VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF MARTINSVILLE

COMMONWEALTH OF VIRGINIA, CITY OF MARTINSVILLE, PLAINTIFF(s),	)	CASE NO: CR19000009-00
v.	)	MOTION FOR JUDGMENT OF ACQUITTAL OR NEW TRIAL PURSUANT TO Rule 3A:15 BASED UPON NEW EVIDENCE WHICH DISPROVES THE ELEMENTS OF CHARGED CRIME BY PROSECUTION, EVIDENCE WARRANTING NEW TRIAL OR ACQUITTAL
BRIAN DAVID HILL, DEFENDANT.	)	

MOTION FOR JUDGMENT OF ACQUITTAL OR NEW TRIAL PURSUANT TO RULE 3A:15 BASED UPON NEW EVIDENCE WHICH DISPROVES THE ELEMENTS OF CHARGED CRIME BY PROSECUTION, EVIDENCE WARRANTING NEW TRIAL OR ACQUITTAL

Respectfully submitted with the Court,

This the 28th day of August, 2022.

Brian D. Hill
Signed
Brian D. Hill

Brian D. Hill
Defendant
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COVER PAGE

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SUMMARY

COMES NOW the Defendant, BRIAN DAVID HILL ("Defendant"), by and through himself pro se, and moves this Honorable Court for the following, for judgment of acquittal or a New Trial pursuant to **Virginia Rules of the Sup. Ct. 3A:15** based upon new evidence not previously submitted to this court, and new evidence not previously known to this Court which disproves the elements of guilt presented by Martinsville Police Department in its original charge on September 21, 2018 (See **Exhibit 0**, Copy of Arrest Warrant and Criminal Complaint in original General District Court charge), prosecuted by both the City of Martinsville and Commonwealth of Virginia, the Plaintiffs'.

This Motion is pursuant to Virginia Rules of the Sup. Ct. 3A:15; Virginia Code § 19.2-271.6, as well as the Supreme Court of Virginia case law authorities of Commonwealth v. Tweed, 264 Va. 524, 570 S.E.2d 797 (Va. 2002), (the "Tweed standard"), and *Odum v. Commonwealth*, 225 Va. 123, 301 S.E.2d 145 (Va. 1983), (the "Odum standard"). This Court does have lawful jurisdiction and authority to act on this motion, provide an evidentiary hearing to both parties, request the

Commonwealth Attorney to respond to the motion, and then this Court can come to a conclusion whether Defendant's request for a new trial should be granted or his request for a judgment of acquittal should be granted in lieu of new trial if the Court finds the new evidence sufficient to disprove enough elements of the Commonwealth's criminal prosecution that no criminal conviction can be sustained, that no criminal conviction can stand even with a trial by jury. The burden of evidence for a judgment of acquittal is likely higher of a standard and burden than the burden of proof standard for requesting a new trial.

Odum standard: Odum v. Commonwealth, 225 Va. 123, 124 (Va. 1983) ("1. Motions for new trials based on after-discovered evidence are within the discretion of the Trial Judge, are not favored, are considered carefully and cautiously, and are reluctantly awarded. 2. The movant for a new trial for after-discovered evidence bears the burden to prove the evidence (a) was discovered after trial, (b) could not have been discovered earlier by reasonable diligence, (c) is not merely cumulative, corroborative or collateral, and (d) is material and should produce opposite results on new trial.").

Tweed standard: Commonwealth v. Tweed, 264 Va. 524, (Va. 2002) ("2. Motions for new trials based on after-discovered evidence are addressed to the sound discretion of the trial judge, are not looked upon with favor, are considered with special care and caution, and are awarded with great reluctance. 3. A party

who seeks a new trial based upon after-discovered evidence bears the burden to establish that the evidence (1) appears to have been discovered subsequent to the trial; (2) could not have been secured for use at the trial in the exercise of reasonable diligence by the movant; (3) is not merely cumulative, corroborative, or collateral; and (4) is material, and such as should produce opposite results on the merits at another trial. The litigant must establish each of these mandatory criteria.")

With the new evidence Exhibits 1-28, pages 317 attached thereto this motion, any reasonable juror would find Brian David Hill not guilty beyond a reasonable doubt and a rational trier of fact will even find him not guilty upon preponderance of the evidence, even under the preponderance of the evidence standard.

See **Exhibit 0** ARREST WARRANT and CRIMINAL COMPLAINT for the basis of the originating arrest and criminal complaint against Brian David Hill, dated September 21, 2018, in the General District Court.

EXHIBIT INDEX PAGE 2 OF 317 of **Exhibit 0**, ARREST WARRANT said in the originating charge that Defendant was charged with: "intentionally make an obscene display of the accused's person or private parts in a public place or in a place where others were present."

EXHIBIT INDEX PAGE 4 OF 317 of CRIMINAL COMPLAINT said in the originating charge that Defendant was: "was medically and psychologically

cleared." Charged by Officer Robert Jones of Martinsville Police Department aka City of Martinsville and Commonwealth of Virginia.

The criminal complaint and arrest warrant has three elements which can be disproven. Brian David Hill never plead guilty even when filing a motion to withdraw appeal. See **EXHIBIT 15**, a copy of the Trial Court's record of: "ORDER IN MISDEMEANOR OR TRAFFIC INFRACTION PROCEEDING". EXHIBIT INDEX PAGE 137 OF 317. See stricken words marked out: "DEF ~~CHANGED HIS PLEA TO GUILTY AND~~ AFFIRMED JUDG GDC, PAY COURT COSTS.". The court did not consider withdrawing appeal a guilty plea. Defendant is still entitled to his rights to new trial or judgment of acquittal.

Under both the Virginia Constitutional law and United States Constitutional law and what it requires for all criminal cases, regardless of whether the charge is a misdemeanor or felony, all criminal defendants are presumed innocent until proven guilty and must be proven guilty beyond a reasonable doubt. This includes the requirement that ALL ELEMENTS of a crime which is charged against an innocent person must be proven beyond a reasonable doubt to the satisfaction of a trier of fact or triers of fact before a criminal conviction can be sustained and made final. Yes, Defendant did withdrawn his appeal, see **Exhibit 16**, EXHIBIT INDEX PAGES 138 through 150, but he did preserve his Constitutional and legal rights to challenge his criminal charge and conviction collaterally or in any other way with

future evidence acquired. He did preserve his right to prove his actual innocence, that was why the Honorable Giles Carter Greer or his clerk marked out (stricken from the record) that Defendant plead guilty because the Defendant did not plead guilty but simply entered an Alford Plea, and an Alford Plea can later be contested if new evidence surfaces which proved that the criminal conviction was erroneous because the prosecution was done in error. Defendant entered an Alford Plea in the Circuit Court when he had withdrawn his appeal. He maintained his innocence but at the time accepted that he could have been convicted at jury trial in November, 2019. Now with new evidence and changes of Virginia law regarding admissibility of evidence, Defendant is confident he can be found not guilty by a jury of his peers. New trial is warranted here.

ELEMENTS OF CRIMINAL OFFENSE DISPROVEN

Here are the elements which can be disproven upon a rational trier of fact even with the Plaintiffs' nude photographs of Brian David Hill that the prosecution has at their side of the criminal case since the Trial in General District Court:

1. Element 1: Brian Hill was not medically cleared and was not psychologically cleared. Citation: EXHIBIT INDEX PAGE 4 OF 317 of CRIMINAL COMPLAINT said in the originating charge that Defendant was: "was medically and psychologically cleared." (**EXHIBIT 0**, EXHIBIT INDEX PAGE 4 OF 317)

2. Element 2: Intent is necessary to convict Defendant of the charged crime in ARREST WARRANT which claimed Defendant had: "intentionally make an obscene display of the accused's person or private parts in a public place or in a place where others were present." (**EXHIBIT 0**, EXHIBIT INDEX PAGE 2 OF 317)
3. Element 3: Obscenity is necessary to convict Defendant of the charged crime in ARREST WARRANT which claimed Defendant had: "intentionally make an obscene display of the accused's person or private parts in a public place or in a place where others were present." (**EXHIBIT 0**, EXHIBIT INDEX PAGE 2 OF 317) – Note: Because Brian Hill was not medically cleared as previously assumed by Martinsville Police, obscenity cannot be proven until there is 100% undeniable proof that Brian David Hill was medically cleared and psychologically cleared before he was arrested for indecent exposure.

This motion, the attached exhibits, and its STATEMENT OF THE FACTS will also prove fraud on the court and/or factual innocence to at least one or more elements of the charged crime, as the very fraud aka the elements of guilt is based upon the element of: "He was medically and psychologically cleared." Upon proving to this Court that Defendant was not medically and psychologically cleared as previously asserted by the City of Martinsville and Commonwealth of Virginia,

it draws every element of guilt into jeopardy except the fact that Brian David Hill was found naked at night in arguably and allegedly in a public place which was a deserted walking trail with nobody on that trail, and only one vehicle went by Hooker Street (same name as Hooker furniture company) as the CRIMINAL COMPLAINT affidavit had said somebody saw a: “naked white male that had been seen running on Hooker St from Church St.”. Not trying to stand by and display genitals, only seeing a naked man running. When somebody naked is only seen running and never masturbating, there is no obscenity in any regard. There is no evidence of a purpose for appealing to the prurient interest in sex in the entire incident. The officer Robert Jones of Martinsville Police Department who also did not identify himself simply turned on a flashlight and Defendant ran away, also showing that Defendant did not attempt to masturbate and did not ever attempt to engage in sexual gratification. As Defendant is proving in this motion that he was not medically and psychologically cleared, and so by proving that he was not medically and psychologically cleared, all three elements are disproven and a conviction cannot be sustained. **It would be an error of fact, error of law, and an abuse of discretion to convict Brian David Hill of this crime after the Circuit Court reviews over this motion, it’s STATEMENT OF THE FACTS, it’s exhibits, it’s case law and legal arguments, and review over the merit of the arguments.** The Commonwealth is free to respond to this motion and they should

respond to this motion. The conviction should be overturned, the charge should be thrown out or a new trial must be had. Defendant requests a new trial or judgment of acquittal under the Tweed Standard and Odum Standard, or any other standard which can be applied under the authorities of the Supreme Court of Virginia.

The request for judgment of acquittal or new trial is for criminal case no. CR19000009-00; charge of violating Virginia Code § 18.2-387. Indecent exposure dated September 21, 2018; and the criminal conviction judgment which was rendered on November 18, 2019. See **Exhibit 0** for the original Arrest Warrant and Criminal Complaint. See **Exhibit 15**, EXHIBIT INDEX PAGE 137 OF 317 for the "ORDER IN MISDEMEANOR OR TRAFFIC INFRACTION PROCEEDING", the judgment of conviction for the charged crime.

Defendant requests in this motion that the Court consider all new **STATEMENT OF FACTS, EXHIBITS, and arguments in this motion** concerning new facts of not being medically and psychologically cleared as previously assumed by law enforcement which were not known at the time of the criminal conviction and would also be spoliation of evidence by the Commonwealth and/or by Sovah Health Martinsville and/or by Martinsville Police Department. These STATEMENT OF FACTS warrant a judgment of acquittal, or a New Trial, or an evidentiary hearing to make a determination on the new facts and allow both sides to present additional arguments, and responses or any additional

evidence to the Court; present any witnesses for direct examination and cross examination; and make a determination if Defendant had made a requisite showing of being innocent of multiple essential elements of the charged crime, meaning that the Virginia law and Local Law was never violated on September 21, 2018. This proves that a conviction cannot be sustained with the new evidence as a matter of law. Defendant kindly and respectfully asks that the Honorable Giles Carter Greer review over all evidence, exhibits, and arguments in this motion and not ignore it. Please do not ignore any of this, Defendant has the evidence Brian David Hill is innocent and the judgment of acquittal or new trial is warranted.

