

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF MARTINSVILLE

**COMMONWEALTH OF VIRGINIA,
CITY OF MARTINSVILLE,
PLAINTIFF(s),**

v.

**BRIAN DAVID HILL,
DEFENDANT.**

CASE NO: CR19000009-00

MOTION FOR JUDGMENT OF ACQUITTAL OR
NEW TRIAL PURSUANT TO RULE 3A:15 BASED
UPON NEW EVIDENCE OF SUSPECT JACODY
CASSELL OF BUSINESS ENTITY: THE CHIMNEY
SWEEP WHO CAUSED CARBON MONOXIDE
POISONING INTOXICATION OF CRIMINAL
DEFENDANT WARRANTING NEW TRIAL OR
ACQUITTAL

**MOTION FOR JUDGMENT OF ACQUITTAL OR NEW TRIAL PURSUANT
TO RULE 3A:15 BASED UPON NEW EVIDENCE OF SUSPECT JACODY
CASSELL OF BUSINESS ENTITY: THE CHIMNEY SWEEP WHO
CAUSED CARBON MONOXIDE INTOXICATION OF
CRIMINAL DEFENDANT WARRANTING NEW TRIAL OR ACQUITTAL**

Respectfully submitted with the Court,

This the 4th day of September, 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
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- Element 5: It is believed that the metal tin blocking the exhaust of gas appliances had caused toxicity of Carbon Monoxide gas. Carbon monoxide (chemical formula CO) is a colorless, highly poisonous, odorless, tasteless, flammable gas that is slightly less dense than air. Carbon monoxide consists of one carbon atom and one oxygen atom connected by a triple bond. It is the simplest molecule of the oxocarbon family. In coordination complexes the carbon monoxide ligand is called carbonyl. It is a key ingredient in many processes in industrial chemistry. See Bierhals, Jürgen (2001). "Carbon Monoxide". Ullmann's Encyclopedia of Industrial Chemistry. Weinheim: Wiley-VCH. doi:10.1002/14356007.a05_203.31**
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exposure is long-term, meaning that the exposure to the dangerous gas was not acute and was for a period longer than a brief or acute period. In Brian’s case, it was 11 months, 2 weeks, 1 day exposure to the gas before he left home and was arrested for indecent exposure a day later. A total of 350 days. Short of 365 days which makes a year. Short of 15 days, Defendant was exposed to Carbon Monoxide gas 15 days short of a one year Earth cycle, 365 days on the human calendar.....32

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Element 8: Defendant had filed a complaint against The Chimney Sweep with the Fire Marshals in September, 2019, by fax. Nothing ever panned out from that complaint and request for inquiry/investigation. Defendant found out about the consumer complaint process at the Office of the Attorney General, to protect consumers from fraud and business wrongdoings. Defendant filed a complaint on May 17, 2022. The Chimney Sweep was served with the complaint and attached evidence. They responded through its owner JaCody Cassell who hired a lawyer Eric Ferguson to respond to Defendant’s complaint.....40

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time he complained was in the same year he found out about the carbon monoxide.43

Element 10: The evidence disproving the lies of JaCody Cassell through his legal counsel Eric Ferguson are the following: (i.)

xFinity/

Comcast Telephone records of 276-790-3505 in September and October of 2017. In contact with the phone number (540) 483-2468. One phone call contact lasted for the time length period of 3 minutes and 11 seconds. (ii.) Signed bank check record of cashed in check from Roberta Hill paying \$300 by check to The Chimney Sweep, and it was signed for by Cassell. Paid for on October 6, 2017. It is authenticated by TRUIST bank records research. 45

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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 creates a criminal defense of involuntary intoxication to the charge in **Exhibit 0** (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 contains 4 levels of EXHIBITS:

1. **EXHIBIT 0**, Copy of Arrest Warrant and Criminal Complaint in original General District Court charge
2. **EXHIBIT 1**, ORDER IN MISDEMEANOR OR TRAFFIC INFRACTION PROCEEDING
3. **EXHIBIT 2**, STATUS REPORT OF PETITIONER SEPTEMBER 27, 2018, RE-MAILED ON OCTOBER 10, 2018

4. **EXHIBIT APPENDIX, VOLUME I OF II (Pages 1 – 532)**, IN
SUPPORT OF MOTION FOR JUDGMENT OF ACQUITTAL OR NEW
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Exhibit Appendixes are necessary since the amount of evidence records of correspondence and filings with the Commonwealth of Virginia's Dispute Resolution Unit case or cases required to make the exhibits admissible would make an estimate of 100 or more exhibits. All pages of this exhibit appendix

are numbered as EXHIBIT APPENDIX PG. ??? OF 532. All are attached to this motion as supporting evidence documents.

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 create a criminal defense of involuntary intoxication to further 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. The burden of proof for involuntary intoxication is less than the burden for proving a defense of mental insanity at the time of an alleged offense allegation.

Involuntary intoxication is a recognized defense in Virginia with its own specific jury instruction, and it has been used with some success elsewhere in the country. It is similar to an insanity defense in that the defendant argues he didn't understand the nature and consequences of his act or could not distinguish right from wrong. That essentially leaves two situations where intoxication is a defense in Virginia for most crimes: (1) being surreptitiously intoxicated without your knowledge or (2) consuming a substance as directed by your physician but where the physician mistakenly prescribed the wrong dose. In this case, that substance was CARBON Monoxide GAS, long term exposure.

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 2, EXHIBIT APPENDIX, VOLUME I OF II (Pages 1 – 532), EXHIBIT APPENDIX, VOLUME II OF II (Pages 1 – 79), 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.

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 1**, a copy of the Trial Court's record of: "ORDER IN MISDEMEANOR OR TRAFFIC INFRACTION PROCEEDING". EXHIBIT INDEX PAGE 6 OF 18. 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.

EXHIBIT INDEX PAGE 2 OF 18 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 18 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.

See **Exhibit 2**, STATUS REPORT OF PETITIONER SEPTEMBER 27, 2018, RE-MAILED ON OCTOBER 10, 2018. This is a federal affidavit letter statement. It does show evidence of possibly intoxication. Since the hospital deleted the ordered laboratory tests from the chart at the time of arrest, the Commonwealth cannot disprove intoxication at the time of the arrest and at the time of the incident.

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, 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) any notion of Defendant pleading 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 favorable to the Defendant 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 when the jury trial was set for December 2, 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.

CRIMINAL DEFENSE PROFFERED BY DEFENDANT, DEFENSE OF INVOLUNTARY INTOXICATION BY INTRODUCTION OF SUSPECT: JACODY CASSELL OF COMPANY: THE CHIMNEY SWEEP

Here are the elements of the criminal defense of involuntary intoxication by proving the existence of suspect named JaCody Cassell who owns the business entitled as: The Chimney Sweep. Located in Franklin County, Virginia, in the town of Rocky Mount, Virginia. He is a suspect because he has not admitted to the conduct of the proffered witness evidence and allegations in the complaint filed by Defendant on May 17, 2022 in the Office of the Attorney General and was forwarded to the Dispute Resolution Unit opening a case, so he is a suspect until he either admits to the conduct or if is ever found guilty of the conduct if ever charged for the conduct. Here are the elements of this suspect which support the criminal Defendant's proffered defense of involuntary intoxication:

1. Element 1: The Chimney Sweep was paid \$300 on October 5, 2017 by Roberta Hill (owner of the Triplex, mother of defendant) to install some type of chimney cap or screening to prevent invasive species of birds from invading the chimney of the Triplex at 310 Forest Street, Martinsville, VA, Apartment 2 of that Triplex being the apartment of

Brian David Hill, the criminal Defendant of this case. Proof of the \$300 payment to JaCody Cassell, owner of the business entity known as The Chimney Sweep is authenticated by banking records provided by TRUIST Bank, formerly SunTrust bank. BB&T was reportedly bought up by TRUIST. TRUIST branch bank is located in Rocky Mount, VA, the same town as The Chimney Sweep.

2. Element 2: Telephone records printed from xFinity/Comcast account in 2017, proved that Roberta Hill's/Defendant's phone number 276-790-3505 was in contact with the mobile phone number (540) 483-2468 of the business referred to as The Chimney Sweep, that phone number listed in their logo and on the Better Business Bureau (BBB) website. That phone number was in contact with Roberta Hill for 3 minutes and 11 seconds on September 26, 2017. On October 5, 2017, there were two matches of contact with that phone number (540) 483-2468 on October 5, 2017, the same day which Mr. Cassell of The Chimney Sweep was paid \$300 for the job they were paid for.
3. Element 3: It was discovered by chimney service expert Pete Compton of ACE Chimney & Wildlife that he found metal tin on top of the chimney flues at 310 Forest Street, Martinsville, VA. It was found on January 30, 2019. That metal tin had blocked the exhaust of multiple

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4. Element 4: There were no other chimney services hired between the timeframe of The Chimney Sweep on October 5, 2017 and ACE Chimney & Wildlife on January 30, 2019 where the metal tin was found.
5. Element 5: It is believed that the metal tin blocking the exhaust of gas appliances had caused toxicity of Carbon Monoxide gas. Carbon monoxide (chemical formula CO) is a colorless, highly poisonous, odorless, tasteless, flammable gas that is slightly less dense than air. Carbon monoxide consists of one carbon atom and one oxygen atom connected by a triple bond. It is the simplest molecule of the oxocarbon family. In coordination complexes the carbon monoxide ligand is called carbonyl. It is a key ingredient in many processes in industrial chemistry. See Bierhals, Jürgen (2001). "Carbon Monoxide". Ullmann's Encyclopedia of Industrial Chemistry. Weinheim: Wiley-VCH. doi:10.1002/14356007.a05_203.

