 244 of 961) after Brian's pro se filings. Commonwealth said in their responsive Discovery request pleading that they wanted any documentation of "…the existence of which is known to the Attorney for the Commonwealth, and <u>any relevant written reports of autopsies, ballistic tests, fingerprint analysis, blood, urine and breath tests, other scientific reports</u>, and <u>written reports of a physical or mental examination</u> <u>of the Defendant</u> or the alleged victim made in connection with this particular case." So, the Commonwealth of Virginia didn't even know for a fact themselves whether Brian was medically cleared that they asked for reciprocal discovery. If they did get the evidence, the very same Medical Record that was filed by Appellant pro se in CORRESPONDENCE, pages 199 through 205,

then they know that the Hospital had decided to refuse to conduct the Laboratory testing including alcohol levels and had just decided to release Brian to “Jail/ Police” on Page 204. The Hospital had clearly skirted their responsibility, had committed medical neglect knowing that Brian was going directly to Jail and could not contact his private physician, it was incompetence. The Medical Record also shows that they never tested his Type 1 Diabetic blood sugar when they knew he was diabetic (pg. 200). That also does not make him medically cleared when they never even tested his blood sugar level knowingly sending him out to face a Magistrate Judge for his charge of Indecent Exposure without ever checking his blood sugar. A big medical NO!-NO! on record. Also, on Page 146 of the record in the PDF file, zoom in closely at the words, “Sinus Tachycardia”, and “105bpm” which is beats per minute. A resting blood pulse should not be over 100 or is considered Tachycardia, an abnormally high heart rate. Then see Page 152, “TRANSIENT CARDIAC DYSFUNCTION IN ACUTE CARBON MONOXIDE POISONING”. That document mentions of the same term “bpm” and explains what it means. Then it also said that “First responders arrived within 30 minutes and found her to have sinus tachycardia with a heart rate of 100 beats per minute”. From the Medical Record in Page 146 of the record, it is clear that Brian had a history of Tachycardia and had similar abnormal readings multiple times at the Hospital on the day of his arrest for Indecent Exposure

after being at the Hospital for an estimated 1 hour or less there, not enough time to fully check his health to make sure that he was truly medically cleared, they did not. Around 4:09AM the "Pulse 119", around 5:01AM "Pulse 106". Those readings were actually worse than the "Sinus Tachycardia" reading on Page 146 of the record. So, wouldn't Brian's health be worse than when he was in the Hospital on "Sunday, November 18, 2017", according to Page 144 of the record. Brian actually was Hospitalized with "Sinus Tachycardia" for having a resting blood pulse of "105" but yet on September 21, 2018, his blood pulse was actually worse than the last time he was admitted in the Hospital but they never actually did any laboratory tests when they clearly should have when considering his behavior described by police and didn't even understood that Brian was suffering under Tachycardia and they "Discharged to Jail/Police" on 4:52AM according to their report. None of it makes any sense, they released a patient knowing that Jail has the worst Medical Care, they released him while he suffered under Tachycardia and they never checked his blood sugar knowing that was he was diabetic before they discharged him and not even giving him an hour at the Hospital. Hardly gave any time to actually give any thorough medical clearing. Then on Page 203, it said: "Differential diagnosis: fracture, sprain, penetrating trauma, et al. bdh ED course: Cleared from a psychiatric standpoint by Behavioral Health. patient will be discharged to jail." That actually does not say

the words “cleared” from a regular medical standpoint and they could not legally say so when evidence showed that Brian had Tachycardia readings that were actually higher than Brian’s last Hospital stay in 2017. That is all in the Record prior to the final conviction of Brian David Hill for Indecent Exposure. So, it is a FACT that Brian was not medically cleared and that the Arresting Officer and his affidavit under Criminal COMPLAINT on Page 6 was wrong when the evidence had shown that Brian was not medically cleared at all. There were Laboratory tests being ordered on Page 205 of the Record. See from the Record it said that “The following items were deleted from the chart, and then 04:52 09/21/2018 04:52 Discharged to Jail/Police.” So, **they used his arrest as an excuse to cancel the Laboratory Tests and then the blood vials reportedly destroyed and evidence spoliated**, which is evidence destruction, OBSTRUCTION OF JUSTICE under 18 U.S. Code § 1519 since Appellant was on Federal Supervised Probation. The Commonwealth knew that evidence was being destroyed, evidence that would have proven that Brian was suffering under some kind of chemical or substance which would explain his psychiatric episode he had suffered while he was taking photographs of himself in the nude. Anybody in the Court who saw the photographs submitted as Exhibits from the Commonwealth can tell that he was acting as though he were on drugs or some narcotic or substance. It all makes sense. The Commonwealth can disagree with this medical

FACT all he wants to but the evidence is evidence and the FACTS are the FACTS and were never refuted. Page 286 also brought up the "Sinus Tachycardia" arguments. Then on Page 287, said "So Brian's heart beats were at extremely high or even possibly dangerous levels (high risk of a heart attack or a stroke) showing signs that something was wrong with Brian's body which can also attribute to his confusing mental state." That was cited in Appellant's "Motion to Request an Insanity Defense — Sanity at the time of the Offense", Page 285. However, this fact of not being medically cleared by irrefutable Medical Records and was argued pro se by Appellant were overlooked by the Trial court and overlooked by the Defense counsel aka Appellant's court appointed lawyers.

3. There is clearly a conflict in the Hospital psychologically clearing Brian on September 21, 2018, Page 203 of 961. Then there was another mental evaluation on Page 193, "10/24/2018 9:61 AM to 10:23", dated October 24, 2018, prior to the Court ordered Mental Evaluator meeting with Appellant for determining Sanity in the General District Court. Said in Page 195 "Thought Content: Delusional", medication was prescribed by Psychiatrist Dr. Conrad Daum of Piedmont Community services in Martinsville on October 24, 2018, prior to the Mental Evaluator meeting with Appellant in the SEALED report, but not by the Hospital who quickly claimed that Brian was mentally/psychologically cleared on September 21, 2018.

Said on Record Page 195: “Obsessive-compulsive disorder, unspecified”, “Autistic disorder”, “Unspecified psychosis not due to a substance or known physiological condition”, Page 196: “Generalized anxiety disorder”, and prescribed medications were for “olanzapine 2.5 mg tablet and sertraline 50 mg tablet”. So, the psychiatrist Dr. Conrad Daum thought that Brian exhibited an “unspecified psychosis” or delusional thought content at the time of mentioning of a “guy in hodie threatened to kill my mother if I didn't do what he said" "meltdown" He was arrested for walking down the street naked and charged with a probation violation.”, Page 193 of the Record. It is clear that this diagnosis conflicts with the Hospital’s claims that Brian was mentally or psychologically cleared. Commonwealth knew this when Brian filed this information pro se. However, this fact of not being medically cleared by irrefutable Medical Records were overlooked by the Trial court and overlooked by the Defense counsel aka Appellant’s court appointed lawyer.

