In The

Court of Appeals

Of Virginia

Brian David Hill,

Appellant,

v.

Commonwealth of Virginia

Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF MARTINSVILLE

(Writ of Error Coram Vobis)

PETITION FOR APPEAL OF APPELLANT

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RULE

Brian David Hill, (the “Appellant” or “Petitioner”) files this Petition for Appeal pursuant to Rule 5A:12 of the Rules of this Court. The appeal was timely filed.

There is no transcript as the Clerk of the Circuit Court had pretty much said in my request to the Circuit Court for Transcripts for 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 version. Well Appellant will produce his truthful and factual statement of the facts pointing to the filings in the Record on Appeal to support the statement of facts that will outweigh even the Commonwealth's version of the statement of facts and again those facts by Appellant 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 civil/criminal case that had entered a final Judgment which had denied Petitioner's Motion/Petition to Correct an Error by petitioning the Circuit Court of Martinsville ("Trial Court") for a Writ of Error Coram Vobis/Nobis (Case no. 1294-20-3, Page 744, Page 741 with Table of Contents, "ORDER - DENIED DEF WRIT ERROR CV"), which such final judgment (Case no. 1294-20-3, Page 744, Page 741 with Table of Contents) was filed on April 10, 2020, in the Trial Court by the Honorable Judge Giles Carter Greer. The Clerk of the Trial Court didn't file the Order in the Table of Contents for this petition under 0242-21-3 but the Order was added by the Deputy Clerk of the Court of Appeals of Virginia but cannot reference the Table of Contents area so a different case number referencing the exact same order is being used, using case no. 1294-20-3 record for that order. The notice of appeal was timely filed (Pages 214

through 217) on April 21, 2020. 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 which have resulted in Unconstitutional errors, defects, and evidence which was overlooked at the time of the Final Judgment by the Trial Court, constitutional issues, factual issues and errors, and matters of law in the appealed case including a substantial issue for appeal concerning the denial of a constitutional right affecting the errors in the Judicial record regarding the wrongful criminal case conviction or a debatable procedural ruling. There is no appointed counsel in this appealed case. The case being appealed is CR19000009-00/CL20000089-00, Civil Case for Writ of Error Coram Vobis/Nobis. 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. Record proves the claims and are relevant to the arguments.

II. STATEMENT OF THE FACTS

The Commonwealth will have their own "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, but was clearly overlooked and was not addressed by the Trial Court prior to disposition. New evidence is in the Writ of Error Coram Vobis final

judgment which is clearly more evidence than evidence overlooked in the judgments entered in Appeal cases no. 1294-20-3 and 1295-20-3. This appeal petition raises evidence and factual issues which could not have been raised in cases no. 1294-20-3 and 1295-20-3 even though the Petitions in those appeals raise substantial factual and evidence issues in those appeals as well. Each Appeal Petition shows a defective prosecution in its own respect. This one will focus on the Writ of Error Coram Vobis/Nobis defects and frauds of the prosecution by the Commonwealth of Virginia.

The pages cited in the Record are with one (1) page included which is the "TABLE OF CONTENTS" ("TOC") produced by the Clerk: "CAV: 03-05-2021 07:01:45 EST". A one-page difference. So, if the page cited for example is 201, then the Trial Court record should be 200 without the Table of Contents, but the PDF File of the Trial Court record will say 201 when it includes the Table of Contents which is 1 page. Appellant is following the page of the entire PDF file record with the TABLE OF CONTENTS included, so the page count will be 1-page more than the page number of the record, 1-page 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 (Case no. 1294-20-3, Page 4, 3-page difference with TOC). Under Page 6 the CRIMINAL COMPLAINT (Case no.

1294-20-3, Page 6, 3-page difference with TOC) was filed as an Affidavit supporting the criminal charge against Appellant. It said in part of the COMPLAINT: "When the male was detained he was read Miranda and **started talking about a black male in a hoodie made him get naked and take pictures of himself**." That was part of the elemental basis for why his charge had stuck in the Trial Court and stuck in the General District Court on December 21, 2018 was because they were given the impression that Brian could not have proven the man in the hoodie was real, the judge didn't believe there was a man wearing the hoodie, and that the Officers acted like they searched for a man wearing the hoodie but never updated the Court in writing as to whether they were able to locate the man or not, so Appellant assumes they never found him. However, Appellant had new evidence that proves factual defects in the original arrest warrant noted above. The Record on Appeal from case no. 1294-20-3 can be brought up in this appeal since the Judicial Officer had filed the Order in case no. 1294-20-3, in the criminal case no. CR19000009-00, the Writ of Error Coram Vobis/Nobis was filed as a motion but the Clerk opened up Civil case no. CL20000089-00 for Coram Vobis but the Order was entered under criminal case no. CR19000009-00. So, both records will be cited in this Petition for Appeal as it is relevant and part of the Record on Appeal, and Writ of Error Coram Vobis is referring to