6. Element 6: Brian David Hill, the criminal defendant was exposed to the Carbon Monoxide gas between October 5, 2017, the date of when it started after metal tin was installed on top of the chimney flues, and the date of September 20, 2018 late at night when Defendant left the home and was found naked in a public place by Officer Robert Jones (Martinsville Police Department) on September, 21, 2018, who charged Defendant with indecent exposure. The term of carbon monoxide exposure is long-term, meaning that the exposure to the dangerous gas was not acute and was for a period longer than a brief or acute period. In Brian's case, it was 11 months, 2 weeks, 1 day exposure to the gas before he left home and was arrested for indecent exposure a day later. A total of 350 days. Short of 365 days which makes a year. Short of 15 days, Defendant was exposed to Carbon Monoxide gas 15 days short of a one year Earth cycle, 365 days on the human calendar.
7. Element 7: Defendant is asserting with this Circuit Court that he proffers a criminal defense of involuntary intoxication, involuntary intoxication caused by the long term exposure to Carbon Monoxide, not acute exposure which isn't long term. It is involuntary because Defendant never asked to be poisoned long-term to the Carbon

Monoxide gas. Defendant was not aware of being exposed to Carbon Monoxide until February or March, 2019, while family had visitation with Defendant at the Federal Correctional Institution in Butner, North Carolina during a court ordered mental evaluation. Defendant found out about the carbon monoxide gas after his family told him about the issue, and Defendant informed his family that it may have been what caused the indecent exposure. Family did further research and discovered Defendant had suffered a lot of symptoms during the timeframe period of the Carbon Monoxide exposure. Symptoms such as mental confusion, psychosis, abnormal White Blood Cell (WBC) count, abnormal Mean Platelet Volume (MPV), Sinus Tachycardia, having blackout of memories, feeling like he may have been drugged but didn't know why at the time, fainting or dizzy spell which caused the blood wound of Brian Hill on November 19, 2017 where blood was coming out of the laceration of his head. Defendant believes there is enough evidence for necessary appointment of a Carbon Monoxide expert of some kind necessary to explain to this Circuit Court that Carbon Monoxide gas poisoning, long term, can induce the criminal Defendant with Autism Spectrum Disorder to exhibit a weird abnormal behavior of walking around naked in a public place at night. An expert

will be needed to confirm the elements facts of how Carbon Monoxide gas induced the charged indecent exposure behavior of Brian David Hill on September 21, 2018.

8. Element 8: Defendant had filed a complaint against The Chimney Sweep with the Fire Marshals in September, 2019, by fax. Nothing ever panned out from that complaint and request for inquiry/investigation. Defendant found out about the consumer complaint process at the Office of the Attorney General, to protect consumers from fraud and business wrongdoings. Defendant filed a complaint on May 17, 2022. The Chimney Sweep was served with the complaint and attached evidence. They responded through its owner JaCody Cassell who hired a lawyer Eric Ferguson to respond to Defendant's complaint.
9. Element 9: This lawyer, Eric Ferguson, who represented JaCody Cassell had lied to the Dispute Resolution Unit of the Office of the Attorney General. They lied to a Government office, an office under the authority and control of the Attorney General for the Commonwealth of Virginia. They lied to a government agency of this Commonwealth. Here is how it can be proven. Eric claimed his client never conducted an estimate for Roberta Hill, never did any work for

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10. Element 10: The evidence disproving the lies of JaCody Cassell through his legal counsel Eric Ferguson are of the following:

- i. xFinity/Comcast Telephone records of 276-790-3505 in September and October of 2017. In contact with the phone number (540) 483-2468. One phone call contact lasted for the time length period of 3 minutes and 11 seconds.
- ii. Signed bank check record of cashed in check from Roberta Hill paying \$300 by check to The Chimney Sweep, and it was signed for by Cassell. Paid for on

October 6, 2017. It is authenticated by TRUIST bank records research.

This motion, the attached exhibits, arguments, and its STATEMENT OF THE FACTS will prove that Defendant Brian David Hill was involuntarily intoxicated by carbon monoxide gas. The suspect is JaCody Cassell of his business entity known as The Chimney Sweep, located at 1492 Blue Bend Rd, Rocky Mount, VA 24151-6568. This involuntary intoxication was caused by The Chimney Sweep, they poisoned and intoxicated Brian David Hill by human error at minimum since October 5, 2017, and September 20, 2018, when Defendant left home and was arrested on September 21, 2018. This disproves two necessary elements of the criminal charge for indecent exposure. It disproves the element of obscenity, and disproves the element of intent. Both are needed to sustain a criminal conviction of indecent exposure. That is the law. 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), other case law authorities.

Again, there are two situations where intoxication is a defense in Virginia for most crimes: (1) being surreptitiously intoxicated without your knowledge or (2) consuming a substance as directed by your physician but where the physician mistakenly prescribed the wrong dose. Case law is provided on the authorities of

this standard, see section: “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”.

Intoxication on an involuntary basis proves beyond a shadow of doubt that intent and obscenity cannot be proven by the City of Martinsville and Commonwealth of Virginia. No jury of any kind and no rational trier of fact will convict the Defendant is found to have been involuntary intoxicated as involuntary intoxication negates/nullifies the obscenity element and intent element. Carbon monoxide gas exposure and poisoning can cause intoxication, similar to that of a street drug or alcohol. It is a tasteless and odorless gas, so it cannot be detected without a Carbon Monoxide detector, and cannot be detected without a blood sample checking the levels of CarboxyHemoGlobin. Multiple carbon monoxide detectors were installed in the Triplex after Pete Compton found such issues on January 30, 2019. Carbon Monoxide was never detected after the detectors were placed in the home since the metal tin was removed from the chimney flue where the exhaust was blocked, and was unblocked after Pete Compton discovered that it caused the carbon monoxide gas.

With proving that a criminal defense of involuntary intoxication disproves two elements of the criminal charge in **Exhibit 0**, a conviction cannot be sustained

as a matter of law and as a matter of fact. **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 authorities 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 and Court of Appeals 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 1**, 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 toxication by carbon monoxide gas and suspect JaCody

Casell lying about what had caused the carbon monoxide gas on October 5, 2017 thus not being medically and psychologically cleared as previously assumed by law enforcement which were not known at the time of the criminal conviction. JaCody Cassell lied to an officer of the Commonwealth of Virginia in the Dispute Resolution Unit, an office under the jurisdiction of the Attorney General.

This is new evidence because it was not secured during the trial set for December 2, 2019 because in 2019 The Chimney Sweep did not lie to the allegations in complaint brought against The Chimney Sweep until Defendant filed the complaint in May 17, 2022 with the Office of Attorney General when complaint was filed and the lying began on June 28, 2022 in response to Defendant's complaint.

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 THE FACTS

This STATEMENT OF THE FACTS contains 27 paragraphs, pages 26-53)

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

Element 1: The Chimney Sweep was paid \$300 on October 5, 2017 by Roberta Hill (owner of the Triplex, mother of defendant) to install some type of chimney cap or screening to prevent invasive species of birds from invading the chimney of the Triplex at 310 Forest Street, Martinsville, VA, Apartment 2 of that Triplex being the apartment of Brian David Hill, the criminal Defendant of this case. Proof of the \$300 payment to JaCody Cassell, owner of the business entity known as The Chimney Sweep is authenticated by banking records provided by TRUIST Bank, formerly SunTrust bank. BB&T was reportedly bought up by TRUIST. TRUIST branch bank is located in Rocky Mount, VA, the same town as The Chimney Sweep.

1. See EXHIBIT APPENDIX PG. 481, 482, and 483 of **EXHIBIT APPENDIX VOLUME I OF II (Pages 1 – 532)**, containing evidence of a 1-page letter from Kathy Bowles the TRUIST Bank employee of Assistant Vice President, Client Resolution Senior Specialist, Consumer Regulatory & Executive Services Team. The signed check on EXHIBIT APPENDIX PG. 482 OF 532 shown that it was signed with the name in cursive handwriting but that last name appears to be

“CASSELL”. The same last name as the business of The Chimney Sweep. The check appears to have been written out to “The Chimney Sweep” on October 5, 2017, and was signed for by a “Cassell”. That check was at the amount of \$300.00. Paid for by Roberta Hill and her bank account. See EXHIBIT APPENDIX PG. 483 OF 532. Roberta Hill was appearing to have been seeking estimates on a chimney cap as there is a voicemail audio recording from Karen Compton of ACE Chimney & Wildlife, and yes related to or married to Pete Compton of ACE Chimney & Wildlife. See EXHIBIT APPENDIX PG. 495 OF 532. The voicemail file 8-25-2022-2017-9-27--1056AM.mp3 proved that Roberta Hill was looking for a chimney cap in September, 2017. The Chimney Sweep only does chimney work hence is the name of the business: “The Chimney Sweep” who of course would do chimney work type services. It is obvious by the name of that business.

2. Photograph of the home of Defendant at the Triplex at 310 Forest Street is listed in EXHIBIT APPENDIX PG. 514 OF 532, PAGE 4 OF 9 - LETTER TO DEMETRICE DAVIS AND ERIC FERGUSON 8-30-2022. Apartment 2 is below Apartment 1. Apartment 1 is the main top apartment with the chimney on top of Apartment 1. See EXHIBIT APPENDIX PG. 278 OF 532, and you will see the address of The Chimney Sweep as being located at: 1492 Blue Bend Rd, Rocky Mount, VA 24151-6568. The TRUIST bank records do show that they do not have just the record of Roberta Hill’s bank account where \$300 was paid for to The

Chimney Sweep, but TRUIST also has the signature of the one who cashed in the check by endorsing his signature, "Cassell". Element 1 has been satisfied.

Element 2: Telephone records printed from xFinity/Comcast account in 2017, proved that Roberta Hill's/Defendant's phone number 276-790-3505 was in contact with the mobile phone number (540) 483-2468 of the business referred to as The Chimney Sweep, that phone number listed in their logo and on the Better Business Bureau (BBB) website. That phone number was in contact with Roberta Hill for 3 minutes and 11 seconds on September 26, 2017. On October 5, 2017, there were two matches of contact with that phone number (540) 483-2468 on October 5, 2017, the same day which Mr. Cassell of The Chimney Sweep was paid \$300 for the job they were paid for.