STATEMENT OF FACTS

The Statement of Facts is hereby presented to the Circuit Court for Martinsville based on the following new pieces of evidence:

Element 1: Brian Hill was not medically cleared and was not psychologically cleared. Citation: EXHIBIT INDEX PAGE 4 OF 317 of CRIMINAL COMPLAINT said in the originating charge that Defendant was: "was medically and psychologically cleared." (EXHIBIT 0, EXHIBIT INDEX PAGE 2 OF 317)

This STATEMENT OF THE FACTS contains 53 paragraphs, pages 12-47)

1. See **Exhibit 1**, a 6-page letter (EXHIBIT INDEX PAGES 6 through 11) regarding the fact that Brian Hill's behavior was a medical emergency and not a

criminal act. Entitled: “A MEDICAL EMERGENCY NOT CRIMINAL by BRIAN HILL’S FAMILY (7-16-2022)”. This statement of the fact is regarding a letter and report prepared by Stella and Kenneth Forinash who are also citizens of the City of Martinsville. They believe it was a medical emergency and not a criminal act based on the evidence, questions, and issues in the criminal case since the very beginning.

2. When Officer Robert Jones told the General District Court in affidavit, in CRIMINAL COMPLAINT that Defendant was: “was medically and psychologically cleared”, that was not the truth. See **EXHIBIT 0**, EXHIBIT INDEX PAGE 4 OF 317. Defendant has the medical documentation and financial documentation from the local hospital to prove all of it. Even documentation from Virginia Medicaid which is an agency of the Commonwealth.

3. Defendant has evidence that blood was drawn from his arm at the local Hospital (**Exhibit 2**) according to the billing records from Sovah Health Martinsville, aka the “local hospital” which gave Officer Robert Jones the false impression of being medically and psychologically cleared which the Officer Robert Jones stated in his initial charge (**EXHIBIT 0**). According to the first page of **EXHIBIT 2** after the **EXHIBIT 2** page marker, $66 dollars was charged for usage of a “1 CATH IV”, processing #230633, Medical supply. **EXHIBIT 28** is a scanned photocopy of the mailing envelope of what contained the billing records and was sent by mail by Sovah Health Martinsville, Patient billing department or

whatever it is called. It was sent on July 26, 2022, went through U.S. Postal Service processing through GREENSBORO NC 270 on "27 JUL 2022 PM 4 L" (from time stamped and location stamped notation) and was received on July 29, 2022. The billing records were obtained after request for them made in letter in **EXHIBIT 27**, "LETTER TO SOVAH HEALTH MARTINSVILLE REQUESTING FINANCIAL RECORDS OF BRIAN DAVID HILL, REQUESTING RECORDS OF HIMSELF MONDAY", "JULY 11, 2022".

4. See **Exhibit 3** for the terminology of what CATH IV means in the billing record. **EXHIBIT 3** is sourced from the NATIONAL CANCER INSTITUTE of the National Institute of Health (NIH), an agency of the USA Government, a credible source. It said from the NIH, that a "peripheral venous catheter" is a "device used to draw blood and give treatments, including intravenous fluids, drugs, or blood transfusions. A thin, flexible tube is inserted into a vein, usually in the back of the hand, the lower part of the arm, or the foot. A needle is inserted into a port to draw blood or give fluids. Brian Hill said blood was drawn from his arm in his original 2255 motion. " See affidavit filed by Defendant in Document #179, **EXHIBIT 23**, EXHIBIT INDEX PAGES 260 through 288.

5. This Circuit Court does not have a document numbering system like the Federal Courts of the United States of America do where every legal document has a case number, where every pleading has its own unique document number, page

range except for when records are transmitted to Court of Appeals of Virginia, and bottom footer or upper header with each page of date filed for easy citation. So Defendant is filing as **EXHIBIT 17**, a **three page TABLE OF CONTENTS index of all court filings by the Clerk of the Court** from pages 1 – 59 (GD PAPERWORK, 01/09/2019), all the way until pages 2296 – 2296 of this Trial Court's record (LETTER - TO CT OF APPEALS-ENTIRE FL, 05/25/2022). The judge in this Circuit Court can use the TABLE OF CONTENTS as an index in asking the Clerk to find the appropriate court records cited and documents cited necessarily for arguments in this motion for new trial or judgment of acquittal. This index can also be used for purposes of further citation upon any appeal of granting or denying this motion by Defendant.

6. The claims by Defendant about the blood vials were argued and asserted in pro se motions Defendant had filed prior to filing the motion to withdraw appeal (See court record filing: "MOTION - DISCOVERY", pages 329 which is page 5 of that particular pleading, filed: 07/26/2019). The billing record proves that the medical equipment or applicator or device was used to have drawn blood from the arm of Defendant at the "local hospital" on the same day but prior to his arrest for the charge of indecent exposure. This is backed by the medical records submitted by Defendant (See **EXHIBIT 18**, Sovah Health Martinsville, Hill, Brian D, Friday, September 21, 2018, 7806761243). See last page of **EXHIBIT 18**, EXHIBIT

INDEX PAGE 163 OF 317, where it said: “Corrections: (The following items were deleted from the chart)” and also said: “ED Physician Record - Electronic - Page 4/4, MM7806761243 SOVAH Health - Martinsville, Job 23328 (05/17/2019 13 34) - Page 7 Doc# 2”. It said different assortment of lab testing was ordered which ordering those specific lab tests would not have happened if blood was never drawn in the first place from Mr. Hill’s arm before his arrest by Martinsville Police.

7. That last page of medical records had said: “The following items were deleted from the chart)”. That means $66 or more (if any other billed item was also used) was charged to Brian Hill’s account at the local hospital and was likely billed to Medicaid (Medicaid fraud or waste???) for a device or applicator to draw blood, and lab tests were ordered from those blood samples, but then not only were there no completion of ordered laboratory tests but they were to be deleted from the medical chart of the patient, which that patient is Brian David Hill. Lab testing was either covered up for whatever reason or the “local hospital” was negligent. The following lab tests were ordered:

a. 04:48 09/21 04:16 COMPREHENSIVE METABOLIC PANEL+LAB ordered. EDMS

b. 04:48 09/21 04:16 COMPLETE BLD COUNT W/AUTO DIFF+LAB ordered. EDMS

c. 04:49 09/21 04:16 CPK, TOTAL+LAB ordered. EDMS

d. 04:50 09/21 04:16 ALCOHOL, ETHYL+LAB ordered. EDMS

e. 04:50 09/2104:16 STAT OVERDOSE PANEL+LAB ordered. EDMS

f. 04:54 09/21 04:16 URINALYSIS W/REFLEX TO CULTURE+LAB ordered. EDMS

8. Again, See **EXHIBIT 1**. Kenneth and Stella Forinash created a 6-page letter to the U.S. District Court and a copy is being filed with this Circuit Court with questions regarding whether this is a medical emergency or a crime. They believe it was very important for the Court and the Commonwealth Attorney to read every page as they also believe Defendant is factually innocent of his charge on September 21, 2018, because of not being medically cleared as assumed by the Officer Robert Jones at the time he charged Defendant. Take a good look at it. This also supports Brian's claim of innocence because what happened to Defendant on September 21, 2018 was not a crime, IT WAS A MEDICAL EMERGENCY, A MEDICAL EMERGENCY. No crime had been committed that day because it was a medical emergency. There was no medical clearing because of no laboratory results from ordered tests which would have been essential to proving whether or not Defendant was cleared of any substance, gas, drugs or any medical issue which may have caused the incident on September 21, 2018.

9. Citation from **EXHIBIT 1**: "**A MEDICAL EMERGENCY NOT CRIMINAL by BRIAN HILL'S FAMILY (7-16-2022)… Police receive a call at 4 in the morning. A 28 year old man was running down a walking trail in Martinsville, VA in the nude at 4 AM in the morning. Why? Was he intentionally trying to be obscene or was this an emergency? Police find out that he is on the sex registry and is on probation. He is treated like a criminal, arrested and put in jail. The judge ignores his mom's testimony about carbon monoxide poisoning in their apartments and how this affected both of them for 11 months at the time of this incident… (1:13-cr-00435) Document 307 Attachments 1-10 Apr. 20, 2022)… Here is a person with autism, brittle diabetes with seizure history and OCD walking & running on a walking trail miles from his home by himself in the nude for hours, is this normal or abnormal behavior? Why did this arresting police officer not know that Brian had diabetes requiring insulin when glucose is high or glucose tabs when it is low? Did he do an investigation? How can a person with a medical history of type 1 diabetes (brittle diabetes) with seizure history since the age of 2, PDD diagnosis since the age of 3, autism spectrum disorder diagnosis since the age of 4 suddenly be "Medically cleared"? Why did this arresting police officer not know that Brian had type 1 diabetes requiring insulin or glucose tabs? Why did he not know that Brian had OCD? Did Brian not tell him? Was**

Brian so far out of it mentally that night that he did not even know that he was diabetic himself? Where was the glucose monitor that Brian always takes with him when he leaves his house to go walking? Where were the emergency glucose tabs that he always keeps in his camera bag when he leaves his house? Where were his insulin pens he always takes with him if his blood glucose is high?" Citation is just a portion of the six page document but very important.

10. It is a fact that Brian Hill exhibited mental confusion (**EXHIBIT 20**) which was brought up in transcript IN **EXHIBIT 21**, PAGE 33 of that transcript. Citation: "…*Talking with him, the time frame didn't really add up to me at that point*." That officer did not think Defendant made sense or that his story didn't add up. If Defendant was not medically cleared, then the officer should not have taken Defendant's statements as coherent at face value and should have treated his statements as incoherent such as delirious (**EXHIBIT 7**, EXHIBIT INDEX PAGE 66 OF 317) or psychosis (**EXHIBIT 19**). These statements never should have been accepted by the police at face value and used against Defendant to charge him with indecent exposure. The whole charge was nonsense when they didn't know for a fact whether Defendant Brian Hill was medically cleared or not.

11. The Officer Robert Jones claimed in affidavit that Defendant was medically and psychologically cleared but later admitted under oath in federal court that he did not obtained Defendant's medical records and didn't even know

for a fact that Defendant was diabetic. He didn't even know something as important as Defendant being a type one brittle diabetic at high risk of diabetic seizures, diabetic coma, nerve damage, kidney damage, eye damage, and low blood sugar which can lead to seizure or death. This officer transported Defendant to jail without even knowing Defendant was diabetic. Yeah, that sounds really convincing that Officer claimed Brian Hill was medically cleared but didn't even know Defendant was diabetic at the time of arrest. Don't take my word for it, see the federal filed court transcript for yourself.

12. IN **EXHIBIT 21**, PAGE 34 of that transcript (Q was the questions asked by Attorney Renorda Pryor and A was the answers given by Officer Robert Jones under oath). Citation: "…*Q Did he also tell you that he was a diabetic as well? A I do not recall him telling me that, no. Q Did he tell you that he was also OCD? A Not that I recall*." Officer did not know Defendant was diabetic but claimed Defendant was medically cleared and psychologically cleared. Not even the hospital told this officer that Defendant was diabetic. Very stupid and incompetent for Dr. Brant Hinchman to not tell Officer Jones that Defendant was diabetic, a type one diabetic. **That decision could have killed Defendant in custody.**

12. IN **EXHIBIT 21**, PAGE 34 and 35 of that transcript (Q was the questions asked by Attorney Renorda Pryor and A was the answers given by Officer Robert Jones under oath). Citation: "…*Q Okay. Did you get those reports*

from -- the medical reports? A No, I did not do a subpoena for his hospital records. Q Okay. Did you speak to a doctor or anyone regarding his condition or anything of that nature that night? A We -- other than just checking with him to see if they were going to be releasing him or admitting him, no." Did you just read what the officer admitted? He never asked for the medical records or hospital records or anything of that nature. He never asked the doctor if Defendant had any serious medical conditions, like type one brittle diabetes??? The officer was ignorant because he never investigated the medical issues of Defendant, didn't even know of Defendant's medical issues. So how exactly is the officer correct in his own claim that Defendant was: "was medically and psychologically cleared." (**EXHIBIT 0**, EXHIBIT INDEX PAGE 4 OF 317). This does not sound like he was cleared at all. Officer wasn't aware of anything except being released by the hospital without laboratory tests being completed after being ordered. Sounds like a cover up to me, a cover up or a big medical neglect (Medicaid fraud or waste?) mistake by Dr. Brant Hinchman. Needs to be investigated by State Police.