4. The General District Court erred on December 21, 2018, in finding Appellant guilty and that was one of the reasons why Appellant had appealed to the Circuit Court (the “Trial Court”). That is because the evidence submitted by the Commonwealth failed to show that Appellant acted intentionally to make an obscene display or exposure of his person. The counsel that was court appointed should have moved to use this exact argument or any similar arguments to request dismissal

of Brian's charges including the facts that Brian was not medically cleared. Brian thought his counsel was so ineffective that he had filed a pro se "motion to dismiss" which is Page 403 through 421 but was ignored/overlooked by the Trial Court because Appellant had counsel appointed at the time and was his last pro se motion prior to his "MOTION TO WITHDRAW APPEAL", Page 422 through 433. It is clear that Appellant could have had his charge dismissed with the evidence alleged in Appellant's truthful statement of the facts from Appellant's side of the story, his filings and evidence that was never objected to by the Commonwealth. It is clear that Appellant was never factually medically cleared. It brings forth the argument that Brian never would have possibly faced a criminal charge from the Commonwealth if his health was fully medically examined. They would have found evidence of Carbon Monoxide poisoning levels (Pages 127 through 136) which would have been reported directly to Martinsville Police and the Fire Marshals of Henry County, and the Martinsville Police highly likely would never have escalated this to a charge in the General District Court. Even if it had been escalated to a criminal COMPLAINT, Brian would have had the levels of Carbon Monoxide Poisoning had the Laboratory tests been conducted and not destroyed by the Hospital (pg. 205) and blood evidence not retained by Police during a criminal case matter. It is clear that the Virginia Health Boards need to investigate and possibly sanction that Medical Doctor

for Medical Neglect by not conducting a full Medical Clearing as necessary for Appellant to have been validly charged with Indecent Exposure.

5. When Appellant had filed his Motion to Withdraw the Appeal in the Trial Court which is Pages 422 of 961 of the Record, Page 434 the Trial Court Judge only considered his "Motion to Withdraw Appeal" as exactly that, a technical withdraw **but did not consider it as a "guilty plea" in fact the Trial Court** never entered in that Brian actually plead guilty, **he did not plead guilty, it was marked out by the Judge at the time the conviction was entered**. There was no guilty plea by Appellant. Page 434 written this: "Other: DEF ~~CHANGED HIS PLEA TO GUILTY AND~~ AFFIRMED JUDG GDC, PAY COURT COSTS." Yes, Appellant is showing the true strikethrough, the Judge had stricken the words "~~CHANGED HIS PLEA TO GUILTY AND~~" with what appeared to be a black marker pen. So, the **Judge of the Trial Court did not consider that Appellant honestly decided that he was guilty because** in his Motion with Withdraw Appeal **he said that he did not waive his actual innocence or legal innocence, he did not plead guilty by any stretch of technicality**. He felt that his counsel was giving him bad advice or was ineffective. He may not have uttered the actual words "Ineffective" but did mention those words in his Page 436 "MOTION TO VACATE FRAUDULENT BEGOTTEN JUDGMENT". So shortly after the final judgment, he did object to his

ineffective counsel with those technical words uttered in writing prior to the Notices of Appeal. In fact, Brian said there were some meddling or unethical interference or issues being raised by the Public Defender Office after they were relieved as counsel of record by the Trial Court. See 383 through 386 of 961. In Brian's motion to withdraw appeal he made some very concerning claims that were overlooked by the Trial Court in regards to ineffective counsel by possibly meddling over interference by former appointed counsel by claiming: Page 430: "He has other routes to prove his legal innocence and overturn his conviction in the General District Court. Brian doesn't to have to deal with any drama coming from the Martinsville Public Defender office over what one of Brian's friends had posted at JusticeForUSWGO.wordpress.com back in June or July 2019". The Trial Court overlooked the facts that the **Public Defender Office may have interfered with any potential future counsel whether appointed or persuading a private attorney to represent him pro bono** in **some form of unspecified retaliation campaign alleged by Appellant.** Even said in his claim that "but then removed those from the blog posting out of concerns from Brian's family that it would put a target on all of our backs." So, there was fear that Brian or his family would be targeted if "one of Brian's friends" didn't remove the blog post. So, **there was clearly some unethical behavior going on and connected with the Public Defender Office of Martinsville even**

after they had filed a motion to withdraw as counsel (Page 381), they still had some form of unethical influence which is a conflict of interest and may violate ethics. There was clear unethical behavior sounding activity going on but was also overlooked by the Trial Court. Then Brian made statements which was likely why Attorney Jones was appointed to this appeal by making statements such as "Brian is having to consider asking for a non-local Virginia attorney away from the Bible belt and away from the Public Defender office". Again, that sentence was in Page 430 of the Record file. However, this fact of dealing with unspecified unethical influence by former counsel were overlooked by the Trial Court and no evidentiary hearing was conducted over those claims.

6. It is quite clear that a lot of the Record on Appeal is of pro se pleadings in Appellant's criminal case. In fact, a very large majority of filings were of pro se material, pro se pleadings and pro se evidence. A lot of evidence demonstrating ineffective assistance of counsel on the record.
7. The Statement of FACTS herein show factual evidence, prima facie, from the Record pages itself that the Commonwealth Attorney had defrauded the Court and misled the Court on two material facts: (1) that **Appellant Brian David Hill had no intent on September 21, 2018, to act obscene in any such way which would appeal to the prurient interest in sex but the Commonwealth Attorney still pushed for the charge and conviction in the criminal court system**, and that (2)

Appellant had not been proven to have been medically cleared which contradicts the element of the "CRIMINAL COMPLAINT" that Appellant has been "psychologically and medically cleared" and Hospital had prematurely released him without checking his entire health to determine whether Appellant had any narcotics or substances or gases in his body prior to prematurely discharging Brian from the Hospital quickly and arresting him for Indecent Exposure. The Commonwealth Attorney had allowed evidence to be destroyed and had not provided certain evidence to the Defense Counsel pursuant to past Court Orders on discovery. The Commonwealth Attorney did not provide the body-camera footage as Appellant was never shown such footage. The Commonwealth Attorney failed or refused to retain the vials of blood samples obtained by Brian Hill while he was at the Hospital on September 21, 2018. Blood samples drawn after he was found butt naked at nighttime without a sensible explanation or not making any sense, it is logical that any Law Enforcement Officer test any blood or urinalyses samples from Defendant or Suspect prior to developing the evidence alleging his guilt of any crime. The **Commonwealth Attorney and its Law Enforcement Officer witness Robert Jones of Martinsville Police Department had allowed blood samples evidence to be destroyed knowing that it may or may not have been beneficial to the Defense of Appellant**. That is the Frauds that Glen Andrew Hall, Esq. had

conducted and should be punished for that behavior**. Even if he can successfully argue that police don't have to conduct laboratory tests on anybody behaving or acting erratic at night**, the **Police shouldn't have stated for a fact on a CRIMINAL COMPLAINT AFFIDAVIT (Page 6)** that Appellant was medically cleared without making sure that laboratory testing was conducted while he was at the Hospital or even in the Jail. That is a factual misrepresentation and knowing falsehood of Mr. Hill's health. **Appellant was NOT medically cleared and the Commonwealth Attorney knew that** but Defense Counsel Scott Albrecht failed or refused to bring that effective defense arguments up in General District Court, and neither did he attempt to bring up a motion to dismiss with such arguments.