Again, referencing: **EXHIBIT APPENDIX VOLUME I OF II (Pages 1 – 532).**

3. Defendant has evidence that he had telephone records printed from xFinity/Comcast account in 2017 according to EXHIBIT APPENDIX PG. 503 OF 532, and EXHIBIT APPENDIX PG. 500 OF 532, proved that Roberta Hill's/Defendant's phone number 276-790-3505 was in contact with the mobile phone number (540) 483-2468 through cell phone provider U.S. Cellular of the business referred to as The Chimney Sweep, that phone number listed in their logo (See EXHIBIT APPENDIX PG. 360 OF 532, PAGE 2 OF 12 - LETTER TO AARON ZIGLAR AND ERIC FERGUSON 7-7-2022) and on the Better Business Bureau (BBB) website (See EXHIBIT APPENDIX PG. 279 OF 532, and EXHIBIT APPENDIX PG. 281 OF 532).

4. That phone number (540) 483-2468 was in contact with Roberta Hill for 3 minutes and 11 seconds on September 26, 2017 according to EXHIBIT APPENDIX PG. 503 OF 532). Call was placed on September 26, 2017 11:26 AM EST. On October 5, 2017, there were two matches of contact with that phone number (540) 483-2468 on October 5, 2017, the same day which Mr. Cassell of The Chimney Sweep was paid \$300 for the job they were paid for. See EXHIBIT APPENDIX PG. 500 OF 532. One phone call was placed on 1:22 PM EST and the other phone call was received on 10:04 AM EST. Both two calls on October 5, 2017. Same day as the check was issued by Roberta Hill and was cashed in on October 6, 2017, signed by “Cassell”. Again, see EXHIBIT APPENDIX PG. 481, 482, and 483 of EXHIBIT APPENDIX VOLUME I OF II (Pages 1 – 532). This proven that work was done, and check was issued afterwards. Establishes that chimney service work was conducted on October 5, 2017. Major probability of an estimate conducted, the 3 minutes and 11 seconds. Element 2 has been satisfied.

Element 3: It was discovered by chimney service expert Pete Compton of ACE Chimney & Wildlife that he found metal tin on top of the chimney flues at 310 Forest Street, Martinsville, VA. It was found on January 30, 2019. That metal tin had blocked the exhaust of multiple gas appliances which had used the chimney flue for exhausting usage of natural gas provided by company: Southwestern Virginia Gas Company. The gas appliances at issue here are a hot water heater, and a gas furnace/radiator which heats Apartment 1 and Apartment 2, and its pipes heats up the Apartment 3 below Apartment 2.

5. It was discovered by a man named Pete Compton who is part of the company ACE Chimney & Wildlife, in Bassett, Virginia. See EXHIBIT APPENDIX PG. 497 OF 532. On January 30, 2019, according to his witness letter filed with the Virginia Circuit Court and the federal court, he found metal tin on top of the chimney flues at the Triplex located at 310 Forest Street, Martinsville, VA. Again, said that evidence of carbon monoxide gas was found on January 30, 2019. That metal tin had blocked the exhaust of multiple gas appliances which had used the chimney flue for exhausting usage of natural gas provided by company: Southwestern Virginia Gas Company. Causing the gas exhaust to flow through the fireplaces, causing the carbon monoxide issue. The gas appliances at issue here are a hot water heater, and a gas furnace/radiator which heats Apartment 1 and Apartment 2, and its pipes heats up the Apartment 3 below Apartment 2. The witness letter is self-explanatory on this element and thus this element has been satisfied. Pete Compton is willing to testify under oath about every one of the claims made in the witness letter. He is a credible witness for the Circuit Court and for this criminal case. Again, the fireplace exhausted the carbon monoxide gas due to the blockage of the chimney flues by installation of metal tin.

Element 4: There were no other chimney services hired between the timeframe of The Chimney Sweep on October 5, 2017 and ACE Chimney & Wildlife on January 30, 2019 where the metal tin was found.

6. There were no other chimney services hired between the timeframe of The Chimney Sweep on October 5, 2017 and ACE Chimney & Wildlife on January 30, 2019 where the metal tin was found. Roberta Hill is willing to attest to that fact under oath when questioned under oath and is willing to write an affidavit on request by the Court or by the Commonwealth's Attorney over this fact. The only suspect of who placed the metal tin would be somebody employed at The Chimney Sweep. This element has been satisfied.

Element 5: It is believed that the metal tin blocking the exhaust of gas appliances had caused toxicity of Carbon Monoxide gas. Carbon monoxide (chemical formula CO) is a colorless, highly poisonous, odorless, tasteless, flammable gas that is slightly less dense than air. Carbon monoxide consists of one carbon atom and one oxygen atom connected by a triple bond. It is the simplest molecule of the oxocarbon family. In coordination complexes the carbon monoxide ligand is called carbonyl. It is a key ingredient in many processes in industrial chemistry. See Bierhals, Jürgen (2001). "Carbon Monoxide". Ullmann's Encyclopedia of Industrial Chemistry. Weinheim: Wiley-VCH. doi:10.1002/14356007.a05_203.

7. It is believed that the metal tin blocking the exhaust of gas appliances had caused toxicity of Carbon Monoxide gas due to gas flowing from the fireplaces. This belief came due to the discovery made by Pete Compton, see witness letter: EXHIBIT APPENDIX PG. 497 OF 532. Carbon monoxide (chemical formula CO) is a colorless, highly poisonous, odorless, tasteless, flammable gas that is slightly less dense than air. Carbon monoxide consists of one carbon atom and one oxygen atom connected by a triple bond. It is the simplest molecule of the oxocarbon

family. In coordination complexes the carbon monoxide ligand is called carbonyl. It is a key ingredient in many processes in industrial chemistry. See Bierhals, Jürgen (2001). "Carbon Monoxide". Ullmann's Encyclopedia of Industrial Chemistry. Weinheim: Wiley-VCH. doi:10.1002/14356007.a05_203. An expert witness who understands carbon monoxide gas and carbon monoxide poisoning would be necessary to satisfy this element for the records of this Court and for satisfying the facts presented in this case itself. Expert witnesses are needed and are necessary.

Element 6: Brian David Hill, the criminal defendant was exposed to the Carbon Monoxide gas between October 5, 2017, the date of when it started after metal tin was installed on top of the chimney flues, and the date of September 20, 2018 late at night when Defendant left the home and was found naked in a public place by Officer Robert Jones (Martinsville Police Department) on September, 21, 2018, who charged Defendant with indecent exposure. The term of carbon monoxide exposure is long-term, meaning that the exposure to the dangerous gas was not acute and was for a period longer than a brief or acute period. In Brian's case, it was 11 months, 2 weeks, 1 day exposure to the gas before he left home and was arrested for indecent exposure a day later. A total of 350 days. Short of 365 days which makes a year. Short of 15 days, Defendant was exposed to Carbon Monoxide gas 15 days short of a one year Earth cycle, 365 days on the human calendar.

8. Brian David Hill, the criminal defendant was exposed to the Carbon Monoxide gas between October 5, 2017, the date of when it started after metal tin was installed on top of the chimney flues, and the date of September 20, 2018 late at night when Defendant left the home. The date of October 5, 2017 can be established by questioning the suspect JaCody Cassell in open court under penalty

of perjury. Ordering him to answer these basic questions under penalty of perjury puts him at risk of perjury if he is caught lying in Court. It would motivate him to tell this Court the truth about the date of which he placed the metal tin on top of the chimney flues causing the CO gas to flow through the fireplaces, and was paid \$300 by Roberta Hill and by check afterwards. September 20, 2018 late at night is the time when Defendant reportedly left home clothed but was found naked in a public place by Officer Robert Jones (Martinsville Police Department) on September, 21, 2018 still during the nighttime, which Officer Jones had charged Defendant with indecent exposure. See Exhibit 0.

9. The term period of carbon monoxide exposure is long-term, meaning that the period of exposure to the dangerous gas was not acute (short period) but was for a period longer than a brief or acute period. In Brian's case, it was 11 months, 2 weeks, 1 day of exposure to the gas before he left home and was arrested for indecent exposure a day later. A total of 350 days. Short of 365 days which makes a year. Short of 15 days of an entire year, Defendant was exposed to Carbon Monoxide gas 15 days short of a one year Earth cycle, 365 days on the human calendar. Element 6 has been satisfied.

Element 7: Defendant is asserting with this Circuit Court that he proffers a criminal defense of involuntary intoxication, involuntary intoxication caused by the long term exposure to Carbon Monoxide, not acute exposure which isn't long term. It is involuntary because Defendant never asked to be poisoned long-term to the Carbon Monoxide gas. Defendant was not aware of being exposed to Carbon Monoxide

until February or March, 2019, while family had visitation with Defendant at the Federal Correctional Institution in Butner, North Carolina during a court ordered mental evaluation. Defendant found out about the carbon monoxide gas after his family told him about the issue, and Defendant informed his family that it may have been what caused the indecent exposure. Family did further research and discovered Defendant had suffered a lot of symptoms during the timeframe period of the Carbon Monoxide exposure. Symptoms such as mental confusion, psychosis, abnormal White Blood Cell (WBC) count, abnormal Mean Platelet Volume (MPV), Sinus Tachycardia, having blackout of memories, feeling like he may have been drugged but didn't know why at the time, fainting or dizzy spell which caused the blood wound of Brian Hill on November 19, 2017 where blood was coming out of the laceration of his head. Defendant believes there is enough evidence for necessary appointment of a Carbon Monoxide expert of some kind necessary to explain to this Circuit Court that Carbon Monoxide gas poisoning, long term, can induce the criminal Defendant with Autism Spectrum Disorder to exhibit a weird abnormal behavior of walking around naked in a public place at night. An expert will be needed to confirm the elements facts of how Carbon Monoxide gas induced the charged indecent exposure behavior of Brian David Hill on September 21, 2018.