13. Also the billing record said: "1 IV HYDRATION 1ST HR" was ordered at $585.00. Brian Hill was dehydrated and needed hydration from the nursing staff at the "local hospital". Hydration through IV tubes for the 1st hour would not have been billed to Brian Hill's medical billing account at the "local hospital" at $585.00 if Defendant was not dehydrated. Dehydration also can lead to becoming

delirious, and can also lead to hallucinations. Not only can carbon monoxide poisoning (**EXHIBIT 22**) cause Defendant to have psychosis (**EXHIBIT 19**) and hallucinations (See pages 160 and 161 of Circuit Court records, received by Clerk, Hon. Ashby R. Pritchett on July 22, 2019 9:30AM, sourced from the Centers for Disease Control (CDC), of the USA Government), but dehydration at the time of Brian Hill's hospitalization after being questioned by Officer Robert Jones and arrest, dehydration can cause hallucinations and delirious mental confusion.

14. **EXHIBIT 7**, EXHIBIT INDEX PAGE 66 OF 317 proves to this Court from the NATIONAL CANCER INSTITUTE (federal government agency/organization) that delirium can be caused by dehydration. Supported by the billing record in **EXHIBIT 2**. Delirium can cause "hallucinations and changes in attention span, mood or behavior, judgement". Brian Hill was not medically cleared, and statements obtained by Law Enforcement from Defendant at the time of arrest were incoherent as the hospital hydrated the body of Defendant and gave him sodium chloride, an electrolyte according to the billing record in **EXHIBIT 2**.

15. Even if this Court can legally ignore the carbon monoxide exposure of Defendant for almost a year due to not having the Carboxy-hemoglobin levels at the time of arrest, the medical records and billing records shown that Brian Hill had to be hydrated by IV tubes in the first hour he was in the "local hospital", again see the entry: "1 IV HYDRATION 1ST HR" was ordered at $585.00. The

hospital felt that it was necessary to hydrate the dehydrated man before he was arrested. The statements obtained by Martinsville Police were obtained before Defendant was taken to the "local hospital". There may not be a statement about dehydration in the medical records (**EXHIBIT 18**) but there was usage of a body hydration by IV in the first hour of his hospital visit by IV fluids which is listed in the billing record. Billing records actually sometimes tells more details or information than the medical records, in some cases, like in this case. Every medical procedure and every item ever used has to be counted for billing purposes, accounting purposes.

16. The Officer said in its criminal complaint charge that: "He was medically and psychologically cleared." That is not true. The officer may believe that was true at the time, but the facts do not make beliefs true. The facts show that the officer's belief was not true.

17. It is a fact that Martinsville Police Investigator Robert Jones did not ever obtain a copy of Hill's medical records (**EXHIBIT 21**, PAGE 35 of that transcript citation: "…Like I said, I did not get his records. They normally do, but I do not have that…". Didn't know any medical facts prior to his complaint.

18. Here is why. The billing record (**EXHIBIT 2**) and Mr. Hill's affidavit (**EXHIBIT 23**) proven blood was drawn from Defendant's arm. That it caused the lab tests to be ordered including blood alcohol levels. Those tests can also be used

to find any narcotics, drugs, substances, or gases (E.G. CarboxyHemoglobin) in the blood of Defendant's body while at the hospital. EXHIBIT INDEX PAGE 163 OF 317, **EXHIBIT 18**. Defendant was not thinking straight as medical noted: "The history from nurses notes was reviewed: and my personal history differs from that reported to nursing." So medical said in Page 4 Doc# 2 (ED Physician Record - Electronic - Page ¼, MM7806761243 SOVAH Health - Martinsville) of **EXHIBIT 18**: "my personal history differs from that reported to nursing". Mental confusion. Defendant couldn't keep his words correct with the mental confusion.

19. There are contradictions in the medical record dated 9-21-2018. One entry said: "*Constitutional: This. is a well developed, well nourished patient who bdh is awake, alert, and in no acute distress*." Page 6 of #181-11. That contradicts the entry in the **EXHIBIT 2** billing record of $585 charged to patient account. There appears to be contradictions and/or cover ups and/or neglect in the medical record (**EXHIBIT 18**). The billing record said hydration was given to Petitioner at the hospital "1ST HR" while the medical record mentions nothing about dehydration despite the $585 billed for first hour of hydration by usage of IV fluids. If Brian was perfectly "*well developed, well nourished patient who bdh is awake, alert, and in no acute distress*" then why was blood drawn from his arm with no completed lab tests? And why was "1 IV HYDRATION 1ST HR" hooked

up to Brian's arm by IV and billed at $585.00, aka "IV THERAPY", "092118 23B781 0780"?

20. Also it said in the billing record in the entry: "2 58-IV SOLUTI ONS, 092118 21B597 0715 1703 63, J7030, 1 IV NACL .9% 1000ML, 157.00". IV "NACL" stands for Sodium chloride 23.4% injection which is used to replenish lost water and salt in your body due to certain conditions (eg, hyponatremia or low salt syndrome). It is also used as an additive for total parenteral nutrition (TPN) and carbohydrate-containing IV fluids. A sodium chloride IV is a mixture of fluids and sodium chloride administered intravenously to restore fluid balance. Sodium chloride is used to treat or prevent sodium loss caused by dehydration, excessive sweating, or other causes. **Sodium is an electrolyte that regulates the amount of water in your body. Sodium also plays a part in nerve impulses and muscle contractions.**

21. Brian Hill was not truly medically cleared, that is a lie. Let's compare medical records, shall we.

22. Medical record of November 19, 2017, See **EXHIBIT 9**. Lab tests were ordered. Brian Hill was there for more hours than his hospital visit on September 21, 2018. Both hospital visits concerned fall and/or injury. Brian was detained by police around or in a creek meaning he fell into the creek before he was detained and was injured before being detained, injured and fell just like his hospital visit in

November, 2017 with more lab work and results while the visit in September, 2018 had no lab tests completed after being ordered. His hospital visit on the date of arrest was very short and did not have lab results proving negative on anything abnormal. Total difference between the two Emergency Room medical records. Proves neglect by example from the same hospital. See **EXHIBIT 18**.

23. See the financial records from Medicaid claims records concerning Brian David Hill. The cost of his hospital visit on 11-19-2017 was a lot more expensive than his hospital visit on 09-21-2018. See **EXHIBIT 4**, Virginia Medicaid Claims History For Member Name: Brian Hill. Lab results were tested completely on November, 2017, while the hospital did not have on any record as to lab testing done on September, 2018. There was no lab results. Either covered up or neglect by medical personnel at the local hospital. The same “local hospital” which falsely and/or erroneous claimed to have cleared the Defendant mentioned in charging document **EXHIBIT 0**. **EXHIBIT 4** is thanks to Defendant filing a FOIA request with Virginia Medicaid requesting those records, see **EXHIBIT 26**, URGENT "LETTER TO MEDICAID REQUESTING RECORDS REGARDING FINANCIAL BILLING STATEMENTS OF SOVAH HEALTH MARTINSVILLE; REQUESTING FINANCIAL RECORDS OF BRIAN DAVID HILL, REQUESTING RECORDS OF HIMSELF; RECORDS OF LAB WORK ORDERED ON SEPTEMBER 21, 2018", "SATURDAY, JULY 16, 2022".

24. There are two transcripts this Court should be made aware of relevant and material to the arrest of Brian David Hill for the supervised release violation on the exact same basis as the ARREST WARRANT and CRIMINAL COMPLAINT in **EXHIBIT 0**. Both transcripts come from two hearings held in the U.S. District Court for the Western District of Virginia, dated December 26, 2018, and May 14, 2019. One hearing was the arraignment and the other hearing was regarding the release of Brian David Hill on bond conditions pending the case in the Middle District of North Carolina. Without his family asking for a mental evaluation, the Court on its own suspicions had directed and ordered a mental evaluation of Brian David Hill for competency and possibly sanity at the time of the incident. Those two transcripts are important and are of the record concerning the supervised release violation and must also be made known to the Virginia Courts. U.S. Probation Officer Jason McMurray thought Brian Hill may not have been mentally right in the head at the time of his arrest and his hunch was right. **Brian Hill was exposed to carbon monoxide which can cause brain damage** and hallucinations and psychosis (**EXHIBIT 19**).

25. See **EXHIBIT 5**, USA v. Brian David Hill - 7:18-MJ-00149, December 26, 2018, Supervised Release Revocation Hearing. Transcript completed on May 2, 2022.

26. See **EXHIBIT 6**, USA v. Brian David Hill - 7:18-MJ-00149, May 14, 2019, Competency/Detention Hearing. Transcript completed on May 2, 2022.

27. Last piece of evidence that Brian David Hill was not medically cleared on September 21, 2018, is a complaint and investigation case letters from a redacted government agency from a redacted government employee, two redacted government employees. Letter dated June 9, 2022 and second letter in this exhibit dated July 20, 2022. See **EXHIBIT 8**. A government agency is currently investigating Dr. Brant Hinchman, MD, doctor who was in charge of the EMERGENCY ROOM medical shift at that time in that "local hospital" which erroneously and fraudulently medically and psychologically cleared Defendant. Defendant was not medically cleared and should not have been considered medically cleared, because not all medical facts were made known at the time he was released to police and jail. No laboratory tests were completed after being ordered. **Talk about waste and medical waste, possibly Medicaid fraud or medical fraud, Medicaid paid for waste of blood being drawn then disposed of without warning, without preservation of that biological evidence, yet Medicaid was billed. Waste and fraud. State Police must investigate.**

28. Defendant had filed a complaint against this individual Dr. Brant Hinchman, MD, and Defendant had filed a complaint against the associated/involved nurses as well for medical neglect and lying to Martinsville

Police about Brian Hill being medically and psychologically cleared. This investigative agency has a right to prevent anybody (even the Corrupt U.S. Attorney and Corrupt Commonwealth Attorney) from interfering with and fettering with such investigation including investigators. Fettering with this investigation may be a crime in the Commonwealth of Virginia once an investigation has started. So Defendant is filing a copy of this letter, REDACTED, to protect the identity of the agency and protect its "Regional Manager" from any threats, blackmail, bribery, intimidation, obstruction, or contempt of their investigation procedures.

29. After the completion of investigation procedures, Defendant promises to file the non-redacted copies with this Court in lieu of the redacted copies in **EXHIBIT 8** once the agency's investigation is completed, and provide a copy with the Commonwealth Attorney's Office and a copy with the judge. This is not just a government agency, but has the legal standing and authority to suspend the license of this medical doctor. If the findings are medical neglect or even possibly as far as Medicaid fraud or Medicaid wasteful procedures or hospital lying to police, then this further proves that Defendant was not medically cleared. Thus cannot be convicted of indecent exposure, cannot be criminally held culpable for indecent exposure because he was not medically cleared as charged. Cannot be held culpable for this charge as the evidence of lack of medical clearing is enough to

throw the entire case out as an unfounded criminal charge against an innocent man.

Brian David Hill = Innocence.