8. Any other STATEMENT OF FACTS, the Appellant will allow the Commonwealth Attorney for Appellees to retain and stipulate their FACTS of the Criminal Case. Appellant will let them stipulate their facts and side of the story but Appellant's FACTS under paragraphs 1-7 are of Appellant's side of the story that was never brought up by Defense Counsel but was brought up Pro Se by the Defense prior to the Final conviction (Pages 434-435) and Final Judgment (Page 463). However, if Appellant disagrees with any of the claims by the Commonwealth Attorney then he will file his respectful reply or bring up his disagreements in any Oral Argument pursuant to Rule 5A:12(g).

Anyways, there is U.S. Supreme Court case law, other case law including by the Supreme Court of Virginia, and Constitutional issues that explains why Appellant believes that the Trial Court made errors in the state case, the assignments of error are stated below:

III. ARGUMENT

i. Standard of Review

A Trial Court's decision to deny Appellant's "MOTION TO VACATE FRAUDULENT BEGOTTEN JUDGMENT" (Page 436) and then entered that final judgment (Page 463, ORDER - VACATE FRAUD JUDG-DENIED) is reviewed for abuse of discretion and for the Errors specified in the Assignments of Error by Petitioner in asking the Court of Appeals to grant such Petition and allow Petitioner/Appellant to perfect the Appeal in asking this Court to order a reversal of the Final Order (Page 463) and order and remand the Court for further proceedings to address the issues of "Fraud on the Court" by Officer of the Court named Glen Andrew Hall, the Commonwealth Attorney.

When reviewing the final order of denying the motion (Page 463) of Appellant without addressing any of the issues of "Fraud" by the Commonwealth Attorney, such order that was imposed by the Trial Court and its reasonableness, Appellant asks for granting of this Petition for Appeal so that this Court can review over the Final Judgment for abuses of discretion and/or by Appellant showing the Assignments of Errors, and then make an order and remand.

The issues of fraud should have been investigated by the Trial Court instead of denying that motion since the Motion asked to vacate the final criminal conviction

order (Page 434) for the issues of fraudulent elements and also since it had stated from the record that **Appellant had not entered a plea of guilty** but **had simply technically withdrawn his appeal**. That order was entered on the 18th day of November, 2019."

IV. Assignments of Error

ii. Argument

i. The Trial Court erred by entering the Final Judgment (Page 463) as a matter of law or abused discretion in overlooking the evidence filed Pro Se which proves Fraud upon the Court by the Commonwealth Attorney. That deprived Appellant of Due Process of Law and Equal Protection under the Laws in the Fourteenth Amendment of the U.S. Constitution.

The assignment of error was that the Trial Court had errored and/or abused its discretion in denying the Appellant's "MOTION TO VACATE FRAUDULENT BEGOTTEN JUDGMENT" (Page 436 through 462) which was filed Pro Se then entering the final judgment under page 463. That is overlooking the evidence filed by Appellant throughout the case showing defects in the entire prosecution against Brian David Hill since Page 6 (CRIMINAL COMPLAINT). Evidence was clearly overlooked and should have been addressed in Appellant's separate but accurate "MOTION TO VACATE FRAUDULENT BEGOTTEN JUDGMENT" as the facts could have been realized had the evidence filed on the Record not been overlooked. There should have been an evidentiary hearing to look over all of the pro se evidence filed by Appellant and sort all of this out before making a final decision on Appellant's motion, that is the

clear error here.

Defects brought out in "II. STATEMENT OF THE FACTS" (Page 3 of Petition for Appeal), paragraphs 1 through 7. It was overlooked because Appellant had legal counsel appointed to his case from Scott Albrecht (Page 10, REQUEST FOR APPOINTMENT OF A LAWYER) to Lauren McGarry (page 381, MOTION TO WITHDRAW AS COUNSEL OF RECORD) to Matthew Clark (page 386, ORDER - APPOINTED ATTY MATT CLARK). None of the court appointed lawyers were bringing out the defects even though the defects would be obvious if anybody conducted a thorough investigation into Brian Hill's behavior on September 21, 2018 when he had never exhibited such behavior previously, all of his medical and mental health records, and the Hospital had never conducted laboratory testing. The Commonwealth Attorney knew that the lab tests were never done and Brian said that he thought he was drugged which should have been "PROBABLE CAUSE" to require a court ordered drug testing or request that he voluntarily accept such testing at the time on September 21, 2018.

For God's Sake, Appellant made statements in sloppy handwriting saying "…*On September 20, 2018, Thursday, some of my memories may have been blacked out*…" on "Case 1:13-cr-00435-TDS, Document #153, Filed 10/17/18, Page 2 of 11" (Page 94 of the record entitled "CORRESPONDENCE") indicating that it was filed on Federal Court record on October 17, 2018, less than 1 month exactly after the incident on September 21, 2018. Then said "...*I felt like I might collapse so I may have been drugged. I had to keep sitting on benches*…" on Page 95 of the Record. Sloppy handwriting, saying he may have been drugged, writes this to the Federal Court. Then on Page 186

through 190 of the Record with the words “Exhibit 8”, shown that he had mailed multiple envelopes to the wrong address as if showing mental confusion. He was piecing together the Greensboro, NC Federal Courthouse at “324 West Market Street, Greensboro, NC 27401” and had instead written the address of “324 West Market Street, Martinsville, VA” where no Federal Courthouse even exists at that location. Making confusing writings, writing the wrong addresses with pieces of the right address, sloppy handwriting, and saying that he thought he was being drugged. The police didn’t even make heads or tails out of what Appellant was saying, just assumed he was lying or making it up. However, they never actually did a drug test, they never actually checked his diabetic blood glucose on September 21, 2018. Then on Page 191 through 197, marked as “Exhibit 9” in the Record, it said a new diagnosis had came regarding Appellant such as “(F29) Unspecified psychosis not due to a substance or known physiological condition” and so the psychiatrist Dr. Conrad Daum of Piedmont Community Services didn’t think that Appellant was lying about his claims but simply thought he was delusional and exhibited a psychosis, a forensic psychiatrist had said so from Piedmont Community Services but was ignored by both the Commonwealth Attorney and all of Appellant’s defense attorneys. That report was omitted from the SEALED forensic psychologist examination of Brian David Hill on November 19, 2018 and the report was filed on November 26, 2018, see “(SEALED) EVALUATION REPORT - PSYCHOLOGICAL EVAL-GDC” pages 64 through 70. It is clear that this Doctor did not review over any of Appellant’s extra-judicial statements written in very sloppy handwriting and filed with the Federal Court and later filed a copy of the exact

Federal Court filing with the Trial Court in his criminal case. When you see good handwriting a few months later while Appellant was locked up, See Page 23, filed November 20, 2018, Letter dated Nov. 13, 2018. In his letter written in November, 2018, around the time he was interviewed by the Mental Evaluator on November 19, 2018, he didn't make the kind of paranoid statements that he had made after his initial arrest with the very sloppy handwriting, you can tell a difference. Very sloppy hand-writing, writing the wrong addresses (pages 186-190), making very paranoid statements and saying that he had blacked out memories and thought he was drugged and yet he kept his doors unlocked. None of those statements were ever brought up with the evaluator Dr. Rebecca Loehrer (Page 17). Nothing on the Record on Appeal proves that those relevant written statements concerning his indecent exposure charge were ever reviewed for the evaluation report for the General District Court.