correction of the Errors of the Judgment entered by the Trial Court.

2. The facts by Officer Robert Jones who filed such charge and COMPLAINT are contradictory to new evidence filed by Appellant which had shown blatant corruption by the leadership of Martinsville Police Department, and such corruption alleged was photographs of a sealed manilla envelope. Their job is to look through any evidence submitted to them in person or even by mail. The photographs cited in the Record are COLOR photographs and were filed by Appellant in color but the Trial Court transmitted only one photo in black and white under Page 38, but the original was in color to show the details of the evidence in support of such Petition/Motion. All others were filed in color which is appreciated by Appellant. See Pages 38, through 42 of 227. The evidence proved that an envelope which was signed for by Martinsville City Chief of Police G. E. Cassady, somehow managed to end up in the possession of Appellant after being signed for under "RESTRICTED DELIVERY". So that proved Martinsville Police Department had refused to do its duty and they had refused to open up the envelope and investigate its contents which may include evidence of a crime or evidence pertinent to a criminal investigation. It proved negligence and lack of any real investigative effort in the criminal case of Brian David Hill. Brian is a citizen of Martinsville at the time of his arrest and is still a citizen of Martinsville. It proves incompetence, and

is technically considered corruption in refusing to open up an envelope mailing directed at Martinsville Police Department and they refused to even determine what evidence was in the envelope being directed at their Police Department. So, the Police acted as though Appellant were wrong or lying because they never could find a man wearing a hoodie when they never even made an effort to open up an envelope full of potential evidence. That means a Police Department which is under the jurisdiction of Appellant and where Appellant was found naked and arrested for indecent exposure and took testimony from Brian David Hill, refused to even look at any hard evidence such as papers/documents. It is corruption because the Police Department failed to do its job, failed to do its duty in investigating any evidence mailed to them. Appellant had shown evidence that he clearly wanted an investigation and had submitted the letter asking for an investigation into the issues he felt he wanted to report to the Police Officer Robert Jones. See Pages 58 (Exhibit 0) through 70. Appellant clearly had the pure belief that he was being targeted by somebody or a group of people, possibly in retaliation for the FOIA Lawsuit and 2255 Motion for requesting acquittal for his Federal charge and wrongful conviction. See photocopy of his 2255 Motion on Case no. 1294-20-3, Pages 364 through 375, Page 361 through 372 with Table of Contents. The Commonwealth Attorney had the envelope and they as well refused to

even open the envelope and investigate its contents, and are just as CORRUPT as the Martinsville Police Department because **they rather play lawyer-games and mind games and just claim that since Appellant was represented by counsel, ineffective counsel, any evidence reported to the Police Department must be ignored, ha-ha, sorry, take a hike.** The Commonwealth Attorney did have the envelope as the photograph in Page 39, the envelope with the addresses in the front, it said "Turned over to CA 8/7/2019 1455hrs" So they just turned it over to the Commonwealth Attorney, they ignore it just like the Chief of Police of Martinsville, they both ignored it on record, and give it to Brian's lawyer who does nothing with it. All of the corrupt lawyers working together to deprive Appellant of fair and equal access to justice in our Courts. How depressing. There are good lawyers too, not all lawyers are corrupt, but the Commonwealth clearly is when evidence is ignored when it may be very important to a case. **See State Bar Rule 3.8**, also referencing Rule 3.8 in the American Bar Association, "Special Responsibilities of a Prosecutor". When a Prosecutor refuses to investigate evidence turned over to him/her by Police then that lawyer is refusing to investigate anything at all and is not willing to seek the truth but is seeking a conviction. That is such a disregard for the truth. A fraud upon the Court itself.