10. Brian David Hill the criminal Defendant is asserting as fact in the Circuit Court for the City of Martinsville that he was involuntarily intoxicated due to Carbon Monoxide gas poisoning, and the toxicity effects caused by the gas. Because of the metal tin blocking the exhaust at the chimney flues, the gas exhaust had nowhere to go and flowed through the fireplaces. It is a fact because Defendant exhibited a lot of symptoms of the usual symptoms found in medical patients who are even acutely exposed to Carbon Monoxide gas. For clear and convincing evidence proving acute exposure would require the levels by CarboxyHemoglobin laboratory testing. Carboxyhemoglobin, Blood - Carbon monoxide is the most

common of the gaseous poisons. **Malfunctioning or poorly ventilated heating appliances and internal combustion engines are frequent causes of carbon monoxide poisoning.** Carbon monoxide combines reversibly with hemoglobin in a manner almost identical to oxygen resulting in a decrease in the amount of oxygen carried by hemoglobin. **Accidental poisoning can occur even at low levels (greater than 0.01%) of CO in the atmosphere with prolonged exposure.** See link: <https://testdirectory.questdiagnostics.com/test/test-detail/309/carboxyhemoglobin-blood?cc=MASTER> (Disclaimer: Link provided by Brian's family).

11. It is difficult or impossible for case law authorities examples to be found where involuntary intoxication was ever brought up as a defense to indecent exposure where Carbon Monoxide can induce such behavior. However one case was found where there was a pending indecent exposure charge of somebody living in the household, the same household which has alleged a theory of Carbon Monoxide gas, so there is a correlation there but nobody has ever asserted publicly in a criminal context that indecent exposure can be induced by toxicity aka intoxication caused by Carbon Monoxide Gas exposure, especially prolonged exposure to the gas. See *A.M. v. Superior Court of Riverside Cnty.*, No. E054602, 4 (Cal. Ct. App. Dec. 8, 2011) (“had a criminal record that included a pending indecent exposure case. (Pen. Code, § 314.1.) Mother was scheduled for a psychological assessment, but broke it off and became angry because she thought

the doctor was "rude." The evaluator was able to note that Mother's reaction was "verging on paranoid," and that Mother believed people were "conspiring against her.""). A.M. v. Superior Court of Riverside Cnty., No. E054602, 6 (Cal. Ct. App. Dec. 8, 2011) ("She also theorized that this residence was full of carbon monoxide, which had made her ill."). The Circuit Court may need to produce new case law authority regarding involuntary intoxication of Carbon Monoxide gas if proved pro-longed exposure to the gas aka long-term exposure to the gas. This issue may be the new wild west of case law which needs to be developed now. New case law may need to be developed on this issue.

12. It is involuntary because Defendant never asked to be poisoned long-term to the Carbon Monoxide gas. Defendant was not aware of being exposed to Carbon Monoxide until February or March, 2019, while family had visitation with Defendant at the Federal Correctional Institution in Butner, North Carolina during a court ordered mental evaluation. See EXHIBIT APPENDIX PG. 54 THROUGH 65 OF 532, **EXHIBIT APPENDIX VOLUME I OF II (Pages 1 – 532)**.

Defendant found out about the carbon monoxide gas after his family told him about the issue (See EXHIBIT APPENDIX PG. 322-338 OF 532), and Defendant informed his family that it may have been what had caused the indecent exposure. Family did further research and discovered Defendant had suffered a lot of symptoms during the timeframe period of the Carbon Monoxide exposure.

Symptoms such as mental confusion (addressed in filed: 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, Page 19 of 77, Page 22 of 77, Page 24 of 77), psychosis (See EXHIBIT APPENDIX PG. 66-71 OF 532), abnormal White Blood Cell (WBC) count (See EXHIBIT APPENDIX PG. 211 OF 532), abnormal Mean Platelet Volume (MPV) (See EXHIBIT APPENDIX PG. 211 OF 532), Sinus Tachycardia (See EXHIBIT APPENDIX PG. 210 OF 532), having blackout of memories (See next paragraph at paragraph 13 for the proof), feeling like he may have been drugged but didn't know why at the time (See next paragraph at paragraph 13 for the proof), fainting or dizzy spell which caused the blood wound of Brian Hill on November 19, 2017 where blood was coming out of the laceration of his head (EXHIBIT APPENDIX PG. 203 OF 532). Defendant assumed that it was a diabetic seizure or low blood sugar, but Roberta Hill was a witness to where the wound was caused and the trail of blood at the time. Defendant's mother Roberta Hill found where he fell in his office, hit his head on part of the desk causing part of it to being damaged. Defendant was found in his bed with blood on the pillow, which meant that Defendant fell unconscious and somehow he was able to still move to his bed where the EMT emergency crew found him with the blood

on the pillow, the laceration where blood came out of his head. Defendant assumed it was diabetic low blood sugar episode but it was actually a fainting spell which can be caused by Carbon Monoxide severe exposure along with tachycardia.

13. See Exhibit 2, STATUS REPORT OF PETITIONER SEPTEMBER 27, 2018, RE-MAILED ON OCTOBER 10, 2018. This is a federal affidavit letter statement. Brian said in EXHIBIT 2, Case 1:13-cr-00435-TDS, Document 153, Filed 10/17/18, Page 3 of 11, EXHIBIT INDEX PAGE 10 OF 18: “...*At one point I felt like I might collapse so I may have been drugged. I had to keep sitting on benches*”. EXHIBIT 2, Case 1:13-cr-00435-TDS, Document 153, Filed 10/17/18, Page 2 of 11, EXHIBIT INDEX PAGE 9 OF 18: “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 2, Case 1:13-cr-00435-TDS, Document 153, Filed 10/17/18, Page 2 of 11, EXHIBIT INDEX PAGE 9 OF 18: “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 did also exhibit symptom of irritability as he told Officer Jones “F**k you!” and cussed him out at the time of being arrested. See EXHIBIT INDEX PAGE 13 OF 18, “Case 1:13-cr-00435-TDS Document 153 Filed 10/17/18 Page 6 of 11”.

14. The Centers for Disease Control and prevention (CDC) has credible information about symptoms caused by Carbon Monoxide if the levels cannot be determined and documented. See https://web.archive.org/web/20220903230021/https://www.cdc.gov/disasters/co_guidance.html or https://www.cdc.gov/disasters/co_guidance.html. Symptoms of severe CO poisoning include malaise, shortness of breath, headache, nausea, chest pain, irritability, ataxia, altered mental status, other neurologic symptoms, loss of consciousness, coma, and death; signs include tachycardia, tachypnea, hypotension, various neurologic findings including impaired memory, cognitive and sensory disturbances; metabolic acidosis, arrhythmias, myocardial ischemia or infarction, and noncardiogenic pulmonary edema, although any organ system might be involved. Sinus Tachycardia was documented by the hospital on November 19, 2017.

15. Defendant believes there is enough evidence of matching symptoms for Carbon Monoxide gas exposure (tachycardia, psychosis, mental confusion, possibly hallucinations, abnormal White Blood Cell (WBC) count, abnormal Mean

Platelet Volume (MPV)) for necessary appointment of a Carbon Monoxide expert of some kind by this Court or by the Commonwealth Attorney necessary to explain to this Circuit Court that Carbon Monoxide gas poisoning, long term, can induce the criminal Defendant with Autism Spectrum Disorder to exhibit a weird abnormal behavior of walking around naked in a public place at night. An expert will be needed to confirm the elements facts of how Carbon Monoxide gas induced the charged indecent exposure behavior of Brian David Hill on September 21, 2018. Even University professors should take interest and notice of the claims made in this motion. Element 7 has been satisfied.

Element 8: Defendant had filed a complaint against The Chimney Sweep with the Fire Marshals in September, 2019, by fax. Nothing ever panned out from that complaint and request for inquiry/investigation. Defendant found out about the consumer complaint process at the Office of the Attorney General, to protect consumers from fraud and business wrongdoings. Defendant filed a complaint on May 17, 2022. The Chimney Sweep was served with the complaint and attached evidence. They responded through its owner JaCody Cassell who hired a lawyer Eric Ferguson to respond to Defendant's complaint.

16. Defendant had filed a complaint against The Chimney Sweep with the Fire Marshals in September, 2019, by fax (See EXHIBIT APPENDIX PG. 407-415 OF 532). Nothing ever panned out from that complaint and request for inquiry/investigation into that chimney company. Defendant found out about the consumer complaint process at the Office of the Attorney General, to protect

consumers from fraud and business wrongdoings. If a business injures or kills somebody, it should be of great concern to this Commonwealth and to of Law Enforcement, especially if the company denies ever doing business with a client they injured and almost killed but the signed check record proves the opposite of the lies. Defendant through his mother Roberta Hill filed a complaint on May 17, 2022 (See EXHIBIT APPENDIX PG. 1-113 OF 532, "COMPLAINT FILED BY BRIAN DAVID HILL; w/OAG"). The Chimney Sweep was served with the complaint and attached evidence (See EXHIBIT APPENDIX PG. 114-116 OF 532). They responded through its owner JaCody Cassell who hired a lawyer Eric Ferguson to respond to Defendant's complaint (See EXHIBIT APPENDIX PG. 164-165 OF 532). Claimed the complaint was baseless and denied ever doing an estimate or work for Ms. Hill. However, the telephone phone call logs/records and the signed check from the TRUIST Bank shows the opposite (See EXHIBIT APPENDIX PG. 359-370 OF 532). Because JaCody Cassell was caught lying on two claims on its face in response to the complaint, the Court should consider the entire complaint as true due to lies from the respondent to that complaint as it only accused The Chimney Sweep company under JaCody Cassell of material facts about Brian David Hill and Roberta Hill being poisoned by Carbon Monoxide gas due to installing metal tin on top of the chimney flues, blocking exhaust of gas appliances causing gas to flow through the fireplaces of Apartment 1 and

Apartment 2. All claims in that complaint should be treated as factual by this Court since attorney Eric Ferguson's claim of Defendant's complaint being baseless was based on his client claiming he never did an estimate and never did chimney work for Roberta Hill. The documented evidence records from third parties such as xFinity/Comcast and TRUIST Bank prove that JaCody Cassell is a liar when confronted with the accusations against his company that he or his company poisoned the Defendant and Roberta Hill with carbon monoxide gas by blocking exhaust of the gas. The complaint is true when the accused lies. See EXHIBIT APPENDIX PG. 511-519 OF 532.