That sloppy handwritten pleading made extrajudicial statements that should have been brought up by the Commonwealth or defense Attorney to the mental evaluator saying *"(4.) On September 20, 2018, Thursday,* ***some of my memories may have been blacked out****. I was under an extreme amount of stress and anxiety already due to the pre-filing injunction Motion****. My whole family could tell. My mom had also noticed that my doors were not locked I was psychologically afraid to sleep in my bed. Sometimes sleeping on the couch and I had a bad feeling something bad would happen to me.***", citing Page 94 of the Record on Appeal, also a copy of Federal Court filing referenced Case #1:13-cr-00435-TDS, Document 153, Filed 10/17/18, Page 2 of 11. None of that was ever reviewed by the Mental Evaluator for sanity. The evaluator

never saw any of his weird writings saying "*ON SEPTEMBER 18TH 2018,* ***Somebody was in the thicket at the end of my neighbor's property*** *and* ***branches moved whenever I looked in that direction****….* ***Likely surveiling me.***". Citing Page 94, Case #1:13-cr-00435-TDS, Document #153, Filed 10/17/18, Page 2 of 11. Yes, so paranoia statements were made where Appellant said in writing that somebody was spying on him on his neighbor's property in the ticket and claimed that he saw the branches move and thought he was under surveillance. So, he was making all kinds of crazy off the wall statements. It is clear that something was mentally wrong with Appellant and yet he was declared sane and competent. Again, see Pages 64 through 70, (SEALED) EVALUATION REPORT - PSYCHOLOGICAL EVAL-GDC. Didn't even spelled the words "surveilling" properly when he written the word "***surveiling***". His paranoid statements and saying that he thought he was drugged was right around the time that Dr. Conrad Daum had evaluated Appellant and prescribed him medications. Said in his notes "History of Present illness (HPI): Notes: local is mental, quality he agreed to zyprexa and zoloft" on Page 193, and on Page 195 he had typed down another interesting note saying "Thought Content: Delusional". So, Appellant had exhibited both psychosis and delusional thought content. Was to be prescribed on medication after meeting with Appellant on October 24, 2018. Then around the time that evaluator Dr. Rebecca Loehrer (Pages 64 through 70) had seen Appellant, she thought he was sane and competent. That was because at that time whatever drug, narcotic, substance, or whatever had affected him would slowly lose its affects and go away. Within months he started appearing saner and more competent. The Commonwealth Attorney and Defense

Attorney had not fully complied with the Court Order on Page 17. They didn't even want her to know of the contents of Appellant's handwriting. The Commonwealth Attorney wanted him found guilty at all costs as with many prosecutors in criminal cases.

The point of this "Assignment of Error" was that the entire mental evaluation was erroneous and materials that were filed with the Trial Court were not given over to the evaluator when the dates of such filings show that the Federal Court was informed as to the insanity and crazy words being filed by Appellant a month prior to being placed on medications and preforming well in being evaluated by Dr. Rebecca Loehrer. Usually anybody who was high on a drug or substance or gas would write sloppy handwriting, having paranoia and hallucinations, say claims as to being drugged and having blackouts. For there to be no laboratory testing at all and there being blood work but no lab testing and blood vials destroyed shows a huge DEFECT, ERROR, and FRAUD on the part of the Police Officer who filed the CRIMINAL COMPLAINT (Page 6) against Brian David Hill with such false claims that he was medically and psychologically cleared. He was NOT IN FACT medically and psychologically cleared, the Hospital Record and the psychiatrist Dr. Conrad Daum evaluation 1 month prior to the other SEALED mental evaluation report says different, contradictions. He should have been evaluated quickly by Dr. Rebecca Loehrer when Appellant was making off-the-wall statements and she never would have written her report the way it was written in SEALED pages 64 through 70. That's just showing the defect in the psychological evaluation of Appellant. Not even this Court of Appeals can fix such defect by simply asking for another mental evaluation because it would be years after the alleged offense

allegations. The number of errors on this element of the charge alone would be sufficient in throwing out the criminal charge against Appellant on Page 6, "CRIMINAL COMPLAINT". If Appellant was not medically cleared for a fact that the whole charge and conviction of Appellant on November 18, 2019, would be erroneous. The charge against him on September 21, 2018 would be erroneous. The General District Court conviction against him on December 21, 2018 would be erroneous.

Here is as to the medical aspect of his supposedly being medically cleared. On Page 141 which is "Exhibit 1", next Page 142 shows a January, 2019th letter from chimney expert Pete Compton on finding evidence of carbon monoxide inside of the home of Brian David Hill, months after his arrest from September, 2018. On January 30, 2019, this was discovered, 1 month after the General District Court had convicted Appellant. Then on Page 143 which is "Exhibit 2", it shown a Medical Record on Page 144 dated "Sunday, November 18, 2017". Lab tests were done around that time he was in the Emergency Room (ER) saying "Labs CMP, Complete Blood Count W/auto Diff, Thyroid Stimulating Hormone, POC GLU, POC GLU", as shown on page 145. Then said "Seizure precautions, Accucheck, Cardiac Monitor, Apply to Pt, Pulse ox continuous, Oxygen at 2 L/NC, lV saline lock, EKG ED, laceration repair set up". They did all of that because of Appellant being injured in the head with blood pouring out. They actually did all of those laboratory tests and found different issues. On Page 146 they found "Sinus Tachycardia" which is a resting blood pulse over 100 beats per minute. Then on page 147 they found abnormally high lab results for certain criteria. White Blood Cell (WBC) was at 11.6, Mean Platelet Volume (MPV) was at 10.8. So,

he had some high readings. Sounds typical for any Emergency Room visit to ensure that proper laboratory tests and drawing blood is done during any injury, right????? Then why was his injury on September 21, 2018 (Page 198 “Exhibit 10”, through Page 205) treated differently than the Medical Record on November 18, 2017?????? They threw him out of the Hospital with severe abrasions and injuries to quickly discharge him to Jail and they and/or the Police have the gull to call him medically cleared, Huh, that sounds more like a rush job and they didn’t want to test him for drugs or anything. They could have found evidence of Carbon Monoxide Poisoning levels and that would have been perfect evidence for this criminal defendant that he was suffering under Carbon Monoxide Poisoning at around the exact time he was found naked and was arrested while naked. Heck, the Police would have rather believed the Carbon Monoxide evidence over Appellant’s claims about a man wearing a hoodie. The Hospital was at clear fault and should have been sued for their misconduct and medical neglect. Also, the Police of Martinsville and the Commonwealth Attorney should also receive the blame too as they let the blood vials be thrown away even though that is criminal evidence that even involves the U.S Probation Office as Appellant was under Federal Custody during September 21, 2018, and was still actively serving his supervised release sentence (Pages 384 through 393). The Hospital never even checked his diabetic blood sugar on the record. His blood glucose affects the mood and behavior of any diabetic. The blame must be put on the Police Officer Robert Jones as well as the Commonwealth Attorney, both should be held criminally liable for Obstruction of Justice by spoliation of evidence under 18 U.S. Code § 1519. Appellant may consider filing a criminal

complaint with the U.S. Federal Bureau of Investigation over the Hospital's and Police Officer's handling of blood evidence that was pertinent to the indecent exposure allegations. The Commonwealth should be held liable too.