30. There is evidence of a cover up or neglect of the laboratory results ordered but later deleted from the chart. Officer Robert Jones admitted under oath at the revocation hearing that: "…I don't know if they did. Like I said, I did not get his records. They normally do, but I do not have that." See **EXHIBIT 21**, PAGE 35 of that transcript citation. Renorda Pryor, the defense attorney had asked this officer: "Was there any tests dealing with his blood alcohol content or anything of that nature?" That officer did not have any of Defendant's medical records, saying they normally do the lab work but he did "not have that". The Officer who charged Defendant with the indecent exposure charge did not have any of Defendant's medical records while saying under oath without proof that Defendant was medically and psychologically cleared. That is perjury in federal court, that may be considered perjury in Virginia for that claim in ARREST WARRANT when under oath or affirmation which is a contradiction of the facts. Saying under oath or affirmation that Brian Hill was medically and psychologically cleared but didn't know that he was a type one brittle diabetic, didn't know about the laboratory results saying they normally have them but he doesn't have Defendant's medical records. Didn't know they were deleted from chart. This officer lied under oath, Defendant was not medically cleared, and that was a LIE, BIG FAT LIE.

31. So lab work is normally done in Emergency Room visits as ordered in Defendant's medical record file but in Defendant's case the lab work ordered was to be deleted from the chart at a later time despite the billing record from Sovah Health Martinsville proving that a device or applicator or IV Kit and CATH IV was used to draw blood from Defendant's arm causing lab tests to be ordered, then deleted from the chart. Attorney Renorda Pryor got some good answers from the U.S. Attorney's witness, Officer Robert Jones of Martinsville Police Department who charged Defendant in the General District Court (**EXHIBIT 0**). The Circuit Court needs to ask him further questions regarding his claim that Defendant was medically and psychologically cleared but the lab tests were ordered and never completed. Not medically cleared. When Officer Jones said they normally do the lab work (or tests) but he doesn't have that, he believed lab work was done but Officer Jones's beliefs do not make them true. Not medically cleared as charged in element.

32. Regardless of this REDACTED government agency investigation (**EXHIBIT 8**) sanctioned to investigate the medical issues on arrest date of September 21, 2018, investigating Emergency Room doctor Brant Hinchman, MD, Defendant has proven that he was not medically cleared. The doctor lied to or gave false impression to police officer Robert Jones on September 21, 2018 about Defendant being medically cleared. No lab tests were completed after being

ordered. Medicaid billed, lab work ordered, but later deleted, Sounds like a cover up which is Medicaid fraud and/or medical fraud. Brian David Hill is actually innocent of indecent exposure because he was not medically cleared, and he has to be medically cleared and psychologically cleared (being checked out fully) prior to being held criminally culpable which includes the obscenity element of the crime and the intent element of the crime. Both cannot be met unless Brian David Hill was proven beyond a reasonable doubt as to being medically and psychologically cleared as charged under oath or affirmation by the Officer Robert Jones of Martinsville Police Department.

33. Because the lab tests were ordered, the billing record shown IV was paid for to draw blood, as well as IV for hydration and sodium chloride IV for hydration of dehydrated Brian Hill as hydration IV as well as "1 IV NACL .9% 1000ML"would not have been charged in the billing record if hydration IV "1 IV NACL .9% 1000ML" were not used. It proved that blood was drawn as Defendant had claimed, but the lab tests were to be deleted from the chart, covered up or neglect or both. It had proven that Defendant was not medically cleared as one of the basis of elements of the **EXHIBIT 0** charge.

34. Theoretically, Defendant could have been manipulated at night to have been drugged, somebody could have injected any kind of drug or narcotic or substance inside of him orally or by injection needle. Defendant having autism

could have accidently smelled chemical bath salts and it could have triggered what had happened. Brian said in **EXHIBIT 24**, Case 1:13-cr-00435-TDS, Document 153, Filed 10/17/18, Page 3 of 11, EXHIBIT INDEX PAGE 292 OF 317: "…***At one point I felt like I might collapse so I may have been drugged. I had to keep sitting on benches***". Defendant said he thought he was drugged. And the Commonwealth of Virginia and City of Martinsville, aka the Commonwealth Attorney cannot disprove Brian David Hill may have been on a drug, narcotic, gas, substance, anything. These statements were written on September 27, 2018. Six days reportedly after Defendant was arrested. Not psychologically cleared, his statements at that time sounded bazaar and goes along with the carbon monoxide gas poisoning (**EXHIBIT 22**) theory. Carbon monoxide gas found in Apartment of Brian David Hill has been proven with evidence of Pete Compton witness letter, the photographs of the white residue and damage in Defendant's apartment and the carbon monoxide gas induced damage to his apartment had got worse while Defendant was in jails in late September 2018, October 2018, November 2018, December 2018, and January 2019 until the source of the carbon monoxide gas had been removed. Carbon monoxide gas had been proven, the levels had not been documented due to lab work ordered but then deleted from the chart of Defendant's medical records.

35. Defendant also made statements in writing in the year 2018 which had proven to any rational investigator or trier of fact that he was not mentally and medically cleared. **EXHIBIT 24**, Case 1:13-cr-00435-TDS, Document 153, Filed 10/17/18, Page 2 of 11, EXHIBIT INDEX PAGE 291 OF 317: "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 mom had also noticed that my doors were not being kept 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**.". **EXHIBIT 24**, Case 1:13-cr-00435-TDS, Document 153, Filed 10/17/18, Page 2 of 11, EXHIBIT INDEX PAGE 291 OF 317: "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**. I was around the period when I was mowing the grass between the time period of 1 to 4PM. That was a tuesday. **Likely surveiling me**." Defendant having paranoid statements or paranoid delusions at the time after his arrest and carbon monoxide or certain drugs or medications can cause such mental health issues. Not medically cleared, a lie by the Martinsville Police in its **EXHIBIT 0** charge. Defendant was not medically cleared by a long shot.

36. Somebody who was drugged or was on alcohol can easily be manipulated or have uncontrolled impulsive behavior of taking nude photos of themselves in the days of technology with cheap cameras (without cell phones) and cell phones. Anybody who is drunk, intoxicated, or on a drug could easily take nude photos of themselves smiling or acting insane or any of the sort. Or somebody can easily take photos of somebody in the nude if they were intoxicated. Brian in the nude photographs presented at the bench trial on December 21, 2018 in General District Court, not jury trial, was not acting normal, was acting erratic, and had acted crazy, in a way which normal people do not even act unless that person was under an intoxication. **It is clear Brian was not medically cleared no matter what the Commonwealth argues in rebuttal**. The local hospital did not medically clear him, heck one month after Defendant was presumably medically cleared, and he was diagnosed by a FORENSIC PSYCHIATRIST "DR. CONRAD DAUM" (**EXHIBIT 19**) as to having a "PSYCHOSIS" (**EXHIBIT 19**) which such information was not made known to the court ordered mental evaluation ordered by the General District Court. He was diagnosed with that in October, 2018.

37. Except forensic psychiatrist Dr. Conrad Daum knew something wasn't mentally right with Defendant but he didn't have the laboratory testing to prove Defendant's psychosis was caused by intoxication because the lab tests were to be

deleted from the chart (**EXHIBIT 18**). Either a criminal cover up or medical neglect and waste of Medicaid tax payer funds to charge for a blood drawing procedure but refuses to complete the purpose(s) of such procedures.

38. **EXHIBIT 10** is the exhibit entitled: "Police: Naked Man High On Bath Salts Chases Down Car", "MARCH 11, 2013 / 9:49 AM / CBS PITTSBURGH", and "Police say a man was high on the synthetic stimulant known as bath salts when he was naked and chased a car down the street in central Pennsylvania.". A criminal on the streets could have easily influenced Defendant outside at night to sniff bath salts and then runs around naked. This is only an example exhibit, but it brings many theories to an issue which can never be rectified because Defendant can never be medically cleared on the day and time of his arrest for indecent exposure. All because lab results were never completed after being ordered.

39. He is actually innocent of indecent exposure because he had acted intoxicated and the nude photographs of Defendant shows him acting wild or crazy outside at night which would normally happen to an intoxicated person, and that can never be fully proven or disproven because the "local hospital" medically neglected Brian David Hill and/or covered up the lab results. They drew the blood, billing record proven it, but never completed the lab tests including blood alcohol testing.

40. Attorney Renorda Pryor thought after hearing about or seeing the nude photographs of Brian that Defendant may have been on drugs or alcohol aka intoxicated. That was why she asked a specific question which was reported by the Transcript (**EXHIBIT 21**, PAGE 35 of that transcript citation). The transcript said: "Q Was there any tests dealing with his blood alcohol content or anything of that nature?" question asked by Atty. Pryor, the witness Robert Jones said: "A I don't know if they did. Like I said, I did not get his records. They normally do, but I do not have that." Attorney Renorda Pryor even suspected at the time of the arrest that Defendant may have been on drugs or alcohol or was drugged into taking nude photographs of himself. The laboratory testing results would have shown intoxication. **That would open up the legal defense of intoxication to the criminal charge by the Commonwealth.** The police OFFICER who charged Defendant in **EXHIBIT 0** thought it was important in the ARREST WARRANT and CRIMINAL COMPLAINT affidavit (**EXHIBIT 0**) for indecent exposure to say that Brian David Hill was medically and psychologically cleared, because if Defendant was not "medically and psychologically cleared" then this creates a huge problem, a huge medical conundrum and legal conundrum in the prosecution's bid for proving that Defendant may or may not have been obscene and may or may not have had the intent to violate Virginia code and local ordinance of indecent exposure.

41. In the medical record dated September 21, 2018 (**EXHIBIT 18**), the discharge paper given to the police / jail was different than the discharge paper in the medical record dated November 19, 2017 (**EXHIBIT 9**). The discharge paper also proves that Defendant was not checked for all issues before claiming he was medically cleared. The hospital contended that Brian was medically cleared but instructed the police / jail in the discharge paper that Defendant should see his private physician the next day, the jail never let him see any physician the next day, and never let him see the jail physician the next day. The discharge paper (**EXHIBIT 18, EXHIBIT INDEX PAGE 157 OF 317, Page 1 Doc# 1; Discharge Instructions - Scanned - Page 1/3**) said: "**FOLLOW UP INSTRUCTIONS Private Physician When: Tomorrow**; **Reason: Further diagnostic work-up**, Recheck today's complaints, Continuance of care". Because the Martinsville City Jail never provided any checkup and never did any drug testing of Defendant, they have no right at all to claim that Defendant was medically cleared, there is no basis for that belief or claim contending of being medically cleared. They never drug tested him, never did any lab work after ordering lab work while Officer Robert Jones tells the United States District Court under oath in transcript (**EXHIBIT 21**, PAGE 35) that "they normally do…" lab work but they don't have that. **The claim in police complaint affidavit are a fraud in this case**, they lied, and the Defendant was not medically cleared. The

other emergency room visit in 2017 had lab work completed for THAT emergency room visit. So they cannot use the excuse not to expect lab work in an emergency room visit. Martinsville is in the wrong here, officer is in the wrong here.

42. Again the officer definitely defrauded the court when he claimed medically cleared. Again the transcript said in citation: "…I don't know if they did. Like I said, **I did not get his records. They normally do, but I do not have that**." See **EXHIBIT 21**, PAGE 35 of that transcript citation. Renorda Pryor, the defense attorney had asked this officer: "Was there any tests dealing with his blood alcohol content or anything of that nature?". The officer lied or had an untruthful belief or delusional belief when he gives the impression they normally do blood alcohol testing or drug testing or any lab testing before arresting somebody. The Defendant was not medically cleared and the belief of Robert Jones in his CRIMINAL COMPLAINT is not the truth. Arrest was defective, complaint was defective.