3. Appellant had filed various evidence pieces 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. Not just that but the Commonwealth Attorney was served a copy of the evidence and papers/photographs included in Appellant's petition for Writ of Error Coram Vobis/Nobis. See Pages 34 through 36 of the record. They also knew of the photographs and they had possession of that envelope which was photographed but was never opened. The Trial Court never asked for any forensic examination of that manilla envelope in Appellant's possession, the Trial Court never asked to actually see the envelope to see for themselves that it was never opened. Pages 42 thorough 71 detail different Exhibits showing a letter directed to the Police Chief G. E. Cassady and asked for it to be given to Police Officer Robert Jones who charged Appellant with

indecent exposure to attempt to give him a valid explanation with proof from Medical Records and Government Research Documents explaining about symptoms of Carbon Monoxide Poisoning to attempt to explain to Officer Robert Jones why Appellant was out there naked at night. Carbon Monoxide had been documented to be the cause of hallucinations, psychosis, impulsiveness, and other erratic behaviors. Effects can be different from person-to-person but it would be a more believable explanation than talking about some guy in a hoodie. However, the Police Department never knew of any of this because they never even opened the envelope to look through it and thoroughly investigate the statements and evidence submitted by Appellant. The letter was in the envelope as the photocopy of the letter shown in Page 59 of the Record shows two important areas, "Certified Mail tracking no.: 7017-2680-0000-5750-9122", and "Return receipt tracking no.: 9590-9402-3527-7275-7497-41". Page 39 had shown the exact same Certified Mail tracking number as shown in the letter. Pages 41 of the Record shows the exact photocopy of the Certified Mail tracking number (same as the envelope and letter) and the Return Receipt Tracking Number with the handwritten signature of G. E. Cassady the Chief of Police of Martinsville, the City of Martinsville at the time. There is another thing that should be brought up here. See Case no. 1294-20-3 of the Record, 3-page difference with TOC, Pages 141

through 205 of the Record. That would be 64 pages total. There may be a one-page difference in Pages 141 through 205 of the Record in case no. 1294-20-3, but it is the photocopy of the Exhibits referenced in this Writ of Error Coram Vobis Petition/Motion under Pages 60 through 62 of the Record in this Appeal.

4. 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, Case no. 1294-20-3. 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, Case no. 1294-20-3) 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 of Case no. 1294-20-3, 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, Case no. 1294-20-3. 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, Case no. 1294-20-3). 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, Case no. 1294-20-3, 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 Case no. 1294-20-3 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, Case no. 1294-20-3 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, Case no. 1294-20-3, 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 in Case no. 1294-20-3. 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. Case no. 1294-20-3, Page 286 also brought up the "Sinus Tachycardia" arguments. Then on Page 287 of Case no. 1294-20-3, 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", Case no. 1294-20-3, 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.

5. When Appellant had filed his Motion to Withdraw the Appeal in the Trial Court which is Pages 422 of 961 of the Record in Case no. 1294-

20-3, 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. Case no. 1294-20-3, 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 (Case no. 1294-20-3) "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 Case no. 1294-20-3. 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 (Case no. 1294-20-3): "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,** Case no. 1294-20-3**),** 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, Case no. 1294-20-3. 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. The Statement of FACTS herein had shown factual evidence, prima facie, from the Record pages itself that the Commonwealth Attorney and Police Department had defrauded the Court and misled the Court on material facts which had created Errors of the Record and Judgment where Coram Vobis/Nobis would be necessary to correct: (1) that **Martinsville Police Department had no intention of ever thoroughly investigating any of Appellant's claims when they wouldn't even open up an envelope with evidence without even understanding the contents of that envelope and how it is completely relevant to the Indecent Exposure case and Police Report and non-thorough investigation over the incident, and**

further contradicts the elements of the "CRIMINAL COMPLAINT" before the Police had quickly charged Appellant and arrested him for Indecent Exposure. It proves that Police were not credible enough to make a determination and claim on whether there was a guy in a hoodie found or not.