17. Mediator Aaron Ziglar of the Office of Attorney General for the Commonwealth of Virginia had warned or advised both parties to the Dispute Resolution Unit case that any responses are voluntary and are not required. Citation of EXHIBIT APPENDIX PG. 114 OF 532: "...**participation in our dispute resolution process is voluntary**, we do request an acknowledgement of this letter". Defendant had not lied throughout those proceedings, maybe Defendant and Roberta Hill made some hyperbolic rants or political opinions. However, JaCody Cassell did lie and was caught lying throughout those voluntary proceedings. The ones who are caught lying in the face of accusations are usually treated as baseless and treated as though the liar is hiding something and is not being genuine. The complaint was not baseless, JaCody Cassell was baseless in lying in contradiction

to his signed check when he cashed in the \$300 from Roberta Hill, on October 6, 2017, a day after he poisoned Brian David Hill and Roberta Hill with carbon monoxide gas by the installation of metal tin on top of the chimney flues. This caused gas to flow through the fireplaces subjecting the residents of both apartments to suffer Carbon Monoxide gas prolonged exposure, long-term.

Element 8 has been satisfied.

Element 9: This lawyer, Eric Ferguson, who represented JaCody Cassell had lied to the Dispute Resolution Unit of the Office of the Attorney General. They lied to a Government office, an office under the authority and control of the Attorney General for the Commonwealth of Virginia. They lied to a government agency of this Commonwealth. Here is how it can be proven. Eric claimed his client never conducted an estimate for Roberta Hill, never did any work for Roberta Hill, has no records of any work for Roberta Hill, and cannot remember anything and has no belief of ever doing a job for Roberta Hill involving her chimney in 2017. The attorney also raised the issue that the complaint filer Brian David Hill had waited up till 5 years to file the complaint. Of course the Defendant was not aware of the carbon monoxide until February or March, 2019. Defendant filed a complaint with the Fire Marshals by fax in September, 2019. It proved that Defendant did not wait 5 years before deciding to complain about The Chimney Sweep. The first time he complained was in the same year he found out about the carbon monoxide.

18. This lawyer, Eric Ferguson, who represented JaCody Cassell had lied to the Dispute Resolution Unit of the Office of the Attorney General. They lied to a Government office, an office under the authority and control of the Attorney General for the Commonwealth of Virginia. They lied to a government agency of this Commonwealth. Here is how it can be proven. Eric Ferguson the attorney

claimed his client never conducted an estimate for Roberta Hill (See EXHIBIT APPENDIX PG. 164-165 OF 532), never did any work for Roberta Hill (See EXHIBIT APPENDIX PG. 164-165 OF 532), has no records of any work for Roberta Hill (See EXHIBIT APPENDIX PG. 164-165 OF 532), and cannot remember anything and has no belief of ever doing a job for Roberta Hill involving her chimney in 2017 (See EXHIBIT APPENDIX PG. 511 OF 532). Review the full letter to see what it was talking about (See EXHIBIT APPENDIX PG. 511-519 OF 532). That is a complete lie as he signed a check paid for by Roberta Hill to The Chimney Sweep (See EXHIBIT APPENDIX PG. 513 OF 532, "PAGE 3 OF 9 - LETTER TO DEMETRICE DAVIS AND ERIC FERGUSON 8-30-2022"). That is a complete lie as Cassell's mobile phone number was in contact with Roberta Hill in both September 26, 2017 and October 5, 2017 (See EXHIBIT APPENDIX PG. 360-361 OF 532, "PAGE 2 OF 12", "PAGE 3 OF 12" - "LETTER TO AARON ZIGLAR AND ERIC FERGUSON 7-7-2022"). See that full letter to see what it was talking about (See EXHIBIT APPENDIX PG. 359-370 OF 532). October 5, 2017 is the exact same day as the date written on the check as photocopied by the bank, in TRUIST bank records (See, EXHIBIT APPENDIX PG. 481-483 OF 532).

19. The attorney also raised the issue that the complaint filer Brian David Hill had waited up till 5 years to file the complaint (See EXHIBIT APPENDIX

PG. 165 OF 532). The lawyer said a claim either wrong or lying for Cassell, he said: “One would think that it would not take 3-5 years to make a complaint.”

However the complaint to the Fire Marshals faxed by Defendant in September 22, 2019 squashes that claim by Attorney Eric Ferguson, the lying lawyer (See EXHIBIT APPENDIX PG. 401-415 OF 532). Of course the Defendant was not aware of the carbon monoxide until February or March, 2019. Again, Defendant filed a complaint with the Fire Marshals by fax in September, 2019 (See EXHIBIT APPENDIX PG. 407- 415 OF 532). It proved that Defendant did not wait 3-5 years before deciding to complain about The Chimney Sweep. The first time he complained about this chimney company was in the same year he found out about the carbon monoxide. That is due diligence. The Fire Marshals of Henry County and also over Martinsville were negligent and refused to investigate this matter, and refused to ask The Chimney Sweep about the allegations made by Defendant. This is dereliction of duty and proved that Attorney Eric Ferguson lied about Defendant waiting 3-5 years to bring forth a written complaint against The Chimney Sweep. Element 9 has been satisfied.

Element 10: The evidence disproving the lies of JaCody Cassell through his legal counsel Eric Ferguson are the following: (i.) xFinity/Comcast Telephone records of 276-790-3505 in September and October of 2017. In contact with the phone number (540) 483-2468. One phone call contact lasted for the time length period of 3 minutes and 11 seconds. (ii.) Signed bank check record of cashed in check from

Roberta Hill paying \$300 by check to The Chimney Sweep, and it was signed for by Cassell. Paid for on October 6, 2017. It is authenticated by TRUIST bank records research.

20. The evidence disproving the lies of JaCody Cassell through his legal counsel Eric Ferguson are of the following: (i.) xFinity/Comcast Telephone records of 276-790-3505 in September and October of 2017. See EXHIBIT APPENDIX PG. 359- 363 OF 532. One phone call contacting Cassell's phone number lasted for the time length period of 3 minutes and 11 seconds, See EXHIBIT APPENDIX PG. 252 OF 532. Would that not be an estimate during the 3 minute 11 second phone call on September 26, 2017, since Cassell was paid \$300 on October 5, 2017 paid for his business by name by check, and that check was cashed in on October 6, 2017?

21. There exists proof of the (ii.) Signed bank check record of cashed in check from Roberta Hill paying \$300 by check to The Chimney Sweep, and it was signed for by Cassell. Paid for on October 6, 2017. It is authenticated by TRUIST bank records research. See EXHIBIT APPENDIX PG. 480-483 OF 532.

22. At one point the complaint case was closed at the Dispute Resolution Unit on July 18, 2022 due to the lawyer's impatience (EXHIBIT APPENDIX PG. 400 OF 532) and hostility towards Defendant and his mother in the Hills' waiting for the records to produce the photocopy of the signed check. See EXHIBIT APPENDIX PG. 424 OF 523. Saying and I quote: "...The only thing I am

interested in is if The Chimney Sweep did any work for them in 2017. **If they have a check, then produce it. If not, then drop this matter.**” (EXHIBIT APPENDIX PG. 512 OF 532 and EXHIBIT APPENDIX PG. 395 OF 532). Defendant gives appreciation and thanks to his mother Roberta Hill for producing the check and unfortunately this hostile behavior of that lawyer Eric Ferguson refusing to be patient and wait for the records research caused the closure of the complaint. So Defendant filed a second complaint against The Chimney Sweep for lying to the Dispute Resolution Unit, for lying to Aaron Ziglar who works for the Office of Attorney General, who the Attorney General is the chief attorney officer for the Commonwealth of Virginia.

23. See EXHIBIT APPENDIX VOLUME II OF II (Pages 1 – 79), and read the whole new complaint filed against The Chimney Sweep. See EXHIBIT APPENDIX PG. 1 through 79 OF 79. All pages from start to finish to see the new complaint filed on August 16, 2022. That complaint filed by Defendant had not been assigned a case number with the Dispute Resolution Unit as far as Defendant is aware of. Instead the closed complaint was reopened on the new evidence accepting Attorney Eric Ferguson’s challenge directed at Defendant saying: **“If they have a check, then produce it. If not, then drop this matter”**. The check had been produced with the handwritten signature of Cassell. This matter of proving the lie as a lie, proving the lie as far as it can go with Defendant’s limited resources

at his disposal. Defendant was able to disprove the lies of JaCody Cassell and Eric Ferguson's challenge. Defendant's response to that challenge, "CHALLENGE ACCEPTED!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!". Now back to EXHIBIT APPENDIX VOLUME I OF II (Pages 1 – 532). See EXHIBIT APPENDIX PG. 512 OF 532.

24. Defendant had Roberta Hill email the evidence of the check signed by Cassell directed at Aaron Ziglar. See EXHIBIT APPENDIX PG. 467-472 OF 532, and was emailed on August 15, 2022.