42. The Commonwealth Attorney and Martinsville Police Department needs proof that Defendant was medically and psychologically cleared at the time of his arrest. The police officer who charged Defendant had thought it was important to note in the CRIMINAL COMPLAINT that Brian David Hill was "medically and psychologically cleared" by the local hospital. That is not true. That is a lie. Once Defendant proves that the medical clearing was a lie, a falsehood, a blatant

disregard for the truth, then the basis in the ARREST WARRANT and CRIMINAL COMPLAINT in **EXHIBIT 0** is based on a falsehood. If Defendant was not medically cleared as charged in September 21, 2018, then the whole basis for such charge was erroneous and is not based on fact. Culpability cannot be attained without proof of full medical clearing including any evidence of clean and healthy laboratory testing results. It is based on theory of alleged guilt, not fact. It was the officer's belief that Defendant was medically and psychologically cleared at the time of Defendant's arrest. That belief is not true, it is not a fact. The officer cannot prove it as fact once the hospital decided to delete from the chart its orders for laboratory testing after Defendant was detained for indecent exposure and brought to the local hospital. The officer believed lab work was done but the lab work was never done even when Defendant had begged for drug testing, saying in affidavit that he may have been drugged, EXHIBIT INDEX PAGE 292 OF 317. Beliefs of Officer Robert Jones do not make it true, it is a belief, not the truth. **The officer MUST TELL THE TRUTH. OFFICER ROBERT JONES MUST TELL THE TRUTH OR HE LIED IN THE ARREST WARRANT. The beliefs of this police officer does not make it true.**

43. The **EXHIBIT 0** charge was not based on fact but a falsehood. Brian David Hill was not medically and psychologically cleared, that is a lie. Brian could have been given any kind of drug or narcotic while he was out on the Dick and

Willie passage walking trail at night, he could have been drugged while walking at night from his residence to the walking trail where Defendant reportedly got naked and took nude photos of himself. **No lab tests, they were covered up, sorry.**

44. **FOR EXAMPLES:** At the time of his arrest, Defendant could have been on Purple Drank. At the time of his arrest, Defendant could have been on Krokodil. At the time of his arrest, Defendant could have been on Phencyclidine (PCP). At the time of his arrest, Defendant could have been on Bath Salts. At the time of his arrest, Defendant could have been on Devil's Breath. At the time of his arrest, Defendant could have been on Methamphetamine. At the time of his arrest, Defendant could have been on crack Cocaine. At the time of his arrest, Defendant could have been on Heroin. At the time of his arrest, Defendant could have been on fentanyl. At the time of his arrest, Defendant could have been on ANYTHING. The police didn't get proof for a fact whether or not Defendant was on any drug or not, Defendant was not cleared for a fact and of truth. Truthfully the Defendant could not have been cleared without a drug test or breathalyzer or any of those police pushed for tests. The police didn't do any mandatory drug testing on Defendant at the time of his arrest, like a bunch of morons, then claim under oath or affirmation that Defendant was medically and psychologically cleared. LIE, LIE, AND LIE, LIE. Beliefs are not material facts. Officer Jones had the belief of being medically and psychologically cleared but as a police officer, he didn't have

any evidence of those claims, they are just beliefs. Beliefs are not the truth. The beliefs of Officer Robert Jones are not the truth, this officer must tell this Court the truth.

45. The Commonwealth Attorney cannot disprove it or prove it because the Defendant had not been factually medically and psychologically cleared at the time of his arrest, which that claim in CRIMINAL COMPLAINT was a belief but it was not true. Being diagnosed with a "PSYCHOSIS" (**EXHIBIT 19**) a month after his arrest draws the entire "local hospital" medical clearing into serious questions.

46. Defendant is ACTUALLY INNOCENT because he has not been medically and psychologically cleared, that is a fact before this Court.

Element 2: Intent is necessary to convict Defendant of the charged crime in ARREST WARRANT which claimed Defendant had: "intentionally make an obscene display of the accused's person or private parts in a public place or in a place where others were present." (EXHIBIT 0, EXHIBIT INDEX PAGE 2 OF 317)

47. Because Brian Hill was not medically cleared, intent cannot be proven until there is 100% undeniable proof that Brian David Hill was medically cleared and lab results should have shown completely clean results of no drugs or gas poisonings before he was arrested for indecent exposure. See the Witness Letter from Kenneth Forinash. See the Witness Letter from Stella B. Forinash. Again, SEE **EXHIBIT 1**: "A MEDICAL EMERGENCY NOT CRIMINAL by BRIAN

HILL'S FAMILY (7-16-2022)". Witness letters were filed in support of the MOTION FOR JUDGMENT OF ACQUITTAL OR NEW TRIAL filed earlier this year. The Court can ask for those letters.

Element 3: Obscenity is necessary to convict Defendant of the charged crime in ARREST WARRANT which claimed Defendant had: "intentionally make an obscene display of the accused's person or private parts in a public place or in a place where others were present." (EXHIBIT 0, EXHIBIT INDEX PAGE 2 OF 317) – Note: Because Brian Hill was not medically cleared as previously assumed by Martinsville Police, obscenity cannot be proven until there is 100% undeniable proof that Brian David Hill was medically cleared and psychologically cleared before he was arrested for indecent exposure.

48. Brian Hill said under penalty of perjury to this Court in affidavit that he never masturbated. Citation: "I never masturbated, I told the police the truth. When I was seen… seen by a passing vehicle, I never masturbated." (**EXHIBIT 25**, Case 1:13-cr-00435-TDS, Document 163, Filed 12/12/18, Page 4 of 6, EXHIBIT INDEX PAGE 305 OF 317). Because Defendant was not truly medically cleared, he cannot be obscene and wasn't in his medical capacity or even mental capacity to even have his behavior construed as to any obscenity if it even exists which it does not. He was not coherent. He was likely intoxicated but that cannot be determined either way as the lab tests were never completed after being ordered, on record in this case (**EXHIBIT 18**). Defendant never masturbated and was not medically

cleared at the time, he was not being obscene. Was never under the totality of circumstances to infer that Defendant had an intent or purpose being an appeal to the prurient interest in sex. See Price v. Commonwealth, 201 S.E.2d 798, 800 (Va. 1974); Romick v. Commonwealth, No. 1580-12-4, 2013 WL 6094240, at *2 (Va. Ct. App. Nov. 19, 2013)(unpublished).

49. There are articles of autistic children wandering away from home and found naked in public places or naked outside of the home. Of course with Defendant he had not had a history of this type of behavior, but his autism had regressed to that of autistic children because nobody knew in 2018 that Brian Hill was exposed to carbon monoxide gas until 4 months after his arrest (**EXHIBIT 22**, Pete Compton ACE Chimney business witness letter). Anyways, Defendant has autism and the Carbon Monoxide ("CO") gas exposure regressed his autism to the point of that of a child. The mental evaluation ordered by the General District Court in November, 2018 under Dr. Rebecca Loehner did not know about the carbon monoxide gas exposure from October 5, 2017, until Defendant leaving the home in late September 20, 2018, and was arrested on September 21, 2018. The mental evaluation ordered by the General District Court in November, 2018 under Dr. Rebecca Loehner did not know about the psychosis diagnosis from Dr. Conrad Daum (**EXHIBIT 19**) a forensic psychiatrist and thus the GDC was not aware of that diagnosis during that evaluation. That evaluation was misled and needs to be

reordered by the Circuit Court upon new trial. Autistic children have the tendency of walking around naked and wandering away from home and in a lot of cases, found naked, just like Defendant was found naked by police. **Should autistic children face criminal liability or mental help programs??????????????????????????????????????**

50. Defendant is filing four different articles of autistic children or autistic teens found naked either in public or was found naked by police, and one such exhibit regards an article on "How to Stop Your Autistic Child From Taking Their Clothes Off", "Medically reviewed Pilar Trelles, MD". See **EXHIBIT 12**. Autism is a neurological regression from people who behave normally and such normal people have no neurological damage or disability. Carbon monoxide or anybody drugging Brian Hill outside can cause such a regression to wandering around naked in public, especially at night. A MEDICAL DOCTOR may be necessary to testify in this case. Defendant recommends and suggests that the Hon. Giles Carter Greer order a medical expert at Commonwealth's expense to review Defendant's behavior in his charge and the medical evidence as well as mental health evidence submitted by Defendant. See **EXHIBIT 11**: "Autistic boy, 13, found naked in house filled with human feces and dead rodents: police". Here is another autistic person found naked in a public place article. See **EXHIBIT 13**: "Naked girl found walking along I-5 near Ashland", "A girl who is believed to be autistic was found

walking naked along the shoulder of Interstate 5 on Sunday north of Ashland. Oregon State Police say she appeared to be in her late teens and couldn't communicate". See **EXHIBIT 14** citation: "Motorists called police around 6 a.m. after noticing the child in the middle of the roadway with no clothes near Apache Road and Price Road…The child is autistic," Many situations of somebody with autism found wandering away from home naked. Not every case reported by news media.

52. Until the passage of Virginia law Virginia Code § 19.2-271.6 which came into effect in the year of 2021, The Circuit Court did not take autism spectrum disorder into consideration due to Stamper v. Commonwealth, 228 Va. 707 (1985) which was nullified by the new law in the year of 2021. Instead this Court had treated Defendant's MEDICAL EMERGENCY as a criminal matter. See Kenneth and Stella Forinash's letter to the Court, **EXHIBIT 1**. Defendant's autistic behavior of wandering away from home and being found naked had not been repeated (**EXHIBIT 21**, PAGE 35 of that transcript citation) since his arrest after the removal of the source of the Carbon Monoxide gas (**EXHIBIT 22**), so the Court and authorities should have no concern that Defendant could do this again as the issue of carbon monoxide had ceased since late January, 2019. Thanks to Pete Compton the hero. Defendant has not ran around naked since then. The carbon monoxide long-term in 2018 had regressed his behavior of autistic spectrum

disorder at that time into that of an autistic child, similar to the above referenced exhibits of example articles.

53. Brian Hill is actually innocent of all three elements of his criminal charge. If the Circuit Court is still not convinced, they should hold an evidentiary hearing, ask the Commonwealth Attorney for a response, and appoint an attorney to represent Defendant in this case to fully demonstrate factual innocence to warrant New Trial in this Court or Judgment of Acquittal to prevent a fundamental miscarriage of justice. Convicting an innocent man of violating the indecent exposure statute is a miscarriage of justice.

LEGAL ARGUMENT AS TO WHY CIRCUIT COURT HAS THE JURISDICTION, AUTHORITY, AND CASE LAW TO JUSTIFY THE RELIEF SOUGHT BY GRANTING THIS MOTION AND EVEN HOLDING AN EVIDENTIARY HEARING

1. The judge's reasoning why possibly considering to deny this type of post-conviction motion: Citation of Rule 1:1 - Finality of Judgments, Orders and Decrees, Va. R. Sup. Ct. 1:1 ("(a)Expiration of Court's Jurisdiction. - All final judgments, orders, and decrees, irrespective of terms of court, remain under the control of the trial court and may be modified, vacated, or suspended for twenty-one days after the date of entry, and no longer. The date of entry of any final judgment, order, or decree is the date it is signed by the judge either on paper or by electronic means in accord with Rule 1:17. (b)General Rule: Orders Deemed Final.

- Unless otherwise provided by rule or statute, a judgment, order, or decree is final if it disposes of the entire matter before the court, including all claim(s) and all cause(s) of action against all parties, gives all the relief contemplated, and leaves nothing to be done by the court except the ministerial execution of the court's judgment, order, or decree.").

2. However due to the rights of criminal defendants under the U.S. Constitution and Virginia Constitution, (court rules cannot override the Constitution and its protections of criminal defendants) Rule 1:1 does not bar reopening a final criminal judgment or conviction of a case when new evidence is filed with the Court, evidence that was not previously known or discovered. New evidence which proves that a final judgment is erroneous or that a final judgment cannot be sustained based on new evidence can bring jurisdiction to the Circuit Court to act on a motion challenging a final judgment or criminal conviction. Again see Odum standard: Odum v. Commonwealth, 225 Va. 123, 124 (Va. 1983) and Tweed standard: Commonwealth v. Tweed, 264 Va. 524, (Va. 2002).