7. Any other STATEMENT OF FACTS, the Appellant will allow the Commonwealth Attorney for Appellee to retain and stipulate their version of the facts of the civil/Criminal Case. Appellant will let them stipulate their facts and side of the story but Appellant's FACTS under paragraphs 1-6 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 Judgment (Case no. 1294-20-3, Page 744, Page 741 with TOC). 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 Petition/Motion "INITIAL FILING - WCN" (Page 2) and then entered that final judgment (Case no. 1294-20-3, Page 744, Page 741 with TOC, "ORDER - DENIED DEF WRIT ERROR CV") 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 (ORDER - DENIED DEF WRIT ERROR CV) and order and remand the Trial 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, and the Trial Court not addressing the errors of the charge and wrongful conviction of Appellant. The errors are so systemic throughout the entire criminal case that Writ of Error Coram Vobis/Nobis or any motion or petition asking for any relief is necessary for the ends of justice, and to protect the Due Process rights of Appellant under the XIV Amendment of the United States Constitution and Virginia CONST. Article I. Bill of Rights Section 11.

When reviewing the final order of denying the Petition/Motion (Case no. 1294-20-3, Page 744, Page 741 with Table of Contents) of Appellant requesting Writ of Error Coram Vobis/Nobis without addressing any of the issues of "Fraud" by the Commonwealth Attorney, and without addressing the issues such as systemic faulty elements of the original charge by Martinsville Police Officer Robert Jones and Commonwealth Attorney Glen Andrew Hall, Esq., 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 and such grave elemental failures should have been investigated by the Trial Court instead of denying that Petition/Motion since the Motion had asked to correct the Errors in the final criminal conviction order (Case no. 1294-20-3, Page 434, Page 431 with Table of Contents) 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." There is no guilty plea, ever, throughout the entire criminal case. The Writ of error Coram Vobis/Nobis addressed more elemental decay from the original CRIMINAL COMPLAINT. Criminal elements decaying in a criminal case are not facts and are not probable cause supporting the arrest, charge, and wrongful conviction of Brian David Hill on December 21, 2018, by the General District Court (Case no. 1294-20-3, Pages 45-46, Page 48-49 with Table of Contents). Therefore, the Trial Court erred to not even correct its final conviction on November 18, 2019.

IV. Assignments of Error

ii. Argument

i. The Trial Court erred by entering the Final Judgment (Case no. 1294-20-3, Page 431, Page 434 with Table of Contents) denying the Petition/Motion as a matter of law or abused discretion in overlooking the evidence of factual element fraud/defects by the Commonwealth Attorney's criminal prosecution by the counter evidence filed Pro Se which proves Fraud upon the Court by the Commonwealth Attorney and either corruption or incompetence by Martinsville Police Department. 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 Petition/Motion "INITIAL FILING - WCN" (Page 2) for requesting Writ of Error Coram Vobis/Nobis which was filed Pro Se then entering the final judgment on Record in Case no. 1294-20-3, Page 434, Page 431 with Table of Contents. That is overlooking the evidence filed by Appellant throughout the Coram Vobis case showing defects in the FACTUAL ELEMENTS (FACT FRAUD) of the entire prosecution against Brian David Hill since Page 6 (CRIMINAL COMPLAINT, no. 1294-20-3) and wrongful conviction as of December 21, 2018. Evidence was clearly overlooked and should have been addressed before denying relief in that ground as it wasn't just on the ground of **Writ of Error Coram Vobis/Nobis under Virginia Code § 8.01-677** but also under the **inherit legal and Constitutional powers** of a Court to **correct clerical errors, errors of fact and correct any frauds upon/on the Court** as the facts could have been realized had the evidence filed on the Record not been overlooked. Very important evidence and facts were 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/Petition as

it isn't just over the Writ of Error statute under Virginia Code § 8.01-677 but also over a Court's inherit or implied powers not under a statute, that is the clear error here.

Defects brought out in "II. STATEMENT OF THE FACTS" (Pages 3 through 16 of Petition for Appeal), Paragraphs 1 through 6. It was overlooked and Appellant did not have legal counsel appointed to his Petition/Motion for Writ of Error.

There are errors of fact and conflicts on the Record and frauds on the Court. The Writ of Error Coram Vobis Motion/Petition (Pages 2 through 71) brought new evidence to the Trial Court's attention than what was even filed with Appellant's Motion to Vacate Fraudulent Begotten Judgment "MOTION - VACATE FRAUD BEGOTTEN JUDG" (Case no. 1294-20-3, Page 433 through 459, Pages 436 through 462 with Table of Contents).