Anyways the pleading on Page 436 "MOTION TO VACATE FRAUDULENT BEGOTTEN JUDGMENT" said "*COMES NOW criminal Defendant Brian David Hill ("Brian", "Hill")* ***respectfully requests that then Honorable Court move to vacate the judgment of conviction*** *entered on November 15, 2019 and* ***December 21, 2018, for fraud upon the court***".

Then he said in that pleading: "***Not just fraud upon the court, but the fact that this Court lacked jurisdiction to convict Brian of indecent exposure***. *This Court lacked jurisdiction to put Brian in a position to withdrawing appeal after* ***Brian had filed the pro se motion to dismiss based upon his legal innocence as a matter of law***. *Brian never signed any papers agreeing to automatically enter in a plea of guilty and was not advised by his lawyers that withdrawing the appeal would automatically enter in a plea of guilty.* ***Brian's lawyer did nothing to defend Brian****, and that explains why Brian had filed one pro se motion after another in the Circuit Court record in this case.* ***Deprived of equal access to the Court (equal protection under the laws), deprived of due process****,* ***deprived of effective counsel. This Court lacked jurisdiction*** *to even accept withdrawing Brian's appeal*.". He may be right about that. The Court may have even lacked jurisdiction once Appellant had started filing Medical Records showing that he was not medically cleared. That would actually go into violating the 4th Amendment rights of Brian David Hill, arresting him without probable cause. It is a defective

element, a permanent element of his charge. If an element is defective, then this may defect the entire criminal case depending on what the defects are and how severe a defect is in a criminal complaint. All of that was already factually argued in the first Assignment of Error on Petition pages 19-32 had clearly outlined. An element such as being medically and psychologically cleared when the Hospital treated him differently when not facing an arrest. Heck you can tell a difference in the Medical Records between dates November 18, 2017 (Pages 143 through 147) and September 21, 2018 (Pages 198 "Exhibit 10", through Page 205). They were more thorough, more responsive, and more caring on November 18, 2017, and it is the same Hospital, located at the same exact address in the city of Martinsville. When Appellant came in with abrasions, they treated him very poorly because of the police telling them about the so-called "indecent exposure" incident, almost as if to create stigmatization so that they want to throw him out and have him arrested with no laboratory results, no proof. Still the Commonwealth had violated 18 U.S. Code § 1519 criminal law for knowing that the blood vials would be valuable forensic evidence and letting the Hospital throw it away. Does the Commonwealth not think that Appellant's federal Probation Officer wouldn't investigate his state charge? The blood vials were destroyed and the Commonwealth knew it and the Police let it happen because they all thought that Appellant was some kind of liar or not making any sense so they must arrest him quickly from the Hospital and throw him in Jail and make sure that no blood count results can ever be obtained.

Overlooking the evidence is a serious error and issue when dealing with a final Judgment from a Trial Court.

Look at Exhibit 6 which is Page 162. It says on the next page, "Controlling Carbon Monoxide Hazard in Aircraft" by the CDC which is the "Centers for Disease Control and Prevention". It says "***Carbon monoxide is a colorless, odorless gas which limits the ability of the blood to carry oxygen to the tissues. Symptoms*** *of* ***acute CO poisoning*** *include headaches, rapid breathing, nausea,* ***weakness****,* ***dizziness, confusion****,* ***hallucinations****, and* ***discoloration of the lips or nail beds****. If* ***the exposure level is high, loss of consciousness may occur*** *without other symptoms. Death may result from depression of the functions of the brain, or if there is underlying coronary artery disease, from heart attack.* ***Because CO remains in the blood for several days****, there may be a* ***gradual increase in body levels of CO over the course of a work week****.* ***Effects of chronic exposure are not completely known***." Dizziness and confusion, maybe that was why Appellant's story was never believed by Martinsville Police as charged on Page 6, CRIMINAL COMPLAINT. Appellant can make confusing statements to Law Enforcement, if he was under Carbon Monoxide theoretically. That can be misbelieved by Law Enforcement as either a lie or non-believable claim. Carbon Monoxide (CO) can remain in the blood for several days. The laboratory tests could easily have picked this up and blood evidence would have proven this beyond a reasonable doubt as a defense fact for Appellant. If you noticed the CDC report, it says "*discoloration of the lips or nail beds*". That would have been known had the Martinsville Police Department turned over the body-camera footage of September 21, 2018 regarding finding and arresting Brian David Hill for indecent exposure. The body-camera footage would have been perfect in showing the discoloration of the lips. **In fact, if you look at the photographs**

of Brian David Hill being naked in the first place that the Commonwealth Attorney introduced as evidence in the General District Court on December 21, 2018, if you use image-interpolation software from programs like PhotoZoom Pro or other tools, zoom up to Brian's lips in those photographs taken around the time of the alleged offense to determine if there is any discoloration of the lips or nail beds. The Court of Appeals of Virginia may also use that to make its own determination whether the Trial Court had erred by overlooking a lot of clear and convincing evidence that Appellant had filed in his case in the Trial Court prior to the Final Judgment and Final Conviction. If they are able to look over the nude photographs of Brian Hill, then they should see if his lips appear discolored and need to use any special photo enlarging software to see if they are able to make such determination as that may help further prove Carbon Monoxide Poisoning of Appellant.

The Commonwealth didn't even have the Medical Records here and didn't even know about any laboratory results here, that is why they filed a Motion for Reciprocal Discovery. See page 243, "RESPONSE - MOT FOR RECIPROCAL DISCOVE", and that motion from the Commonwealth Attorney had asked for "***the existence of which is known to the Attorney for the Commonwealth****, and any relevant written reports of autopsies, ballistic tests, fingerprint analysis,* ***blood, urine and breath tests****, other* ***scientific reports, and written reports of a physical or mental examination*** *of the Defendant or the alleged victim made in connection with this particular case*". That was filed on February 6, 2019. The Commonwealth didn't even know if there was any laboratory tests or not and had filed that document at the wrong time, it should have

been filed at the time of Appellant's arrest, the blood samples should never have been spoiliated/destroyed. Spoliation of evidence is also a Fraud Upon the Court because the evidence may be favorable to the adverse party.