3. Also the Supreme Court of Virginia, rules of the Court has a rule on a motion for a new trial or judgment of acquittal if the evidence is enough to show that the Commonwealth cannot sustain a criminal conviction. All elements of a criminal charge must be met before a criminal conviction can be entered constitutionally as part of due process of law. See Rule 3A:15 - Motion to Strike or

to Set Aside Verdict; Judgment of Acquittal or New Trial, Va. R. Sup. Ct. 3A:15 (“(c)Judgment of Acquittal or New Trial. The court must enter a judgment of acquittal if it strikes the evidence or sets aside the verdict because the evidence is insufficient as a matter of law to sustain a conviction. The court must grant a new trial if it sets aside the verdict for any other reason.”).

4. As to the psychosis diagnosis (**EXHIBIT 19**) by the forensic psychiatrist Dr. Conrad Daum of Piedmont Community Services directly involving the statements given by Defendant regarding what happened on September 21, 2018 and why he was naked and taking photos of himself around that time, that diagnosis may be a defense under Va. Code 19.2-271.6 - Evidence of defendant's mental condition admissible; notice to Commonwealth (“A. For the purposes of this section: "Developmental disability" means the same as that term is defined in § 37.2-100. "Intellectual disability" means the same as that term is defined in § 37.2-100. "Mental illness" means a disorder of thought, mood, perception, or orientation that significantly impairs judgment or capacity to recognize reality. B. In any criminal case, evidence offered by the defendant concerning the defendant's mental condition at the time of the alleged offense, including expert testimony, is relevant, is not evidence concerning an ultimate issue of fact, and shall be admitted if such evidence (i) tends to show the defendant did not have the intent required for the offense charged and (ii) is otherwise admissible pursuant to the general rules of

evidence. For purposes of this section, to establish the underlying mental condition the defendant must show that his condition existed at the time of the offense and that the condition satisfies the diagnostic criteria for (i) a mental illness, (ii) a developmental disability or intellectual disability, or (iii) autism spectrum disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.")

5. Let us examine the Tweed Standard and Odum standards which both have a similar requirement for new trials and judgment of acquittal if the new evidence is enough to disprove the elements of guilt presented by the Commonwealth of Virginia which may require acquittal by dismissal of case.

A PARTY SEEKING A NEW TRIAL LEGAL STANDARDS

6. A party who seeks a new trial based upon after-discovered evidence bears the burden to establish that the evidence (1) appears to have been discovered subsequent to the trial; (2) could not have been secured for use at the trial in the exercise of reasonable diligence by the movant; (3) is not merely cumulative, corroborative, or collateral; and (4) is material, and such as should produce opposite results on the merits at another trial. The litigant must establish each of these mandatory criteria.

7. To satisfy first criteria, the evidence of proving not being medically cleared as stated in the STATEMENT OF THE FACTS was all discovered after the trial in the General District Court on December 21, 2018.

8. To satisfy second criteria, the evidence could not have been secured for use at trial because of ineffective assistance of counsel in violation of the Sixth Amendment of the U.S. Constitution. As well as non-existence of Va. Code 19.2-271.6 until its passage in 2021 legislative session. All court appointed lawyers Matthew Scott Thomas Clark, Lauren McGarry, and Scott Albrecht did not ever secure any evidence proving that Defendant was not medically cleared as when charged by Martinsville Police. Evidence could not have been secured pro se because at the time a lawyer was appointed, any pro se filings were ignored by the Circuit Court, any evidence filed pro se would have been disregarded and ignored, it was ignored for a fact. So the evidence could not have been secured prior to trial because of ineffective assistance of counsel and the Circuit Court ignored all pro se motions and ignored all pro se evidence while counsel was appointed. So ineffective counsel is the cause. See: Dominguez v. Pruett, 756 S.E.2d 911 (Va. 2014). Shaikh v. Johnson, 666 S.E.2d 325 (Va. 2008). See: Byrd v. Johnson, 708 S.E.2d 896 (Va. 2011). If counsel were effective in securing this evidence, Defendant never would have been convicted in the first place because he is factually innocent since he was never truly medically cleared. The entire claim by

Officer Robert Jones that Defendant was medically and psychologically cleared was based on only a belief, not based on a fact, not based on evidence, not based on the truth, it was only based on a belief by this police officer.

9. To satisfy third criteria, that it "is not merely cumulative, corroborative, or collateral", it is not merely just evidence but it proves directly that lab work was ordered, but lab work was never completed and was deleted from the chart. It was covered up. It proved that Defendant was dehydrated at the time he was at the hospital (See **EXHIBIT 2**, EXHIBIT INDEX PAGE 13 OF 317). He was asked about why he was out there naked before he was transported to the hospital. His statements could not have been coherent. Lab work was ordered but never completed and at Sovah Health Martinsville's fault. Sovah Health Martinsville is the local hospital where they gave Officer Robert Jones the false impression and belief that Defendant was medically and psychologically cleared. So the evidence proves to any reasonable trier of fact that the Defendant was never medically cleared, and it jeopardizes every other element of the charged crime. The indecent exposure statute was never meant to criminalize medical emergencies and never meant to criminalize those found naked in public without the intent and without the obscenity elements needing to be met. Otherwise that statute can criminalize an elderly person with dementia or Alzheimer's disease or mentally handicapped person found naked in public. It would criminalize those with severe mental

handicaps, it would criminalize those with brain damage, and it would criminalize an elderly critically ill person. The purpose of the indecent exposure statute was only to penalize flashers, and those who purposefully want to expose themselves in public for the purpose of masturbation and to appeal to the prurient interest in sex, genital excretions, etc etc. Obscenity is required to convict somebody with indecent exposure to protect the elderly and medically impaired people from being convicted wrongfully of indecent exposure charges. It creates a balance of law where it protects the public from sexual acts in public but at the same time it protects medical emergencies from being criminally liable. So this evidence proves that the hospital did draw blood, billed Medicaid for procedures, but did not complete the procedure of conducting laboratory tests and spoiliated the blood. Then deleted the ordered lab tests from the chart. Evidence proved that a redacted government agency is investigating Dr. Brant Hinchman and once the investigation is complete the results can be given to the court and would also be considered new evidence based on the government findings. Government trumps corrupt Glen Andrew Hall.

10. "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).

11. To satisfy the last element, "(4) is material, and such as should produce opposite results on the merits at another trial." The last element is satisfied because it is directly material that Defendant was not medically and psychologically cleared. That is in the CRIMINAL COMPLAINT and is the direct element of alleged guilt. It made the Circuit Court and General District Court believe or be given the wrong impression that Defendant was purposefully out nude in public with good health and was caught by law enforcement, then made claims as to why he was nude out in public which those claims could not be verified and thus Defendant was arrested and treated as though his claims were only a mere excuse as to why he was out there in the nude. The judge didn't believe Defendant at the time. New evidence changes the outcome of facts and law and should change the outcome in this case.

12. However, Defendant was not medically and psychologically cleared and was given medical procedures not mentioned in the medical record dated

September 21, 2018. There are two medical records. One from November 19, 2017, and September 21, 2018. The medical record from 2017 shown a lot of procedures done including laboratory testing and ECG reading showing Sinus Tachycardia. There were no lab tests and no ECG tests done on September 21, 2018. No lab work done after hearing from police that he was out there naked taking photos of himself. Whether out of emotional anger or whatever the reason may be, the hospital did order lab testing and IV Kit was used and other IV tools, however the assortment of lab tests which were originally ordered were to be deleted from the chart without explanation. The police officer who charged Defendant with indecent exposure had the belief without any hard evidence that Defendant was "medically and psychologically cleared". That belief has now been dashed, that belief has been proven untrue. It is an error of fact and an error of law to convict Brian David Hill of indecent exposure. Doesn't matter about the nude photographs when dehydration has been proven by IV fluids of hydration and electrolytes were documented in the **EXHIBIT 2** and **EXHIBIT 28** records. Defendant's statements weren't coherent.

13. Now it is documented by billing record that procedures were conducted which were not noted in the medical records. Dehydration was not noted in the medical records dated September 21, 2018. Brian David Hill gave statements about the man wearing the hoodie threatening to kill Brian's mother if he didn't take his clothes off in a public place and take photographs of himself. Those statements

were given before the hospital visit, and during the hospital visit when Defendant was accused of lying by Officer Robert Jones. However, Robert Jones is NOT A MEDICAL DOCTOR, **AGAIN, OFFICER ROBERT JONES OF MARTINSVILLE POLICE DEPARTMENT IS NOT A MEDICAL DOCTOR**. He accused Defendant of lying while Defendant was being pumped with electrolyte of sodium chloride and hydration. So defendant was dehydrated and was questioned by Officer Jones about the guy wearing the hoodie while Defendant was dehydrated and then the officer admitted in Federal Court that he never got the medical records, never spoke with Dr. Brant Hinchman in any detail about Defendant's serious medical issues like Type 1 brittle diabetes and OCD as well as his proof that he did indeed had autism spectrum disorder. The whole criminal case was built on beliefs and fraud, the only truthful thing was that Brian David Hill was found naked on a deserted but public walking trail at night. There is no evidence of sexual gratification. There is evidence showing no medical clearing as lab testing was ordered but to be deleted from the chart which thwarts the standards of usually mandatory or pushed drug testing for those accused of being drunk or on drugs aka intoxication in public. Why did Martinsville Police not drug test the Defendant that night when he was found not making any sense? Why did Martinsville Police assume that Defendant had any lab work from the hospital but refused to subpoena for those medical records and yet had the belief without any

proof that Defendant was medically and psychologically cleared? Why did the mental evaluation ordered by the General District Court in this criminal case in a SEALED evaluation report not know that in (October) “10/24/2018 9:51 AM to 10:23 AM” a forensic psychiatrist of Piedmont Community Services diagnosed Defendant with having psychosis but that was omitted from the sealed mental evaluation study? Why does the mental evaluation study by Dr. Rebecca Loehner in the SEALED evaluation report by Court Order in November, 2018 have no mention of the psychosis diagnosis from Piedmont Community services from a forensic psychiatrist licensed Doctor in **EXHIBIT 19**? Why did Attorney Scott Albrecht not inform Dr. Rebecca Loehner at the time in the SEALED evaluation report about the psychosis diagnosis from Piedmont Community services from a forensic psychiatrist licensed Doctor in **EXHIBIT 19**? Was the Judge in the General District Court misled or was defrauded when he was not made aware of the psychosis when he found Defendant guilty of indecent exposure? Was Dr. Rebecca Loehner in a court ordered evaluation in the General District Court misled or was defrauded when she was not made aware of the psychosis when the judge found Defendant guilty of indecent exposure? It is clear that Brian David Hill was not psychologically right in the head and so he was not psychologically cleared and was not medically cleared. The hospital did a very poor job and that is why they are under investigation by REDACTED government agency which has the authority to

suspend or revoke the license of Emergency Room doctor Dr. Brant Hinchman of the local hospital who lied to the police officer or gave the police officer the wrong impression of being medically and psychologically cleared.