25. Like clockwork, the closed complaint case in the Dispute Resolution Unit was reopened (See EXHIBIT APPENDIX PG. 473 OF 532) on August 19, 2022 and response was asked of Mr. Ferguson. Ten business days may have elapsed depending on which business days are counted. Likely, if Attorney Eric Ferguson does not respond at all anymore, then it is clear that the Circuit Court and the Commonwealth's Attorney should intervene, to take notice of the evidence of lying by JaCody Cassell and consider him a suspect of poisoning Brian David Hill and Roberta Hill with carbon monoxide gas on October 5, 2017 by installation of a blocking agent to block the exhaust of natural gas exhaust from gas appliances, causing the gas to flow through the fireplaces. Blocking agent is a metal tin as reported by Pete Compton of ACE Chimney & Wildlife. See EXHIBIT APPENDIX PG. 418 OF 532. It is clear that Defendant isn't just innocent of indecent exposure, innocent of his charge, but the suspect or culprit has been

identified and proven by the exhibits in support of this motion herein. Element 10 has been satisfied.

ALL ELEMENTS HAVE BEEN PROVEN AND SATISFIED

22. This Circuit Court should treat the entire COMPLAINT (EXHIBIT APPENDIX PG. 1-113 OF 532) by Brian David Hill, the criminal Defendant, as having merit since the owner of The Chimney Sweep had been caught lying even in the face of documentary evidence disproving what Attorney Eric Ferguson told Aaron Ziglar the mediator for the Office of the Attorney General, Dispute Resolution Unit. People who don't lie have nothing to hide. JaCody Cassell has something to hide, the fact that he would lie to an employee of the Commonwealth of Virginia, he would lie to an employee working for the Office of Attorney General. He had been caught lying and attorney Eric Ferguson continues the wall of denials and his client continues the wall of denials. See EXHIBIT APPENDIX PG. 1-104 OF 532, 105-113 OF 532.

23. All elements have been proven in regard to the fact that Defendant had suffered under carbon monoxide gas from October 5, 2017, until September 20, 2018, late at night when he left the home and was found naked on the Dick and Willie passage walking trail on September 21, 2018. There had been news articles

printouts in exhibits to the filed: 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, Page **44** of **77**, Page **45** of **77**, Page **46** of **77**. Defendant has Autism Spectrum Disorder (“Autism”) before, during, and after the time he was accused of indecent exposure. The Defendant’s carbon monoxide gas exposure and his Autism are a mixed bag of issues.

24. This Court has nothing to worry about because the source of the carbon monoxide had been removed on January 30, 2019 thanks to Pete Compton of ACE Chimney & Wildlife in Bassett, Virginia (EXHIBIT APPENDIX PG. 418 OF 532). The Court has no need to punish Defendant to deter a behavior which had not been repeated, this is not a serial behavior. Once the carbon monoxide had been removed after Defendant had been away from the carbon monoxide due to his detainment in Martinsville City Jail and in the Feds custody, the behavior had not happened again. This Court has no need to punish the Defendant as there is nothing they need to deter, if that is one of the primary reasons why the Hon. Giles Carter Greer refuses to acquit Brian David Hill out of fear that it could happen again. It has not. It will never happen again. The source of the poisoning has been gone since January 30, 2019, and carbon monoxide detectors have been placed in

Apartment 2 and Apartment 1. The carbon monoxide will never come back again, the Defendant ensures this Court that now that he is aware of the carbon monoxide gas poisoning which induced that behavior, and he will not let it happen again. There is no reason to charge or convict this Defendant with what happened on September 21, 2018 in light of this new evidence. Defendant was involuntarily intoxicated due to the carbon monoxide gas which induced the behavior charged as indecent exposure on September 21, 2018, See **Exhibit 0**.

25. Brian David Hill is actually innocent of all three elements of his criminal charge. The local hospital who gave the erroneous medical clearing did not conduct the laboratory tests ordered on September 21, 2018, after blood was drawn from Defendant's arm. See 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, Page **37 of 77**, Page **35 of 77**, Page **30 of 77**. Because no laboratory tests were ever conducted by the hospital while police Officer Robert Jones admitted at a federal hearing that they normally do the lab work aka laboratory testing of bodily fluids but he didn't have that because he never asked for the medical records, and no lab work was completed at no fault of Defendant.

26. Defendant wanted a drug test after he was arrested for indecent exposure. Former Assistant Public Defender named Scott Albrecht had been asked by the Defendant for drug tests but Scott Albrecht never subpoenaed the hospital either despite the fact the original charge claimed Defendant was medically and psychologically cleared when he was charged with indecent exposure. It was all ineffective assistance of counsel in violation of the Sixth Amendment of the United States Constitution. See *Strickland v. Washington*, 466 U.S. 668 (1984), *Hill v. Commonwealth*, 8 Va. App. 60, 67-68 (Va. Ct. App. 1989) (“(7) Since its enactment, the Supreme Court has had several occasions to discuss the effect of Code Sec. 19.2-317.1 upon the issue of ineffective assistance of counsel. In *Frye v. Commonwealth*, 231 Va. 370, 345 S.E.2d 267 (1986), the Court said: In view of the seriousness of a charge of ineffective assistance, counsel is entitled to the opportunity to state his reasons for his acts of commission and omission now subjected to challenge. On the other hand, we will not rule as a matter of law, upon this record, that counsel's conduct was consistent with reasonable trial strategy and therefore was not ineffective. We will not impute to counsel a certain rationale and thereby deny the defendant the opportunity to demonstrate, by evidence which might be obtained in a plenary hearing, that counsel had no such tactical basis for his actions. *Id.* at 400, 345 S.E.2d at 288; see also *Correll v. Commonwealth*, 232 Va. 454, 470, 352 S.E.2d 352, 362, cert. denied, 107 S.Ct. 3219 (1987) (a claim of

ineffective counsel cannot be resolved on direct appeal "unless counsel charged with ineffectiveness has had an opportunity to defend himself on the record by giving the rationale for his challenged acts of omission or commission"); Beaver v. Commonwealth, 232 Va. 521, 537-38, 352 S.E.2d 342, 351-52, cert. denied, 107 S.Ct. 3277 (1987); Payne v. Commonwealth, 233 Va. 460, 475, 357 S.E.2d 500, 509, cert. denied, 108 S.Ct. 308 (1987); Payne v. Commonwealth, 5 Va. App. 498, 504, 364 S.E.2d 765, 768 (1987). None of these cases has addressed the issue whether the trial court is permitted to take additional evidence to support an allegation of ineffective assistance of counsel.”)

27. 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 and the merits of his defense to the criminal charge, and is proffered as his involuntary intoxication defense 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, and evidence which could not have been secured at the time of Trial which would have been December 2, 2019 had the Defendant not withdrawn his appeal. 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. It is new evidence which could not have been secured in 2019 during the pending criminal charge on Trial De Novo in the Circuit Court, and the jury would never have heard of any of this because it did not have possibly exist at the time. The new evidence which could not have been secured in 2019 which did not exist are the following:

i. The evidence that suspect or culprit JaCody Cassell of business known as The Chimney sweep had lied to the mediator of the Attorney General's office of Dispute Resolution Unit in email to Aaron Ziglar on June 28, 2022 (EXHIBIT APPENDIX PG. 164-165 OF 532). Lied in response to the allegations and COMPLAINT against The Chimney Sweep (See EXHIBIT APPENDIX PG. 1-104 OF 532, 105-113 OF 532).

ii. Defendant and Defendant's mother Roberta Hill had given JaCody Cassell plenty of chances to admit wrongdoing by human error which almost killed Defendant and his mother after both being damaged health-wise and the human error caused damage to Triplex which required expensive repair work. Instead JaCody Cassell and his hired lawyer Eric Ferguson had repeatedly been hostile towards the victim of The Chimney Sweep's human error aka the Defendant and Defendant's mother. Refusing to admit that the business The Chimney Sweep had poisoned Brian David Hill and Roberta Hill with carbon monoxide gas poisoning due to sealing off exhaust from two gas appliances used in the Triplex of both Defendant's and Roberta's home, caused gas to flow through the fireplaces with

white residue left as evidence of the carbon monoxide, long-term.

iii. The complainant had been completely honest with the Office of the Attorney General and honest with The Chimney Sweep that JaCody's business The Chimney Sweep had caused the carbon monoxide by the installation of metal tin on top of the chimney flues.

iv. The Defendant even said in one or more letters (EXHIBIT APPENDIX PG. 428-431 OF 532) and Roberta Hill had said various times in emails from rbhill67@comcast.net to Aaron Ziglar and Eric Ferguson that what The Chimney Sweep had done was a human error (EXHIBIT APPENDIX PG. 527 OF 532, EXHIBIT APPENDIX PG. 488 OF 532). Defendant was being nice by telling the truth and asserting that it was human error. But with the lying by JaCody Cassell, it makes Defendant wonder if it was on purpose, it makes Defendant not trust them.

v. That Defendant will not hold anger or bitterness towards damaging acts done by human error or mistake, but is angry at The Chimney Sweep for simply lying to the

government employee and claiming they never did any work or estimate knowing that he signed a \$300 check for the chimney work he claimed he denied ever doing such work.

vi. That his denials and the evidence disproving multiple denials from JaCody Cassell makes him a suspect (whether criminal or civil) in the carbon monoxide poisoning of Brian David Hill since October 5, 2017 until when he was arrested for indecent exposure. The jury would not have known about JaCody Cassell lying in 2019 because he lied in response to Defendant on June 28, 2022. Defendant and Roberta Hill had proven that JaCody Cassell is a liar when he had responded through his legal counsel Eric Ferguson to the allegations filed by Defendant on May 17, 2022. Defendant has proven his claims and elements of involuntary intoxication.