The possibilities are endless here, many more arguments could be made but it is clear that a lot of evidence was overlooked in CORRESPONDENCE, from Pages 71 through 237. A lot of things seem wrong with his charge and the way it was being prosecuted and defended. The lack of reviewing over all of the filed pro se materials seems to violate the Due Process clause of the U.S. Constitution, Amendment XIV.

Citing Amendment XIV of United States Constitution:

> "…No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (citation partially omitted)

Citing Article I. Bill of Rights, Section 11. "Due process of law; obligation of contracts; taking of private property; prohibited discrimination; jury trial in civil cases" of Virginia Constitution:

> "That no person shall be deprived of his life, liberty, or property without due process of law…" (citation partially omitted)

His liberty was taken away. He received more supervised release sentence, 9 months of Federal Imprisonment, see Pages 390 through 391. Unless he is proven to be innocent of his state charge or is acquitted in any way and cannot be convicted, Appellant

will face further deprivation of his freedom and liberty, even though it is a conditional liberty. Therefore, Appellant is still entitled to Due Process of Law in the Virginia Courts even for a misdemeanor. He is entitled to effective counsel, fair and equal access to the Judicial process, the adversarial system. State Courts must give equal protection under the law. That includes the Constitutional right to effective assistance of counsel. That includes Due Process where all evidence must be looked over and scrutinized, and not ignored or overlooked when making a final decision affecting the life, liberty, and freedom of a criminal defendant.

ii. The Trial Court erred by entering the Final Judgment (Page 463) as a matter of law or abused discretion in not holding an evidentiary hearing/proceeding in regards to the cumulative evidence filed Pro Se which proves Fraud upon the Court by the Commonwealth Attorney. That deprived Appellant of Due Process of Law and Equal Protection under the Laws in the Fourteenth Amendment of the U.S. Constitution.

The assignment of error was that the Trial Court had errored and/or abused its discretion in denying the Appellant's "MOTION TO VACATE FRAUDULENT BEGOTTEN JUDGMENT" (Page 436 through 462) which was filed Pro Se then entering the final judgment under page 463, when the Trial Court held no evidentiary hearing/proceeding in regards to the cumulative evidence filed Pro Se which proves Fraud upon the Court by the Commonwealth Attorney.

The Appellant does not feel it is necessary to copy, paste, and reiterate all of the evidence pages of the Record on Appeal brought out in the 1st Assignment of Error.

Read the FACTUAL ISSUES and EVIDENCE ISSUES in Assignment of Error:

"*i. The Trial Court erred by entering the Final Judgment (Page 463) as a matter of law or abused discretion in overlooking the evidence filed Pro Se which proves Fraud upon the Court by the Commonwealth Attorney. That deprived Appellant of Due Process of Law and Equal Protection under the Laws in the Fourteenth Amendment of the U.S. Constitution.*"

Also again citing "II. STATEMENT OF THE FACTS" (Page 3 of Petition for Appeal), paragraphs 1 through 7.

The Trial Court should have held an evidentiary hearing before it dispositioned the case as it had deprived Appellant of Due Process of Law.

Fuentes v. Shevin, 407 U.S. 67, 81 (1972). At times, the Court has also stressed the dignitary importance of procedural rights, the worth of being able to defend one's interests even if one cannot change the result. Carey v. Piphus, 435 U.S. 247, 266–67 (1978); Marshall v. Jerrico, Inc., 446 U.S. 238, 242 (1980); Nelson v. Adams, 529 U.S. 460 (2000) (amendment of judgement to impose attorney fees and costs to sole shareholder of liable corporate structure invalid without notice or opportunity to dispute).

Mathews v. Eldridge, 424 U.S. 319, 333 (1976). "Parties whose rights are to be affected are entitled to be heard." Baldwin v. Hale, 68 U.S. (1 Wall.) 223, 233 (1863).

Carey v. Piphus, 435 U.S. 247, 259 (1978). "[P]rocedural due process rules are shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases." Mathews v. Eldridge, 424 U.S. 319, 344 (1976).

Even cases in the Commonwealth of Virginia state that notice of hearing is a due

process constitutional right.

> Cheeks v. Commonwealth, 20 Va. App. 578, 582-83 (Va. Ct. App. 1995) (“In Harris v. Deal, 189 Va. 675, 686-87, 54 S.E.2d 161, 166 (1949), the Supreme Court stated that [n]o judicial proceeding can deprive a man of his property without giving him an opportunity to be heard in accordance with the provisions of the law, and if a judgment is rendered against him without such opportunity to be heard, it is absolutely void. A void judgment is in legal effect no judgment. By it no rights are obtained. See also Matthews v. Commonwealth, 216 Va. 358, 359, 218 S.E.2d 538, 540 (1975) (holding that " ' "it is well settled that a void decree or order is a nullity and may on proper application be vacated at any time." ' ") (citation omitted). Applying this principle, we find that the order of October 27, 1993, entered in the circuit court is void for lack of notice to the appellant. An important consideration in interpreting the meaning of a statute is whether it is mandatory and jurisdictional or directory and procedural. When asked to decide whether various provisions relating to juvenile transfer proceedings are jurisdictional in nature, the Supreme Court has analyzed the provisions "to determine whether they impart a substantive right to the juvenile or merely impose a procedural requirement." Jamborsky v. Baskins, 247 Va. 506, 509, 442 S.E.2d 636, 637 (1994). A mandatory provision in a statute is one that connotes a command and the omission of " 'which renders the proceeding to which it relates illegal and void, while a directory provision is one the observance of which is not necessary to the validity of the proceeding; and a statute may be mandatory in some respects, and directory in others.' " Ladd v. Lamb, 195

Va. 1031, 1035, 81 S.E.2d 756, 759 (1954) (citation omitted). See also Jamborsky, 247 Va. at 511, 442 S.E.2d at 638 (holding that the twenty-one day period in the transfer statute under former Code Sec. 16.1-269(E) is directory and procedural and not mandatory and jurisdictional). However, the denial of a transfer hearing and the opportunity to present evidence deprived the accused of a substantive right and the constitutional guarantee of due process. Id. at 509, 442 S.E.2d at 637.").

There is clear and convincing evidence raising the issues that Appellant was not medically cleared by being released prematurely. Appellant had demonstrated from the Record on Appeal that there were two Hospitalizations of Appellant documented. There is a difference of treatment concerning Brian David Hill between dates November 18, 2017 (Pages 143 through 147) and September 21, 2018 (Pages 198 "Exhibit 10", through Page 205). They were more thorough, more responsive, and more caring on November 18, 2017, and it is the same Hospital, located at the same exact address in the city of Martinsville. When Appellant came in with abrasions, they treated him very poorly because of the police telling them about the so-called "indecent exposure" incident, almost as if to create stigmatization so that they want to throw him out and have him arrested with no laboratory results. The treatments between those two dates had shown that this is not the normal Emergency Room procedure with what had happened on September 21, 2018. Both were physical injuries. Both were in the Emergency Room (ER). Yet on September 21, 2018, they were very adamant on saying that Brian was naked/nude and taking photos of himself in that Medical Record and then made multiple entries about

releasing him to "Police/Jail" acting as though Appellant deserved being arrested and Jailed immediately and shown lack of compassion. **It is medical neglect and such medical neglect destroyed evidence of the only hope of Brian David Hill being acquitted from the very beginning of any potential indecent exposure charge under Virginia Code § 18.2-387. The discharge of Appellant on September 21, 2018 is not normal typical and legally acceptable Emergency Room procedures when Police expect a thorough examination of a criminal suspect prior to releasing him to Law Enforcement custody.** They just wanted to dump him into the Jail system as quick as they could knowing that they never tested his blood, they never checked his diabetic blood glucose readings and released him with high resting blood pulse ox multiple times. He had similar issues exhibited on his visit to the Emergency Room on November 18, 2017 (Pages 143 through 147). They released a man knowing that he was not medically cleared and no laboratory testing was done.