The letter that was attempted to have been mailed to the Chief of Police of Martinsville asking that it be investigated or looked into by Sergeant Robert Jones of Martinsville Police Department, brought up various good information showing that laboratory results were never done which is medical neglect and had shown a difference between Appellant's Hospital visit on November 19, 2017 (Case no. 1294-20-3, Page 141 through 147, Pages 144 through 150 with Table of Contents) and his Hospital visit on September 21, 2018 (Case no. 1294-20-3, Pages 195 through 202, Pages 198 through 205 with Table of Contents) prior to being arrested by Martinsville Police and discharged to Jail. That was referenced and used in the letter to the Chief of Police in Pages 62 and 63 of the Record and Pages 61 which has a description of blood pouring out of Brian's head which is supported by the Hospital Record (Record said and I quote "*Head*

Laceration/ Open wound of head") of November 19, 2017 concerning Brian David Hill.

The point of this "Assignment of Error" was that the original Police Department who charged Brian Hill with indecent exposure under Virginia Code § 18.2-387 had no idea about residue of Carbon Monoxide in Brian's home, had no idea about the actual threatening greeting card reported by Brian, and had no idea about the tachycardia readings and had no idea that laboratory tests were never done in the first place.

It had shown a lack of a real investigation, a shoddy investigation at best, incompetence. Brian was charged very quickly and would not have given the Police enough time to actually look for a man wearing a hoodie. Around 5:35AM the arrest warrant was created and issued against Appellant. In Case no. 1294-20-3, Page 200, 197 without Table of Contents, Brian arrived at the Emergency Room around 4:04AM. Not long ago after Appellant was handcuffed by Police. So not many hours had gone by before the CRIMINAL COMPLAINT was filed and thus the Police Department had no further obligation to investigate Appellant's claims about a man wearing a hoodie, they just get the Commonwealth Attorney Glen Andrew Hall involved ready to prosecute against Appellant at all costs, AT ALL COSTS. The Police Department was clearly incompetent and was ready to charge him quickly. Any claim by the Commonwealth Attorney that the Police were unable to locate a man wearing a hoodie is pure hogwash. Even in murder/homicide cases, police detectives are given 48 hours to quickly find the murderer. They set up no checkpoints on the record, they probably didn't even interview or interrogate nobody. They just made their assumptions very quickly and arrested Appellant because it was easier to charge him with Indecent Exposure rather than fully

investigate his claims and ask his mother about the threatening greeting card mentioned in the letter to Martinsville Police on Page 62 of the Record. It said and I quote from the Record of the Letter: "*Exhibit 7) Three anonymous greeting cards (possibly with an intent to annoy, harass, or intimidate) and one anonymous threatening greeting card from an unknown assailant or assailants who sent the four mailings from Tennessee with no return address. Total of 20-pages*." The Commonwealth Attorney spent no effort on the Record to investigate the threatening greeting card. The greeting card could have been analyzed by a hand writing expert at the Federal Bureau of Investigation (FBI). It could have been tested by special forensic testing for thumb prints, DNA, anything as to who the writer could be. **The Martinsville Police and the Commonwealth Attorney failed to do any of that, just charge him with an offense and ignore him**, **ignore any evidence he files and ignore any evidence of a crime, ignore it all, too bad so sad take a hike, lawyer-games.** Matthew Clark was part of those mind games too as he ignored the envelope and never did anything with it either. It is probably better that he didn't attempt to open the envelope as that is physical irrefutable evidence of an envelope filled with evidence papers were never even opened by Martinsville Police and neither of the Commonwealth Attorney Glen Andrew Hall.

Overlooking the evidence is a serious error and is a serious issue when dealing with a final Judgment from a Trial Court, especially a wrongful conviction of an innocent man. Brian David Hill is clearly innocent and such cumulative evidence proves that. When the charge doesn't fit, the Court must acquit. Appellant never even pled guilty on Page 434 of his criminal case. It is very easy to

overturn this wrongful conviction with enough evidence countering the narrative of the Commonwealth Attorney's prosecution.