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 suspect or culprit JaCody Cassell where his business The Chimney Sweep had caused the poisoning of Defendant with carbon monoxide gas originally by human error as stated in the STATEMENT OF THE FACTS was all discovered after the response from suspect or culprit JaCody Cassell on June 28, 2022. He lied in response and those lies have been proven to be lies by both Roberta Hill and Brian David Hill, the Defendant. The lies have been proven which makes this new evidence. Because the Office of the Attorney General represents the Commonwealth of Virginia, the Dispute Resolution Unit is a government office under the authority of the Commonwealth of Virginia. JaCody Cassell the suspect had lied to the Commonwealth of Virginia in response to Defendant's allegations filed on May 17, 2022 that The Chimney Sweep had caused the carbon monoxide poisoning which may be legally considered involuntary intoxication of Defendant prior to the indecent exposure charge of

September 21, 2018, and that intoxication was not disproven due to deletion of laboratory tests ordered on September 21, 2018 but never completed by the local hospital after being ordered. Lab tests would have proven the levels of carbon monoxide poisoning caused by natural gas.

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 the evidence could not have been secured for use at trial because JaCody Cassell had lied in 2022, he had lied by attorney Eric Ferguson's response from his client on June 28, 2022. The trial by jury was set for December 2, 2019. All court appointed lawyers Matthew Scott Thomas Clark, Lauren McGarry, and Scott Albrecht did not ever secure any evidence of the suspect or culprit proving that Defendant was involuntarily intoxicated 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 due to counsel being appointed but did nothing to prove Defendant's innocence, 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, and he was intoxicated on an involuntary basis. 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 cumulative, corroborative, or collateral evidence but it proves directly that the suspect or culprit JaCody Cassell had lied when allegations were brought up about his company’s (The Chimney Sweep’s) involuntary intoxication caused by their human error of placing metal tin on top of the chimney flues without poking any holes or using chicken wire instead to prevent blockage of exhaust of two gas powered appliances such as gas hot water heater and gas radiator/furnace. Human error is not a criminal act with exception to involuntary manslaughter, usually, but lying about a human error is very suspect and paints a picture of mal-intent. It paints a picture that maybe or possibly JaCody Cassell did it on purpose or rather not correct his mistakes by lying instead of simply telling the truth that he made a simple mistake and felt sorry for it. He

should have felt sorry for causing Defendant to have been wrongfully charged and wrongfully convicted. He should feel sorry for all the damage he and his business caused this innocent man. Defendant asks Jesus Christ to make Cassell feel sorry for what he had done and the abuses the Defendant had gone through in the criminal justice system due to Cassell. If Defendant were never exposed to carbon monoxide, this criminal case would not have existed and Defendant never would have been arrested by Officer Robert Jones on September 21, 2018. Cassell does not feel remorse for what he did to Defendant and Roberta Hill. He feels no remorse. JaCody Cassell feels no remorse for his business causing the carbon monoxide gas intoxication for Defendant and his mother. They could have both been killed which could have caused criminal charges against whoever had placed the metal tin, and the blame would be JaCody Cassell and his company The Chimney Sweep. If you describe someone's words or actions as malicious, you mean that they are intended to harm people or their reputation, or cause them embarrassment and upset. Carbon monoxide harmed Defendant and painted him as an indecent exposurer. Defendant only wants justice and an end to his misery.

10. Proving that suspect or culprit JaCody Cassell by his company The Chimney Sweep had caused the involuntary intoxication, first by human error in October 5, 2017, then lying about the entire thing when a complaint is filed with the human error caused allegations, and the lies are disproven with telephone log

records and signed check photocopied by archived records kept by TRUIST Bank. If this Court questions this suspect or culprit JaCody Cassell by his company The Chimney Sweep, if this Court finds that he did caused intoxication of Defendant since October 5, 2017 until he left his home and was arrested for indecent exposure, then Defendant has a genuine criminal defense of involuntary intoxication. Proof of somebody causing involuntary intoxication of a criminal defendant aka another person would disprove the intent element of the criminal charge in **Exhibit 0**, and would disprove the obscenity element of the criminal charge in **Exhibit 0**.

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 in his right state of mind due to intoxication. Mens Rea, Latin for the state of mind at the time of an accused offense. While Virginia does not appear to have established a clean definition of criminal intent, Black’s Law Dictionary defines it as “[a]n intent to commit an actus reus without any justification, excuse, or other defense.”. A criminal defense, if accepted by the Court on the basis of facts and law, is considered factual innocence and meaning that a Court of Law cannot sustain a conviction for a charged crime when an accepted criminal defense is invoked.

12. That criminal defense disproves the intent and obscenity elements in the CRIMINAL COMPLAINT and is the direct elements of alleged guilt charged. 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 presumption of 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.

13. However, again it should be noted that Defendant was not medically and psychologically cleared. See 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, Page 37 of 77, Page 35 of 77, Page 30 of 77. Because no laboratory tests were ever conducted by the hospital while police Officer Robert Jones admitted at a federal hearing that they normally do the lab work aka laboratory testing of bodily fluids but he didn't have that because he never asked for the medical records, and no lab work was completed at no fault of Defendant.

13. Now it is documented by the STATEMENT OF THE FACTS and the 10 elements of the proffered criminal defense that the suspect is JaCody Cassell. If he admits to installment/placement of the metal tin causing the involuntary intoxication by carbon monoxide gas and poisoning of Defendant and his mother Roberta Hill since October 5, 2017, then he becomes a culprit to the malicious act of intoxicating Defendant and Roberta Hill. It is clear after that fact under criminal law that Defendant is actually innocent of indecent exposure and has a laser focused criminal defense to his charge on September 21, 2018, in the General District Court for the City of Martinsville, see Exhibit 0. Corpus delicti, in Western law, is the principle that a crime must be proved to have occurred before a person can be

convicted of committing that crime. The person must be proven guilty of all elements of the crime before being convicted of a crime. A criminal defense is a legal justification and good legal reason warranting acquittal rather than conviction. A criminal defense is proven by evidence, proven by circumstances, and can be used at any jury trial if warranted by law. As a matter of law, Defendant is innocent of indecent exposure due to being involuntarily intoxicated. Let us look at the legal standards for involuntarily intoxication.

14. Commonwealth v. Shumway, Criminal Case No.: CR06-2141, 2 (Va. Cir. Ct. Feb. 12, 2007) (“Involuntary intoxication is an exception to the general rule that intoxication does not excuse a crime. Johnson v. Commonwealth, 135 Va. 524, 533, 115 S.E. 673, 676 (1923). "Intoxication is involuntary when drunkenness is produced in a person without his willing and knowing use of intoxicating liquor, drugs, other substance." 2-53 VIRGINIA MODEL JURY INSTRUCTIONS-CRIMINAL INSTRUCTION NO. 53.300 (2006).”). Commonwealth v. Shumway, Criminal Case No.: CR06-2141, 2-3 (Va. Cir. Ct. Feb. 12, 2007) (“The involuntary intoxication defense has two parts. First, the defendant must have been unconsciously or unwillingly intoxicated. According to the Supreme Court of Virginia, the "test of involuntary drunkenness, and the one almost if not quite universally found in the authorities, is the absence of an exercise of independent judgment and volition on the part of the accused in taking the intoxicant - as for

example, when he has been made drunk by fraudulent contrivance of others, by casualty, or by error of his physician." *Johnson v. Commonwealth*, 135 Va. at 536. Second, involuntary intoxication only "exempts from punishment, if it unsettles the reason." *Id.* at 534 (citing *MINOR, SYNOPSIS OF CRIMINAL LAW*). See also, *Director of the Department of Corrections v. Jones*, 229 Va. 333, 339, 329 S.E.2d 33, 37 (1985)(jury instruction in lower court stated: "if you believe that Joseph Jones: (1) was unwillingly and unknowingly drunk by the fraudulent contrivance of others, and (2) the drunkenness so unsettled Joseph Jones' ability to reason as to prevent him from exercising his own free will, then you cannot find him guilty."))

15. *Commonwealth v. Shumway*, Criminal Case No.: CR06-2141, 3 (Va. Cir. Ct. Feb. 12, 2007) ("In Virginia, as well as other states, involuntary intoxication and insanity are separate defenses. The Supreme Court of Virginia acknowledged three possible forms of the intoxication defense in *Johnson v. Commonwealth*. 135 Va. at 528-533. See also, *ROGER GROOT, CRIMINAL OFFENSES AND DEFENSES IN VIRGINIA* 325 (4th ed. 1998)("In its leading case, *Johnson v. Commonwealth*, the Supreme Court recognized three possible forms of an intoxication defense."). The three forms are as follows: 1) voluntary intoxication, 2) involuntary intoxication; 3) "settled insanity produced by drink." *Id.*”).

16. *Commonwealth v. Shumway*, Criminal Case No.: CR06-2141, 3 (Va. Cir. Ct. Feb. 12, 2007) ("Virginia case law and legal treatises treat the insanity and

involuntary intoxication defenses as separate defenses. See e.g., *Honesty v. Commonwealth*, 81 Va. 283, 283 (1886)(explaining that for both the insanity and intoxication defenses, the defense must show both the condition and that his condition rendered "him incapable of doing a willful, deliberate and premeditated act."); *Baccigalupo v. Commonwealth*, 74 Va. 807, 807 (1880)(referring to the two defenses separately). For example, *CRIMINAL OFFENSES AND DEFENSES IN VIRGINIA* lists intoxication and insanity as separate defenses. See *GROOT*, *supra*, at 301 and 325 (1998). See also, 1-31 *VIRGINIA CRIMINAL LAW AND PROCEDURE* §§31.3 and 31.4 (2005)(the treatise separates the insanity defense (31.4) from the involuntary intoxication defense (31.3)).")