There is clear and convincing evidence warranting an evidentiary hearing and all of that evidence should have been debated, argued, and discussed as to why Brian was not medically cleared and was arrested super quickly not giving Martinsville Police Investigators any time to do their own thorough investigation before simply deciding that Appellant was guilty and push for his charge and conviction by the Commonwealth Attorney.

It is a fraud on the court that the Commonwealth Attorney continued trying to convict Appellant of Indecent Exposure under Virginia Code § 18.2-387 under

an element that was disproven by pro se filings that Appellant was "psychologically and medically cleared" as stated on Page 6 of the CRIMINAL COMPLAINT.

It is a fraud on the court that the Commonwealth Attorney continued trying to convict Appellant of Indecent Exposure under Virginia Code § 18.2-387 under an element that was disproven by pro se filings and case law that the Commonwealth had prosecuted the Appellant in General District Court on December 21, 2018 with no evidence of intent by Appellant. The law requires evidence that **Appellant acted intentionally** to make an obscene display or exposure of his person. The Commonwealth shown no such evidence and would have likely shown no such evidence in the Trial Court either had Appellant been given effective counsel and had taken the matter to trial.

Even though the arguments are limited due to the General District Court not being a State Court of Record and not having any Transcripts, the Appellant still argues that the General District Court of Martinsville had erred on December 21, 2018 (Page 42), in finding that the evidence before it was sufficient to find that Appellant violated Virginia Code § 18.2-387 because the evidence fails to show that Appellant acted intentionally to make an obscene display or exposure of his person. That statute provides, in relevant part, that "[e]very person who intentionally makes an obscene display or exposure of his person, or the private parts thereof, in any public place, or in any place where others are present, or procures another to so expose himself, shall be guilty of a Class 1 misdemeanor." Va. Code § 18.2-387 (emphases added).

"The 'obscenity' element of Code § 18.2–387 may be satisfied when: (1) the accused admits to possessing such intent, Moses v. Commonwealth, 611 S.E.2d 607,

608 (Va. App. 2005)(en banc); (2) the defendant is visibly aroused, Morales v. Commonwealth, 525 S.E.2d 23, 24 (Va. App. 2000); (3) the defendant engages in masturbatory behavior, Copeland v. Commonwealth, 525 S.E.2d 9, 10 (Va. App. 2000); or (4) in other circumstances when the totality of the circumstances supports an inference that the accused had as his dominant purpose a prurient interest in sex, Hart, 441 S.E.2d at 707–08. The mere exposure of a naked body is not obscene. See Price v. Commonwealth, 201 S.E.2d 798, 800 (Va. 1974) (finding that `[a] portrayal of nudity is not, as a matter of law, a sufficient basis for finding that [it] is obscene')." Romick v. Commonwealth, No. 1580-12-4, 2013 WL 6094240, at *2 (Va. Ct. App. Nov. 19, 2013)(unpublished)(internal citations reformatted).

While the evidence may show that Appellant was naked in public, as stated above, nudity, without more, is not obscene under Virginia law. Rather, "[t]he word `obscene' where it appears in this article shall mean that which, **considered as a whole, has as its dominant theme or purpose an appeal to the prurient interest in sex**, that is a shameful or morbid interest in nudity, sexual conduct, sexual excitement, excretory functions or products thereof or sadomasochistic abuse, and which goes substantially beyond customary limits of candor in description or representation of such matters and which, taken as a whole, does not have serious literary, artistic, political or scientific value." Va. Code § 18.2-372 (emphasis added). While Virginia does not appear to have established a clean definition of criminal intent, Black's Law Dictionary defines it as "[a]n intent to commit an actus reus without any justification, excuse, or other defense."

In summary, in order to show that Appellant violated Va. Code § 18.2-372 by

committing the offense of indecent exposure under Virginia law, the Commonwealth was required to prove, among other things, that Appellant had the intent to display or expose himself in a way which has, as its dominant theme or purpose, appeal to the prurient interest in sex, as further defined above, without any justification, excuse, or other defense.[1] The Commonwealth failed to do so. Rather, the Commonwealth's evidence, presented through its own witnesses, showed Appellant as someone who was running around naked between midnight and 3:00 a.m. and taking pictures of himself because he believed that someone was going to hurt his family if he did not do so. (Pages 82 and 83 of CORRESPONDENCE, Pages 81 through 126 of CORRESPONDENCE, Federal Affidavits filed in Trial Court in 2019).

iii. The Trial Court erred by entering the Final Judgment (Page 463) as a matter of law or abused discretion in not recognizing that the United States Supreme Court held that all Courts have an inherit power to vacate Fraudulent Begotten Judgments if they believe that a prosecution of a criminal or civil case was based on Fraud.

The assignment of error was that the Trial Court had errored and/or abused its discretion in denying the Appellant's "MOTION TO VACATE FRAUDULENT BEGOTTEN JUDGMENT" (Page 436 through 462) which was filed Pro Se then entering the final judgment under page 463, when the U.S. Supreme Court had ruled that all Courts have inherit or implied powers to entertain a motion or writ requesting that the Court vacate a Judgment that it may believe was precured by Fraud. The Trial Court

[1] For the reasons stated above, the Commonwealth's burden was to prove every element of the offense, including the mens rea, beyond a reasonable doubt. However, even if, arguendo, this Court were to find that the Commonwealth's burden was only a preponderance of the evidence, the Commonwealth has still failed to carry its burden.

erred by not exercising its own inherit powers. Even the Supreme Court of Virginia had made rulings regarding a "court's" inherit power to vacate a judgment or disturb a sound judgment upon later evidence surfacing showing that the judgment was procured by fraud.

See "Chambers v. Nasco, INC, 501 US 32, 115 L. ED 2d 27, 111 S Ct 2123 (1991), Courts §18 "inherent or implied powers", as well as Courts §225. 1; Equity §47 "power to vacate fraudulent judgment", "this Court has an inherent power to investigate a fraud upon the Court and to vacate an earlier judgment upon proof of such fraud."

All Courts have a Constitutional and legally inheritable right to vacate any judgment it feels is later a victim of fraud on the court. They do not need to wait for Congress or the State Legislature to pass a law or rule allowing a Court to do this. Courts for decades have different rulings in different jurisdictions over the fraud upon the court case law authorities.