The possibilities are endless here, many more arguments could be made but it is clear that a lot of evidence was overlooked by both Martinsville Police Department and the Commonwealth Attorney so they have no credibility to claim that they could not find a guy/man wearing a hoodie who Appellant alleged had threatened him when evidence demonstrates that Martinsville Police and their Commonwealth Attorney won't even open up an envelope with evidence inside. A lot of things seem wrong with the final Judgment in this case and the way the errors keep piling up on the Record and are being defended. The lack of reviewing over all of the evidence materials filed by Appellant 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 with TOC of Case No. 1294-20-3. Unless the errors are corrected and the frauds are dealt with by the Trial Court of Record, then Appellant will wrongfully face further deprivation of his freedom and liberty by use of frauds, errors, and deceit, 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 who is supposed to be presumed innocent until proven guilty beyond reasonable doubt.

ii. The Trial Court erred by entering the Final Judgment (Case no. 1294-20-3, Page 431, Page 434 with Table of Contents) denying the Petition/Motion 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 and showing factual errors and prosecutorial defect. 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 Petition/Motion "INITIAL FILING - WCN" (Page

2) for requesting Writ of Error Coram Vobis/Nobis which was filed Pro Se then entering the final judgment under Record in Case no. 1294-20-3, Page 434, Page 431 with Table of Contents, 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 Court should correct the errors of fact. When the errors of fact show that there aren't enough facts to sustain a criminal conviction, then the entire conviction is null and void. There are no guilty pleas entered by Appellant. The Judgment is weak and is erroneous. The new evidence could not have been brought on Direct Appeal so the Petition/Motion for Writ of Error Coram Vobis/Nobis brought up the newly discovered evidence showing a fact fraud that Police did not seem interested in investigating anything to do with a guy wearing a hoodie when they refused to have even open up an envelope with potential evidence sent by Appellant under restricted delivery.

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 (Case no. 1294-20-3, Page 431, Page 434 with Table of Contents) denying the Petition/Motion as a matter of law or abused discretion in overlooking the evidence of factual element defect by the Commonwealth Attorney's criminal prosecution by the counter evidence filed Pro Se which proves Fraud upon the Court by the Commonwealth Attorney and either corruption or incompetence by Martinsville Police Department. 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" (Paragraphs 1 through 6, Pages 3 through 16 of this Petition for Appeal).

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

Haas v. Commonwealth, 283 Va. 284, 291 (Va. 2012) ("**the Court of Appeals is vested with authority to refer a case brought under this chapter back to the circuit court for an evidentiary hearing if, in its discretion**, it deems **that the facts require further development**, it is not required to do so. The Court of Appeals is vested with broad discretion in determining whether the facts require further development. *Turner*, 282 Va. at 247, 717 S.E.2d at 121; *Johnson v. Commonwealth*, 273 Va. 315, 325, 641 S.E.2d 480, 486 (2007).")

Commonwealth v. Zheng, 110 N.E.3d 1220, (Mass. App. Ct. 2018) ("As such, an **evidentiary hearing should have been held regarding the details of what the defendant was advised by counsel**. See Commonwealth v. Goodreau, 442 Mass. 341, 348 (2004) (**if substantial issue is raised by motion or affidavits**, **evidentiary hearing should be held**); Commonwealth v. Cano, 87 Mass. App. Ct. 238, 240 (2015) (same).")

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).

The Court of Appeals should review over Affidavits on Pages 72 through 97 of the Record including Endorsement of filing. They had raised such a substantial issue that an evidentiary hearing should have clearly been held as a matter of facts and law.

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).

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 that Martinsville Police had refused and failed to investigate exculpatory evidence of the threatening greeting card, the Carbon Monoxide evidence, and refused to even interview expert witness Pete Compton. See Page 46 with the informal Affidavit from Pete Compton. Says "Case 1:13-cr-00435-TDS, Document 221-16, Filed 11/20/19, Page 3 of 3" on the bottom of filed Document in this WCN case. Nothing was investigated, nothing was to be presented. Appellant was clearly wrongfully convicted by fraud and refusal to investigate any evidence ever proffered by Appellant. All they ever sought was an unfair criminal conviction, a fraudulent conviction. Brian wanted the Police to investigate, even before he was charged with Indecent Exposure, but the Police FAILED HIM, they failed him. The Police failed him and the Court of Appeals must understand that they had failed to do their duty which is investigate crimes and investigate any evidence regarding a crime whether it be a cold case or hot case. Detectives ignoring evidence is non-professional behavior, it is essentially a misconduct, a corrupt act. A dereliction of duty.