14. Again, he was not mentally right in the head when he made these statements: Brian said in **EXHIBIT 24**, Case 1:13-cr-00435-TDS, Document 153, Filed 10/17/18, Page 3 of 11: "…***At one point I felt like I might collapse so I may have been drugged. I had to keep sitting on benches***". Defendant said he thought he was drugged. And the Commonwealth of Virginia and City of Martinsville, aka the Commonwealth Attorney cannot disprove Brian David Hill may have been on a drug, narcotic, gas, substance, anything. Defendant also made statements in writing in the year 2018 which had proven to any rational investigator or trier of fact that he was not mentally and medically cleared. **EXHIBIT 24**, Case 1:13-cr-00435-TDS, Document 153, Filed 10/17/18, Page 2 of 11, EXHIBIT INDEX PAGE 291 OF 317: "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 mom had also noticed that my doors were not being kept 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.". **EXHIBIT 24**, Case 1:13-cr-00435-TDS, Document 153, Filed 10/17/18, Page 2 of 11, EXHIBIT INDEX PAGE 291 OF 317: "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. I was around the period when I was mowing the grass between the time period of 1 to 4PM. That was a tuesday. Likely surveiling me." These statements were written on September 27, 2018. Six days reportedly after Defendant was arrested. Not psychologically cleared, his statements at that time sounded bazaar and goes along with the carbon monoxide gas poisoning (**EXHIBIT 22**) theory. Carbon monoxide gas found in Apartment of Brian David Hill has been proven with evidence of Pete Compton witness letter, the photographs of the white residue and damage in Defendant's apartment and the carbon monoxide gas induced damage had got worse while Defendant was in jails in late September 2018, October 2018, November 2018, December 2018, and January 2019 until the source of the carbon monoxide gas had been removed. Carbon monoxide gas had been proven, the levels had not been documented due to lab work ordered but then deleted from the chart of Defendant's medical records.

15. It is clear that Defendant was not medically and psychologically cleared based on all of the material and relevant evidence not just with Exhibits supportive of this motion and attached to this motion. Defendant made paranoid statements and statements of being drugged and having blacked out memories in an affidavit to the Federal Courthouse in September 27, 2018 STATUS REPORT. It was mailed to the wrong address and had to be re-mailed in October of 2018. Therefore

it was clear that Defendant was not mentally in his right state of mind. With the passage of Virginia Code § 19.2-271.6. “Evidence of defendant's mental condition admissible; notice to Commonwealth”, it is clear under law that the psychosis, his weird psychological writings in his September 27, 2018 STATUS REPORT filed in October, 2018, it is all relevant and material as well as admissible to the Circuit Court as admissible evidence. This evidence proves that Defendant was not psychologically and medically cleared as asserted by Martinsville Police Officer Robert Jones.

16. This means the requirement under the Tweed Standard and Odum Standard (Supreme Court of Virginia) that the evidence could not have been secured or be made available at the time of Trial (Citation in part: “…(2) could not have been secured for use at the trial in the exercise of reasonable diligence by the movant”) because at that time it was not admissible until the passage of Virginia Code § 19.2-271.6 in the year of 2021. So prior to the passage of that law, psychosis could not have been admissible as evidence in any year prior to the passage of that statute. The evidence is now all admissible and material or relevant or both. The mental evaluator Dr. Rebecca Loehner who conducted the mental evaluation as ordered by the General District Court in this case, was not aware of Defendant’s written statements which sounded paranoid and exhibited psychosis six days after his arrest on September 27, 2018, see **EXHIBIT 24** which is federal

court document #153. Dr. Conrad Daum was not aware of Document #153 but nevertheless thought that Defendant had exhibited an "unknown psychosis" which such psychosis and hallucinations can be caused by carbon monoxide gas (**EXHIBIT 22**) which was proven by Defendant, just not the levels were proven. Defendant made the same statements about the guy in the hoodie in Document #153 and the same statements made to Dr. Conrad Daum to even be given such diagnosis of "psychosis", see **EXHIBIT 19**.

17. It is clear that all **STATEMENT OF THE FACTS** and all arguments made in this motion support the relief sought. Either a new trial must be had or judgment of acquittal doing away with this criminal charge as unfounded and cannot legally sustain a criminal conviction as a matter of law. The facts being proven to disprove multiple elements of the prosecution's case by the City of Martinsville and Commonwealth of Virginia warrant that it is an error of fact and error of law to sustain a criminal conviction, because constitutionally the Virginia Constitution and U.S. Constitution requires that all elements of a crime must be met with clear and convincing evidence beyond a reasonable doubt before a jury can convict a criminal defendant. The defendant is presumed innocent, Defendant was presumed innocent until proven guilty beyond a reasonable doubt. All elements must be met, that is a requirement of case law and constitutional law. All

elements have not been met, element of being medically and psychologically cleared has not been met.

18. It is a fundamental miscarriage of justice to convict Defendant any longer in this Circuit Court. The General District Court had no basis to convict the Defendant because all elements of the offense had not been proven by the Commonwealth Attorney. Martinsville Police had the belief Defendant was medically cleared and mentally/psychologically cleared. That is not true. Beliefs under affidavit do not make them true.

19. The U.S. Supreme Court has supported the emphasis that all state courts must not convict people who are factually innocent of a crime otherwise it is a clear and convincing miscarriage of justice and actual prejudice against an innocent person. See Schlup v. Delo, 513 U.S. at 327 — 28. Settles v. Brooks, Civil Action No. 07-812, 18 n.6 (W.D. Pa. Jun. 26, 2008).

20. This Court has no right to deny this motion on the procedural default or procedural ground that it lacks jurisdiction using Rule 1:1 of the Rules of the Supreme Court of Virginia as an excuse. The judge cannot deny this motion on the excuse that it claimed it may lack jurisdiction because it would create a fundamental miscarriage of justice and prove the courts are broken convicting innocent people and demanding legal fees be paid by innocent people for crimes they are not guilty of which is contrary to justice and contrary to Constitutional law

and remedy. Due process of law requires that this Court corrects its errors of fact and errors of law. It is not justice, it is tyranny to convict innocent people without mercy.

21. See Settles v. Brooks, Civil Action No. 07-812, 16 (W.D. Pa. Jun. 26, 2008) ("Petitioner counters that this evidence of his actual innocence overcomes the procedural default because to not entertain his **procedurally defaulted claim of actual innocence would result in a complete miscarriage of justice**.").

22. See Constitution of Virginia; Article I. Bill of Rights; Section 8. Criminal prosecutions

CITATION: Section 8. Criminal prosecutions. That in criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, and to call for evidence in his favor, and he shall enjoy the right to a speedy and public trial, by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty. He shall not be deprived of life or liberty, except by the law of the land or the judgment of his peers, nor be compelled in any criminal proceeding to give evidence against himself, nor be put twice in jeopardy for the same offense.

23. See Constitution of Virginia; Article I. Bill of Rights; Section 8. Criminal prosecutions

Section 11. Due process of law; obligation of contracts; taking or damaging of private property; prohibited discrimination; jury trial in civil cases.

"That no person shall be deprived of his life, liberty, or property without due process of law…"

24. Due process of law requires that this Court act on this motion, due process of law requires that the Commonwealth Attorney be ordered to respond to the claims, arguments, and evidence made in this motion. Due process requires that evidence not be ignored by this Court.

25. If a judge ignores the evidence, it is a due process violation. See Hunter v. United States, 548 A.2d 806, (D.C. 1988) ("Because the trial court improperly ignored evidence bearing on appellant's competence to enter a guilty plea, we reverse and remand to the trial court for further proceedings.") Lafferty v. Cook, 949 F.2d 1546, 1555 n.10 (10th Cir. 1992) ("the inquiry on habeas is whether the state court denied the defendant his right to due process by ignoring evidence, including evidence at trial"). Raghav v. Wolf, 522 F. Supp. 3d 534, 538 (D. Ariz. 2021) ("Immigration Court violated his due process rights by ignoring evidence of his conditions in India and erroneously applying the law."). James v. Bradley, 19-870-pr, 2 (2d Cir. Mar. 31, 2020) ("James brought this action alleging that Bradley violated his right to procedural due process by ignoring evidence at the hearing that purportedly showed that the tested urine was taken from someone other than James.").

26. See Schlup v. Delo, 513 U.S. at 327 — 28. Settles v. Brooks, Civil Action No. 07-812, 18 n.6 (W.D. Pa. Jun. 26, 2008) ("The Supreme Court in Schlup explained that an actual innocence claim in the context of seeking to have a

procedural default "forgiven" so as to have the procedurally defaulted claims reviewed on the merits is a "gateway" claim. In other words, the claim of actual innocence in the Schlup context is not a claim that because I am actually innocent by virtue of that fact alone I am entitled to federal habeas relief but, rather, is a claim that contends because I am actually innocent, the court should **forgive my procedural default in the State courts** and **consider my procedurally defaulted claims on their merits.** Schlup, 513 U.S. at 315.")

27. Defendant must be adjudged as acquitted or given a new trial under the Tweed Standard and Odum Standard pursuant to Va. R. Sup. Ct. 3A:15, "Rule 3A:15 - Motion to Strike or to Set Aside Verdict; Judgment of Acquittal or New Trial". Defendant should not be denied relief here. He has disproven three elements of the crime, because Defendant has the proof that he was not medically and psychologically cleared. Mental health evidence which wasn't admissible prior to the year of became admissible after the year of 2021. Defendant can fully prove to this Court that he was not psychologically cleared as charged and was not medically cleared as charged. Defendant is not guilty of indecent exposure and cannot be convicted because he was not medically cleared, and the Commonwealth can never prove otherwise. They cannot prove otherwise, Defendant is never guilty and cannot and should not be convicted of indecent exposure regardless of whether it is a local ordinance or state statute. There are legal standards required to secure a

criminal conviction of consequences for a crime committed. No crime was committed on September 21, 2018, and no conviction can be secured with three elements of the charge in jeopardy. Sustaining this criminal conviction is an error of law, error of fact, errors of fact, and is a grave and fundamental miscarriage of justice. It is no justice at all, it is a fabrication of justice, and it is fake justice, not even worthy of a criminal record, not even worthy of State Police notation of a criminal record. Conviction of an innocent man is true obstruction of justice by the Commonwealth.

CONCLUSION

1. It is clear that Defendant was not medically and psychologically cleared as charged on September 21, 2018 as proclaimed in **EXHIBIT 0** ARREST WARRANT and CRIMINAL COMPLAINT.

2. It is clear that not all elements of guilt are met, referring to the elements of the charged crime presented by the Commonwealth Attorney Glen Andrew Hall representing City of Martinsville and Commonwealth of Virginia. Defendant was not medically and psychologically cleared as charged. Defendant was not with a clean bill of health. The officer didn't even subpoena for medical records but asserted under oath or affirmation in CRIMINAL COMPLAINT page 3 that Defendant was medically and psychologically cleared. That was a big fat lie.

Officer Jones lied in oath or affirmation or was based on an erroneous belief not based on facts. Defendant was not cleared in the aspect of the charge element.

3. Because Defendant was not medically cleared, intent can never be established even under a trier of fact's broad discretion which such discretion over intent cannot be successfully challenged on appeal alone. However, the evidence that Defendant had psychosis and made paranoid statements and statements of being drugged but lab work which was ordered were deleted by the hospital without a valid explanation or excuse after lab work was ordered on September 21, 2018, on the date of Defendant's arrest. Intent can never be proven and any reasonable juror would find that intent cannot be proven without first fully medically and psychologically clearing the Defendant with a clean bill of health which would include completed laboratory testing and laboratory results. Since there are no completed laboratory testing and laboratory results, AT THE FAULT OF THE HOSPITAL who gave Officer Robert Jones a false impression or belief that Defendant was medically and psychologically cleared when he in fact wasn't according to the evidence and the passage of Virginia Code § 19.2-271.6 in the year of 2021.