Harris v. Bornhorst, 513 F.3d 503, 521 (6th Cir. 2008) ("In *Demjanjuk v. Petrovsky*, 10 F.3d 338 (6th Cir. 1993), we held that the prosecutors, in failing to read reports in their possession that turned out to be exculpatory, "acted with reckless disregard for the truth and for the government's obligation to take no steps that prevent an adversary from presenting his case fully and fairly." *Id.* at 351-54. "**This was fraud on the court** in the circumstances of this case where, **by recklessly assuming Demjanjuk's guilt, they failed to observe their obligation to produce exculpatory materials requested by Demjanjuk**."")

Cone v. Tessler, Case No. 16-11306, 7 (E.D. Mich. Feb. 15, 2019) ("the court

may use its inherent authority to impose sanctions even where Rule 11 also applies. *See also, Chambers v. NASCO, Inc.*, 501 U.S. 32, 49 (1991) ("[T]he inherent power of a court can be invoked even if procedural rules exist which sanction the same conduct.").")

Long v. Virginia Employment, Record No. 2123-91-2, 2 (Va. Ct. App. Jul. 20, 1993) ("In Jones, the Virginia Supreme Court differentiated between intrinsic and extrinsic fraud for purposes of determining how a judgment procured by fraud may be challenged. The Court stated that intrinsic fraud includes "perjury, forged documents, or other incidents of trial related to issues material to the judgment." 224 Va. at 607, 299 S.E.2d at 508. On the other hand, extrinsic fraud is "conduct which prevents a fair submission of the controversy to the court." Id. Essentially, Long alleges that a Glaser employee, Nancy Floyd, perjured herself before the commission. TheJones Court clearly defined perjury as intrinsic fraud. Thus, Long's allegation, if believed, constitutes intrinsic fraud.")

Taylor v. Taylor, 159 Va. 338, (Va. 1932) ("The solution of the question lies in determining whether the plaintiff procured his judgment by fraud on the defendant and on the court, and whether the situation thereafter arising will permit, on the weighing of equities, the granting of relief.")

Taylor v. Taylor, 159 Va. 338, (Va. 1932) ("5. JUDGMENTS AND DECREES — *Setting Aside Judgment for Fraud — Extrinsic or Collateral Frauds.* — The acts for which a court of equity will, on account of fraud, set aside or annul a judgment or decree between the same parties, rendered by a court of competent jurisdiction, relate to frauds extrinsic or collateral to the matter tried by the first court, and not to a fraud in the matter

on which the judgment or decree was rendered.")

The Statement of the Facts, Paragraphs 1 through 5, Pages 3 through 16 of this Petition for Appeal, makes very good points of evidence and law.

CONCLUSION

Appellant asserts 3 Assignments of Error as to why Petition for Appeal should be granted for the Constitutional rights and legal errors involved.

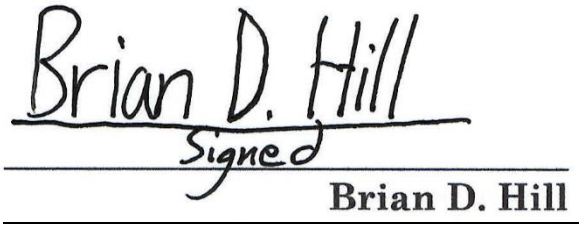
For the foregoing reasons stated above, the Appellant urges this Court to grant this Petition for Appeal and allow the Appellant to perfect his appeal if it is so ordered by this Court in pushing for an order and remand to vacate the final order/judgment (See Page 463) denying Appellant's motion asking to vacate the fraudulent begotten judgment in Pages 434 and 435 wrongfully convicting Appellant of Indecent Exposure on November 18, 2021 in the Trial Court.

REQUEST FOR ORAL ARGUMENT

As this appeal raises important constitutional and evidence issues which were believed overlooked, due process of law which could have broad effects on those accused of state crimes, the Appellant requests oral argument. Appellant also requests new counsel since "JOHN IRA, IV, JONES" who was appointed to represent Appellant had refused to consult Appellant and therefore requests new counsel be appointed to present oral argument.

Respectfully Filed/Submitted on March 29, 2021,

BRIAN DAVID HILL
Pro Se



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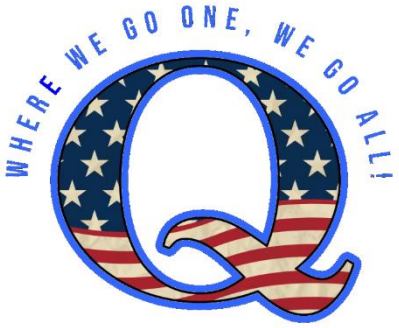
WHERE WE GO ONE, WE GO ALL!
Q

CERTIFICATE OF COMPLIANCE

1. This brief complies with type-volume limits (word limit 12,300), excluding the parts of the document exempted by Rule 5A:12(e) (cover page, table of contents, table of authorities, and certificate):

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Brian D. Hill
Signed

Brian D. Hill

Dated: March 29, 2021

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Pro Se Appellant

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 29th day of March, 2021, I caused this "PETITION FOR APPEAL OF APPELLANT" to be printed then hand delivered to the Commonwealth of Virginia and City of Martinsville through the Commonwealth Attorney's Office of Martinsville City and the original was filed with the Clerk of the Court of Appeals of Virginia by Virginia Court eFiling system (VACES) through Assistant/Filing-Representative Roberta Hill which shall satisfy proof of service as required by Rule 5A:12(b) stating that "*a copy of the petition must be mailed or delivered to the Commonwealth's attorney or the city, or county, or town attorney, as the case may be.*" And the proof that such pleading was delivered will be attached to this "Petition for Appeal" shall satisfy the proof of service was required by Rule 5A:12(b):

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Counsel for Appellee

The reason why Brian David Hill must use such a representative/Assistant to serve such pleading with the Clerk on his behalf is because Brian is currently still under the conditions of Supervised Release for the U.S. District Court barring internet usage without permission. Brian's Probation Officer is aware of Roberta Hill using her email for conducting court business concerning Brian Hill or court business with the Probation Office in regards to Brian David Hill. Therefore, Roberta Hill is filing the pleading on Brian's behalf for official court business. Brian has authorized Roberta Hill to file the pleading.

If the Court wishes to contact the filer over any issues or concerns, please feel free to contact the filer Brian David Hill directly by telephone or by mailing. They can also contact Roberta Hill at rbhill67@comcast.net and request that she forward the message and any documents or attachments to Brian David Hill to view offline for his review.

Brian D. Hill
Signed
Brian D. Hill

Brian David Hill – Ally of Qanon
Founder of USWGO Alternative News
310 Forest Street, Apt. 2 Martinsville, Virginia 24112
(276) 790-3505
Pro Se Appellant

DISCOVERY RECEIVED BY:

Lindsay Cu

NAME

3-29-21

DATE

Commonwealth v. BRIAN HILL

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