There was 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 (Record No. 1294-20-3, Pages 143 through 147, 3-page difference with TOC) and September 21, 2018 (Record No. 1294-20-3, Pages 198

"Exhibit 10", through Page 205, 3-page difference with TOC). The Hospital staff were more thorough, more responsive, and more caring on November 18, 2017, and it was the same Hospital, located at the same exact address in the city of Martinsville. When Appellant came in with abrasions after being handcuffed by Martinsville Police, the Hospital Staff 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 wanted the Hospital to throw him out and have him arrested as quick as possible 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 (Record No. 1294-20-3, Pages 143 through 147, 3-page difference with TOC). 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 corrupt 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, No. 1294-20-3), 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. 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. (Record No. 1294-20-3: 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 (Case no. 1294-20-3, Page 431, Page 434 with Table of Contents) denying the Petition/Motion 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 correct errors upon its Record of Judgments/Orders and to vacate Fraudulent Begotten Judgments if they believe that a prosecution of a criminal or civil case was based on Fraud and evidence surfaces showing multiple defects of the elements of such criminal prosecution by the Commonwealth of Virginia.

The assignment of error was that the Trial Court had errored and/or abused its discretion in denying the Appellant's Petition/Motion "INITIAL FILING - WCN" (Page 2) for requesting Writ of Error Coram Vobis/Nobis which was filed Pro Se then entering the final judgment under Record in Case no. 1294-20-3, Page 431, Page 434 with Table of Contents, when the U.S. Supreme Court had ruled that all Courts have inherit or implied powers to entertain a motion or petition for a writ requesting that the Court vacate a Judgment that it may believe was precured by Fraud, or an judgment that was based upon errors that the Court had not known at the time such Judgment was made when prosecuted by a defective prosecution, malicious prosecution with faulty facts and systemic element decay in the criminal elements from the original CRIMINAL COMPLAINT. The Trial Court erred by not exercising its own inherit powers, not even having an evidentiary hearing asking what all of the evidence was about and why Appellant had filed such evidence and what it signified for whatever relief that was requested as a matter of law, as a matter of fact, and for the ends of justice to have been met. 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, a faulty prosecution, a defective prosecution.

The Petition/Motion was validly filed under § 8.01-677 and the inherit power of a Court to correct clerical errors, errors of fact and correct any frauds upon the Court (These powers are "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases. That it has long gone unquestioned is apparent not only from the many state court decisions sustaining such dismissals") Link v. Wabash Railroad Co., 370 U.S. 626, 630-31 (1962). 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."

It said from the very Pleading under Page 2 of the Record and it said "*the criminal defendant in this case files this motion for writ of error coram vobis in this Circuit Court to correct the errors and frauds perpetuated on this Court and the General District Court*."

All Courts have a Constitutional and legally inheritable right to vacate any judgment it feels is later a victim of fraud on the court. Also, Courts have an inherit right and a right under § 8.01-677 to correct any proven Errors upon its own record to maintain the truthful, factualness, and integrity of the Court itself, without such a Court would

fail as non-credible and not trustworthy. 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.

See the quoted paragraph in Page 3:

> Page 3 WCN: "Petitioner files evidence that shows that the Commonwealth of Virginia had lied about the facts of the case in regards to what they filed in the Court of Appeals of Virginia, opposition brief filed on 02-24-2020, under CAV #0128-20-3. That is a fraud upon the Court, a final judgment of presumed guilt procured by fraud. One fact was that the police were never able to locate the guy wearing the hoodie. An Exhibit will be introduced in attachment showing that the Martinsville Police Department refused to open an envelope full of evidence (See **Exhibit 1**) that would have likely changed the course of investigation with the threatening greeting card and the carbon monoxide cumulative evidence. Instead of investigating the evidence, the envelope was kept sealed and transferred to the Commonwealth's Attorney Glen Andrew Hall and then was secretly transferred again to Matthew Scott Thomas Clark who never informed Petitioner that he received the envelope that was meant for Martinsville Police Department, that the Police Department ignored the evidence and refused to investigate any evidence. Such incompetence and dereliction of duty by a so-called professional law enforcement agency." (citation reformatted)