17. *Commonwealth v. Shumway*, Criminal Case No.: CR06-2141, 3-4 (Va. Cir. Ct. Feb. 12, 2007) ("The two defenses are very similar, however. For the involuntary intoxication defense, the Defendant must show that "his inability to control his conduct meets the M'Naghten test for insanity." 1-31 *VIRGINIA CRIMINAL LAW AND PROCEDURE* §31.3 (2005). Indeed, "[m]ost jurisdictions have adopted the M'Naghten test, under which the Defendant must prove that, as a result of a mental disease, he did not know the nature of the act or that the act was wrong." *Id.* "Thus, under the modern definition of involuntary intoxication, the only difference between the definition of this defense and insanity is the cause of the condition. 'For the former, a mental disease or defect is required, for the latter,

involuntarily caused intoxication." Shawn Marie Boyne & Gary Mitchell, *Death in the Desert: A New Look at the Involuntary Intoxication Defense in New Mexico*, 32 N.M.L. REV. 243, 254 (2002). The burden of production and persuasion is much lighter for the involuntary intoxication defense than the insanity defense. For the intoxication defense, the Defendant need only introduce "evidence sufficient to warrant an instruction" to satisfy his burden of production and persuasion. 1-60 VIRGINIA CRIMINAL LAW AND PROCEDURE §60.4 (2005). In contrast, for the insanity defense, the Defendant must establish the defense to the "satisfaction of the fact finder." *Id.* A possible explanation for this disparity is that "it is within the experiential understanding of most jurors to understand how intoxication affects one's thinking. Boyne & Mitchell, *supra*, at 255. However, jurors have less experience with the level of mental illness that satisfies the legal definition of insanity." *Id.*")

18. The jury for this Court, if a request for new trial is granted, will be able to hear from the suspect JaCody Cassell and any employees from his company: The Chimney Sweep about intoxicating Brian David Hill and Roberta Hill since October 5, 2017, until the metal tin was removed from the chimney flue by Pete Compton in January 30, 2019. **The burden of production and persuasion is much lighter for the involuntary intoxication defense than the insanity defense.** For the intoxication defense, the Defendant need only introduce "evidence sufficient to

warrant an instruction" to satisfy his burden of production and persuasion. 1-60
VIRGINIA CRIMINAL LAW AND PROCEDURE §60.4 (2005).

19. Defendant may not have the actual carbon monoxide levels due to deletion of laboratory tests after being ordered by Sovah Health Martinsville at no fault of Defendant, but he has the suspect or culprit for the Court to order his appearance to validate the claims and evidence in this very Motion requesting New Trial or Judgment of Acquittal. The suspect JaCody Cassell should be compelled to speak under oath in this Circuit Court and be compelled in front of a jury to admit or deny Defendant's allegations against his company The Chimney Sweep after being caught lying by Roberta Hill having phone call records/logs from Comcast/xFinity and the signed check from Cassell himself in archive records of TRUIST Bank. She requested the records, Defendant has those records thanks to her.

20. Again, he was not mentally right in the head when he made these statements: Brian said in **EXHIBIT 2**, EXHIBIT INDEX PAGE 10 OF 18, 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 2**, Case 1:13-cr-00435-TDS, Document 153, Filed 10/17/18, Page 2 of 11, EXHIBIT INDEX PAGE 9 OF 18: “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 2**, Case 1:13-cr-00435-TDS, Document 153, Filed 10/17/18, Page 2 of 11, EXHIBIT INDEX PAGE 9 OF 18: “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 APPENDIX PG. 418 OF 532**) 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. The evidence showing the existence of 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. Covered up by hospital?

21. The burden of proof has been met of involuntary intoxication caused by The Chimney Sweep and under the lies by JaCody Cassell, warranting an evidentiary hearing. Enough proof is being filed with this Court to warrant an evidentiary hearing, and to subpoena this witness either by Court or by the Commonwealth's Attorney.

22. This meets 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 in existence until Defendant filed a complaint on May 17, 2022 with the allegations in the office of the Commonwealth of Virginia in its Dispute Resolution Unit, and JaCody Cassell lied and denied everything in response to those allegations on June 28, 2022, that is a fact. 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 intoxication under carbon monoxide gas at the time of the mental evaluation. Dr. Conrad Daum was not aware of Defendant's intoxication under carbon monoxide gas at the time of the mental evaluation, but he did suspect enough of something odd to diagnose him with "psychosis" which is a symptom of Carbon Monoxide gas exposure. See EXHIBIT APPENDIX PG. 66-76 OF 532.

23. 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 of involuntary intoxication caused by The Chimney Sweep to disprove multiple elements (intent, obscenity) 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. Again, Corpus delicti, in Western law, is the principle that a crime must be proved to have occurred before a person can be convicted of committing that crime. The Defendant is presumed innocent, Defendant was supposed to be 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. Elements of obscenity and intent have not been met with the criminal defense of involuntary intoxication caused by The Chimney Sweep and its owner JaCody Cassell who lied to the Commonwealth of Virginia in Dispute Resolution Unit.

24. 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, had the false belief that Defendant was obscene and intentionally committed an actus reus without any justification, excuse, or other defense. That is not true. Beliefs under affidavit by Officer Robert Jones do not make them true.

25. 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).

26. 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 but it is tyranny to convict innocent people of crimes they are innocent of without mercy.

27. 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.**”).

28. 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.

29. 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...”

30. 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.

31. 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.”).

32. 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.”)

33. 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 two elements of the crime, because Defendant has the proof that he was involuntarily intoxicated by carbon monoxide gas and JaCody Cassell of The Chimney Sweep lied about the**

allegations of what started the carbon monoxide intoxication poisoning of Brian David Hill and his mother Roberta Hill since October 5, 2017. Defendant had proven enough to this Court in this motion that the suspect (not culprit unless he has been proven to be the direct culprit or admits to the act) has been identified and proven on the records of the Dispute Resolution Unit of the Office of the Attorney General for the Commonwealth of Virginia. The suspect is JaCody Cassell of The Chimney Sweep who his company started the involuntary intoxication of Defendant from October 5, 2017, until the date of arrest of Defendant, Roberta Hill was still poisoned by the carbon monoxide until; January 30, 2019. Defendant is not guilty of indecent exposure and cannot be convicted because he was not medically cleared and was under involuntary intoxication, and the Commonwealth can never prove otherwise. The Court may have no choice but to subpoena and order this witness: JaCody Cassell to appear before this Court or answer interrogatories to answer questions about him lying to the Office of Attorney General and lying to Defendant's mother Roberta Hill over allegations against The Chimney Sweep filed by Defendant on May 17, 2022. They cannot prove otherwise, Defendant was 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 involuntarily intoxicated as caused by The Chimney Sweep on October 5, 2017 and thus was not medically and psychologically cleared, and had no intent and no obscenity 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 which was charged 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 intoxicated with carbon monoxide gas and that claim cannot be disproven due to destruction of evidence and deletion of evidence by the local hospital at no fault of Defendant. 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 under 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. Defendant was intoxicated and that could have been proven had the ordered laboratory tests not been deleted from the chart of his medical records dated September 21, 2018.

3. Because Defendant was not medically cleared and was involuntarily intoxicated by carbon monoxide gas poisoning, intent can never be established even under a trier of fact's broad discretionary powers 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. They cannot disprove the carbon monoxide in body of Defendant argument as they do not have the laboratory results. Defendant believes the lab tests would have found the levels of carbon monoxide induced intoxication. 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. Also the Commonwealth Attorney would have to show any evidence to a jury that there was no carbon monoxide gas long term exposure of Defendant to establish that he was medically cleared. The suspect is JaCody Cassell and there is evidence documented of him lying to the Dispute Resolution Unit of the Commonwealth's Attorney General in response to Defendant's direct allegations against his company had shown a reason to find Defendant not guilty. 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 involuntarily intoxicated thus 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 of Carbon Monoxide (CarboxyHemoglobin) 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 for the carbon monoxide gas poisoning of Defendant and Roberta Hill is none other than The Chimney Sweep, none other than JaCody Cassell who runs the company.

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.

9. The suspect is JaCody Cassell and he must be questioned by this Court in regards to the evidence cited in and attached in this motion, evidence cited in the Defendant’s complaint. He has a right to plead the Fifth Amendment and have his attorney present, but the Defendant has the evidence that Cassell lied about never doing any work for Ms. Hill and never doing any estimate for Ms. Hill. He must be questioned under oath about his cause of the involuntary intoxication of Defendant.

8. Defendant is innocent, he was not cleared, he was intoxicated, 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	5-6	ORDER IN MISDEMEANOR OR TRAFFIC INFRACTION PROCEEDING
EXHIBIT 2	7-18	STATUS REPORT OF PETITIONER SEPTEMBER 27, 2018, RE-MAILED ON OCTOBER 10, 2018
EXHIBIT APPENDIX VOLUME I OF II (Pages 1 – 532)	1-532, index is five pages (pages 19-550), (index pages incl. 19-555)	EXHIBIT APPENDIX VOLUME I OF II (Pages 1 – 532) 537 pages with Index.
EXHIBIT APPENDIX VOLUME II OF II (Pages 1 – 79)	1-79, index is two pages (pages 550-629), (index pages incl. 555-636)	EXHIBIT APPENDIX VOLUME II OF II (Pages 1 – 79) 81 pages with Index.

636 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 Defendant was involuntarily intoxicated by carbon monoxide gas at the time of arrest which shows a criminal defense to the three elements (medically cleared, intent, obscenity) of the criminal charge on September 21, 2018 in **EXHIBIT 0** which means that the three elements were meritless, frivolous, baseless, and without clear

and convincing evidence to support that even in light most favorable to the Commonwealth, the evidence is insufficient to sustain a conviction;

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 the evidence sufficient or order an evidentiary hearing to question JaCody Cassell over the matters of Defendant being involuntarily intoxicated by carbon monoxide gas since October 5, 2017, all the way up until Defendant's arrest on September 21, 2018 while still under the effects of the intoxication at the time of arrest which cannot be disproven without laboratory results;
4. That the Circuit Court consider vacatur or modification of the wrongful conviction dated November 18, 2019 (**EXHIBIT 1**), 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;
5. 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;

6. 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;
7. 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 4th day of September, 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 4th day of September, 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 Fax: (276) 403-5478 Email: ahall@ci.martinsville.va.us	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 Martinsville, VA 24114 Email: apritchett@vacourts.gov
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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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