4. Defendant said under federal affidavits that he never masturbated and never had sexual gratification. Defendant also tried to show similar arguments in the General District Court trial that he had no sexual gratification. Defendant never

had any sexual gratification because Defendant was not medically and psychologically cleared. Defendant may have been on any street drug or illegal drug or carbon monoxide gas or anything that night at the time he was found naked by Martinsville Police. They never drug tested him but said he was medically and psychologically cleared. That is a proven lie, there is no lab work, and there are no drug tests, no evidence that Defendant had a clean bill of health, not without the laboratory testings checking the levels in his blood. No lab tests were completed, no drug tests were done by Martinsville Police. Defendant can never be proven to have been medically and psychologically cleared as that is a lie, it is only a belief without any supporting evidence proving it. No facts proving medical clearing. Defendant was not cleared and no such impression should have been made of such as that is false statements in a police report. False statements of medical clearing, false statements of being psychologically cleared. It is false at no fault of Defendant. The fault lays at Sovah Health Martinsville. The fault lays at Dr. Brant Hinchman who should be charged with making a false report or contributing false impressions to the police report with Martinsville Police Department or giving false statements or giving false impressions to Martinsville Police Department. Dr. Brant Hinchman of Sovah Health Martinsville aka the local hospital should be tried in court for lying or misleading law enforcement, possibly intentionally. Defendant must be let go and Defendant must be acquitted of this charge, and no

charges should ever result again from September 21, 2018. Defendant was not proven to have been medically cleared without the laboratory forensic lab work and blood alcohol testing. The hospital screwed things up. Defendant should be acquitted of this conviction and charge dismissed at once, the Commonwealth knows that Defendant is innocent of his charge. Scott Albrecht knew Defendant was innocent but did a very poor job at the Trial in the General District Court. Court appointed attorney Scott Albrecht was right all along when he told Defendant that he was innocent of indecent exposure. However, he did a poor job on everything else, except his encouragement to Defendant that he was innocent of his charged crime. That is all folks.

5. The element of Defendant being "medically and psychologically cleared" in **EXHIBIT 0** as charged without clear and convincing evidence by Martinsville Police Department and Sovah Health Martinsville hospital, it was meritless, baseless, frivolous, and without evidence to prove it or support it.

6. The element of Defendant making "an obscene display" in **EXHIBIT 0** as charged without clear and convincing evidence by Martinsville Police Department and Sovah Health Martinsville hospital, it was meritless, baseless, frivolous, and without evidence to prove it. Meritless because obscenity or intent of obscenity cannot be proven without 100% proof of a clean bill of health by the hospital including lab testing results when already ordered and blood already drawn.

7. The element of Defendant intentionally making "an obscene display" in **EXHIBIT 0** as charged without clear and convincing evidence by Martinsville Police Department and Sovah Health Martinsville hospital, it was meritless, baseless, frivolous, and without evidence to prove it. Meritless because obscenity or intent of obscenity cannot be proven without 100% proof of a clean bill of health by the hospital including lab testing results when already ordered, blood drawn.

8. Defendant is innocent, he was not cleared, he was not being obscene, and he had no intent. Unless the Commonwealth of Virginia and City of Martinsville can prove otherwise to the claims, Statement of the Facts, Exhibits, and arguments made in this motion, this Court should grant this motion for judgment of acquittal or order a new trial by jury, without any unnecessary delay.

EXHIBITS LIST

EXHIBITS #	PAGES #	DESCRIPTION
EXHIBIT 0	1-4	PHOTOCOPY OF ARREST WARRANT AND CRIMINAL COMPLAINT IN GENERAL DISTRICT COURT - 09-21-2018
EXHIBIT 1	5-11	A MEDICAL EMERGENCY NOT CRIMINAL by BRIAN HILL'S FAMILY (7-16-2022) – By Kenneth Forinash and Stella Forinash
EXHIBIT 2	12-16	SOVAH HEALTH MARTINSVILLE (LOCAL HOSPITAL) BILLING RECORDS OBTAINED JULY 19, 2022 – DATED SEPTEMBER 21, 2018

EXHIBIT 3	17-18	Definition of peripheral venous catheter - NCI Dictionary of Cancer Terms (cancer.gov) printout by family
EXHIBIT 4	19-21	Virginia Medicaid Claims History For Member Name: Brian Hill - Claims For 11/19/2017 And 9/21/2018
EXHIBIT 5	22-45	USA v. Brian David Hill - 7:18-MJ-00149, December 26, 2018, Supervised Release Revocation Hearing. Transcript completed on May 2, 2022
EXHIBIT 6	46-64	USA v. Brian David Hill - 7:18-MJ-00149, May 14, 2019, Competency/Detention Hearing. Transcript completed on May 2, 2022.
EXHIBIT 7	65-66	Definition of delirium - NCI Dictionary of Cancer Terms (cancer.gov) printout by family
EXHIBIT 8	67-69	REDACTED government letters. First page Letter dated June 9, 2022 and second letter in this exhibit dated July 20, 2022.
EXHIBIT 9	70-85	Medical records from Sovah Health Martinsville (local hospital), dated Sunday, November 19, 2017.
EXHIBIT 10	86-91	Article printout by family, Entitled: "Police: Naked Man High On Bath Salts Chases Down Car", "MARCH 11, 2013 / 9:49 AM / CBS PITTSBURGH"
EXHIBIT 11	92-103	Article printout by family, Entitled: ""Autistic boy, 13, found naked in house filled with human feces and dead rodents: police""
EXHIBIT 12	104-115	Article printout by family, Entitled: "How to Stop Your Autistic Child From Taking Their Clothes Off",

		"Medically reviewed Pilar Trelles, MD".
EXHIBIT 13	116-120	Article printout by family, Entitled: "Naked girl found walking along I-5 near Ashland"
EXHIBIT 14	121-135	Article printout by family, Entitled: "Tempe police locate guardians of boy found naked, alone Tuesday morning"
EXHIBIT 15	136-137	ORDER IN MISDEMEANOR OR TRAFFIC INFRACTION PROCEEDING
EXHIBIT 16	138-150	MOTION TO WITHDRAW APPEAL
EXHIBIT 17	151-155	TABLE OF CONTENTS of COURT RECORDS OF CIRCUIT COURT filed by Clerk, Hon. Ashby R. Pritchett, dated 05-26-2022 07:00:33 EDT
EXHIBIT 18	156-163	Medical records from Sovah Health Martinsville (local hospital), dated Friday, September 21, 2018.
EXHIBIT 19	164-170	Mental health medical records from Piedmont Community Services, concerning Dr. Conrad Daum patient visit on October 24, 2018.
EXHIBIT 20	171-175	Scanned Photocopies of returned attempted mailings from Martinsville city Jail due to mental confusion caused by carbon monoxide gas exposure - Case 1:13-cr-00435-TDS Document 181-9 Filed 07/22/19 – Note: There is no L. Richardson Preyer Federal Building in Martinsville city.
EXHIBIT 21	176-257	USA v. Brian David Hill - 1:13-CR-00435-1, September 12, 2019, SUPERVISED RELEASE REVOCATION HEARING.

		Transcript completed on Nov. 4, 2019.
EXHIBIT 22	258-259	Witness Letter from Pete Compton; ACE Chimney business & Wildlife, dated: June 13, 2019
EXHIBIT 23	260-288	JUNE 21, 2019 DECLARATION OF BRIAN DAVID HILL IN OPPOSITION TO GOVERNMENT'S/RESPONDENT'S DOCUMENTS #156, #157, AND #158 - Case 1:13-cr-00435-TDS, Document 179, Filed 06/24/19, 28 Pages
EXHIBIT 24	289-300	STATUS REPORT OF PETITIONER SEPTEMBER 27, 2018, RE-MAILED ON OCTOBER 10, 2018
EXHIBIT 25	301-307	Declaration of Brian David Hill in support of continuing Supervised Release, towards innocence in case, Case 1:13-cr-00435-TDS, Document 163, Filed 12/12/18, 6 Pages
EXHIBIT 26	308-312	URGENT!!!! LETTER TO MEDICAID REQUESTING RECORDS REGARDING FINANCIAL BILLING STATEMENTS OF SOVAH HEALTH MARTINSVILLE; REQUESTING FINANCIAL RECORDS OF BRIAN DAVID HILL, REQUESTING RECORDS OF HIMSELF; RECORDS OF LAB WORK ORDERED ON SEPTEMBER 21, 2018 - SATURDAY, JULY 16, 2022
EXHIBIT 27	313-315	LETTER TO SOVAH HEALTH MARTINSVILLE REQUESTING FINANCIAL RECORDS OF BRIAN DAVID HILL, REQUESTING

		RECORDS OF HIMSELF - MONDAY, JULY 11, 2022
EXHIBIT 28	316-317	Scanned photocopy of envelope containing "EXHIBIT 2: SOVAH HEALTH MARTINSVILLE (LOCAL HOSPITAL) BILLING RECORDS OBTAINED JULY 19, 2022 – DATED SEPTEMBER 21, 2018"

317 pages total, EXHIBIT INDEX PAGES

REQUEST FOR COURT TO PROVIDE EQUITABLE RELIEF AND ANY OTHER RELIEF

Therefore, the Defendant prays that this Honorable Court order the following:

1. That the Circuit Court declare or make a factual finding that three elements (medically cleared, intent, obscenity) of the criminal charge on September 21, 2018 in **EXHIBIT 0** were meritless, frivolous, baseless, and without clear and convincing evidence to support that;
2. That the Circuit Court consider ordering a new trial or permanent judgment of acquittal for the criminal charge of Brian David Hill in **EXHIBIT 0**, charged on September 21, 2018, for multiple required elements of guilt lacking the required evidence necessary for a conviction of that charged crime;
3. That the Circuit Court consider vacatur or modification of the wrongful conviction dated November 18, 2019 (**EXHIBIT 15**), and consider a New Trial by Jury or

Judgment of Acquittal dismissing this case against Brian David Hill with prejudice for lack of evidence to sustain a conviction;

4. That the Circuit Court waive and discharge any and all pending legal fees ever taxed, levied, or ordered against Defendant if the Circuit Court had determined that Defendant is innocent and thus should not be held to pay any fees or fines or any protected SSI disability money since Defendant is innocent;
5. That the Circuit Court waive and discharge any and all pending legal fees ever owed by the Defendant pursuant to all legal matters and cases that had begun from the original charge and prosecution on September 21, 2018, if the Circuit Court had determined that Defendant is innocent and thus should not be held to pay any fees or fines or any protected SSI disability money since Defendant is innocent;
6. That the Circuit Court consider providing any other relief or remedy that is just and proper, in the proper administration of justice and integrity for the Court.

Respectfully submitted with the Court, This the 28th day of August, 2022.

Brian D. Hill
Signed
Brian D. Hill

Brian D. Hill
Defendant

Former news reporter of U.S.W.G.O. Alternative News
Ally of Q
310 Forest Street, Apartment 2
Martinsville, Virginia 24112
(276) 790-3505

JusticeForUSWGO.NL or JusticeForUSWGO.wordpress.com

CERTIFICATE OF SERVICE, CERTIFICATE OF FILING

I hereby certify that a true and accurate copy of the foregoing Motion was faxed or emailed/transmitted by my Assistant Roberta Hill at rbhill67@comcast.net (due to Probation Conditions of not being allowed to use the Internet) or delivered this 28th day of August, 2022, to the following parties:

1. Commonwealth of Virginia
2. City of Martinsville

by having representative Roberta Hill filing his pleading on his behalf with the Court, through email address rbhill67@comcast.net, transmit/faxed a copy of this pleading to the following attorneys who represent the above parties to the case:

Glen Andrew Hall, Esq. Commonwealth Attorney's Office for the City of Martinsville 55 West Church Street P.O. Box 1311 Martinsville, Virginia 24114/24112 Attorney for the Commonwealth Phone: (276) 403-5470	Hon. Ashby R. Pritchett, Clerk of the Court Circuit Court for the City of Martinsville Phone: 276-403-5106 Fax: 276-403-5232 55 West Church Street, Room 205 P.O. Box 1206

Fax: (276) 403-5478 Email: ahall@ci.martinsville.va.us	Martinsville, VA 24114 Email: apritchett@vacourts.gov

The reason why Brian David Hill must use such a representative 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 her to file the pleading. All exhibits or any exhibits with anything printed from any internet based service was printed and researched by Roberta Hill.

That should satisfy the Certificate of Service regarding letters/pleadings during the ongoing Covid-19 pandemic. 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 c / o 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 D. Hill
Defendant
Former news reporter of U.S.W.G.O. Alternative News
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