Neighbors v. Commonwealth, 274 Va. 503, 505 (Va. 2007) ("10. The circuit court's restriction of Code § 16.1-106 to only monetary cases in the case at bar was erroneous. There is no restriction to an appeal of a petition for a writ of error coram vobis from the general district court to the circuit court because it is a non-monetary civil proceeding. Accordingly, the appeal of the denial of a writ of coram vobis is within the jurisdiction of a circuit court under Code § 17.1-513 and the circuit court erred in

determining it lacked jurisdiction to hear the appeal from the judgment of the general district court. 11. Code § 8.01-677 makes clear that the limited purpose of a writ of **coram vobis is to correct only `clerical error" or certain "error in fact."** The writ of coram vobis should not be; used for any purpose other than to **correct a clerical error or error in fact**. This limited application has not been extended to serve as a writ of error to bring the original judgment under review, or to permit a change of a defendant's plea after trial.") Brought up in page 5 of the Record.

Neighbors v. Commonwealth, 274 Va. 503, 504 (Va. 2007) ("1. The writ of error coram vobis, or coram nobis, is an ancient writ of the common law. It was called coram nobis (before us) in King's Bench because the king was supposed to preside in person in that court. It was called coram vobis (before you — the king's justices) in Common Pleas, where the king was not supposed to reside. The difference related only to the form appropriate to each court and the distinction disappeared in this country when the need for it ended.") Brought up in page 5 of the Record.

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**."")

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 6, Pages 3 through 16 of this Petition for Appeal, makes very good points of evidence, on the errors and defects of

the entire prosecution, and the law.

Errors exist throughout the Record in the General District Court and Trial Court of Record. There are factual errors. Errors showing maybe even a lack of probable cause with lack of medical clearing and Police ignoring evidence mailed to them. The Trial Court did not know in their Final Judgment on November 18, 2019 (Record No. 1294-20-3, Pages 434, 3-page difference with TOC) of the Police Department refusing to open a sealed envelope mailed to them (Pages 37 through 40), signed for by the Chief of them (Page 41), and was addressed to them. How can any reasonable Judge or Trier-of-fact believe a Police Officer who arrests somebody quickly and terminates an investigation by letting the lawyers handle it, when that is very shoddy investigative work? Lawyers should not get involved in a case or controversy until after an investigation is thoroughly conducted to prevent a MISCARRIAGE OF JUSTICE, a wrongful conviction of an innocent man when such is erroneous and not compassionate. Courts should be fact finders and are about the truth. The Writ of Error Coram Vobis/Nobis is appropriate in such matters such as fact fraud or fact errors. Courts don't even need the Writ of Error Coram Vobis statute or any statute under Virginia Code § 8.01-677, when all Courts have a Constitutionally given inherit power to manage their own affairs, correct the errors upon its own record, and resolve any frauds upon the court that can be proven with clear and convincing evidence and matters of law.

CONCLUSION

Appellant asserts 3 Assignments of Error as to why Petition for Appeal should be granted for the Constitutional rights, factual errors, 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 (Case no. 1294-20-3, Page 741, Page 744 with Table of Contents, "ORDER - DENIED DEF WRIT ERROR CV") denying Appellant's Motion/Petition asking for the Trial Court to grant a Writ of Error Coram Vobis/Nobis to correct all errors and frauds upon the Court on a wrongful or erroneous judgment (Case no. 1294-20-3, Page 431, Page 434 with Table of Contents) 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.

Respectfully Filed/Submitted on April 1, 2021,

BRIAN DAVID HILL
Pro Se

Brian D. Hill
Signed
Brian D. Hill

Brian David Hill – Ally of Qanon
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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):

[X] this brief contains [*11,242*] words.

[ ] this brief uses a monospaced type and contains [*state the number of*] lines of text.

2. This brief complies with the typeface and type style requirements because:

[X] this brief has been prepared in a proportionally spaced typeface using [*Microsoft Word 2013*] in [*14pt Times New Roman*]; *or*

[ ] this brief has been prepared in a monospaced typeface using [*state name and version of word processing program*] with [*state number of characters per inch and name of type style*].

Brian D. Hill
Signed

Brian D. Hill

Dated: April 1, 2021

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

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 1st day of April, 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):

Glen Andrew Hall, Esq.
55 West Church Street, P.O. Box 1311
Martinsville, Virginia 24112 or 24114 (for P.O. Box)
Telephone: 276-403-5470
Fax: 276-403-5478
Email: ahall@ci.martinsville.va.us

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

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Received three (3)
documents from
Brian Hill. 4.1.21