In The

Court of Appeals

Of Virginia

Brian David Hill,

Appellant,

v.

Commonwealth of Virginia, City of Martinsville

Appellee.

ON APPEAL FROM THE CIRCUIT COURT FOR THE CITY OF MARTINSVILLE

OPENING BRIEF OF APPELLANT

Brian David Hill – Ally of Qanon
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1029-1073). Appellant never fixed the motion where the only relief sought was a Petition for the Writ of Actual Innocence. However, the Appellant had used the terms “actual innocence” (See Record-pages 1031, 1032, 1033, 1034, 1036, 1038, 1039, 1064) in the Motion because he had asserted that the new evidence (See Statement of the Facts, paragraph 3; subparagraphs EXHIBIT 1 through ADDITIONAL EVIDENCE 20.of paragraph 3 of the statement of the Facts) which was unavailable at the time of his criminal conviction (See RECORD 454-455) demonstrates actual innocence evidence. See paragraph 16 of the Statement of the Facts. That alone should warrant acquittal. When the Commonwealth of Virginia had presented a lack of evidence or lack of facts necessary to convict the Appellant with violation of Martinsville Local Ordinance 13-17. - Indecent exposure (See RECORD 1-3), or Virginia Code § 18.2-387 (See RECORD 1-3). The Circuit Court which is the final state-court-of-record (State/Commonwealth) had convicted the Appellant of violating Virginia Code § 18.2-387 (however placed it as a “Local Ordinance” in the disposition of finding of guilty) (See RECORD 454-455). His charge had nothing to do with being “indecent” but was a charge of intention of obscenity. The arrest warrant had stated in its own alleged fact or probable cause in the original criminal charge that the basis of Appellant’s arrest was over the accusation of intentionally being obscene. Read the original charge (See RECORD 1-3) where it actually said Appellant was charged with “13-17/18.2-387 , Code or Ordinances of this city, county or town: 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.”. However, Appellant was overcharged for a crime he did not commit because the Commonwealth of Virginia did not prove their charge of Appellant intending to be obscene on September 21, 2018. That was why the “actual innocence” issue was preserved in the Trial Court (See Record-pages 1031, 1032, 1033, 1034, 1036, 1038, 1039, 1064), because the new evidence demonstrates a lack of intent and that Appellant was not being obscene on September 21, 2018, as charged (See RECORD 1-3). Appellant did not commit that charged crime because he did not intend to appeal to the prurient interest in sex (See RECORD 1-3; record 1036-1041). Acquittal is warranted in response to the Appellant’s motion (See record 1029-1237) and additional evidences listed in the Trial-Court-record’s Table of Contents, but for reference you should review the evidences in all subparagraphs of paragraph 3 of Statement of the Facts. See Statement of the Facts paragraphs 2-7. Instead the Circuit Court erred (Record-pages 1550-1550) by denying the motion by misconstruing it as an Actual Innocence Writ Petition under the Virginia Codes of Chapter 19.2 or Chapter 19.3. Those codes were not invoked and the courts are usually strict about not granting a motion if rule or law was not properly invoked. Chapter 19.2 or Chapter 19.3 was never invoked in that Motion filed January 20, 2022 (See RECORD 1029-1237). The Circuit Court erred as a matter of fact and as a matter of law. See paragraph 3 and all of its subparagraphs of the Statement of the Facts for the new evidence citations. That issue is preserved on appeal as the ultimate fact

Assignment of error 2. The Circuit Court erred as a matter of law in its order (Record-pages 1550-1550) by misconstruing a Motion under Virginia Rules of the Sup. Ct. 3A:15 (Record-pages 1029-1030, and 1029-1237) as a "Petition for the Writ of Actual Innocence" under Virginia Code Chapter 19.2 or Chapter 19.3 instead of ruling that the Motion had invoked "Rule 3A:15 - Motion to Strike or to Set Aside Verdict; Judgment of Acquittal or New Trial" (Record-pages 1029-1030). That issue was preserved for appeal, even though Chapter 19.2 or Chapter 19.3 was not said in its quick order because the judge is corrupt or didn't want to take the time to file any additional legal opinions or memorandums to invoke the statutes or any laws or rules as to why the Trial Court had improperly denied the motion. Misconstruing a motion which does not even invoke the statutes of a Petition for the Writ of Actual Innocence. That is because the very Rule of 3A:15 in the rules of the Supreme Court of Virginia permits a Appellant to request acquittal after a finding of guilty if the Commonwealth of Virginia had a lack of enough evidence to sustain a criminal conviction. Proving actual innocence (See Record-pages 1031, 1032, 1033, 1034, 1036, 1038, 1039, 1064) to a criminal conviction (See RECORD 454-455) of a criminal charge (See RECORD 1-3) is enough to warrant acquittal since it disproves the Commonwealth's case and thus did not have the evidence necessary to sustain a conviction. See paragraph 16 of the Statement of the Facts. 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."). The rule which is the law of the Virginia Court System actually says: "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". Commonwealth v. Flythe, Record No. 0592-15-4, 9 (Va. Ct. App. Sep. 1, 2015) ("Having found that the granting of the motion to strike constituted an acquittal because the Commonwealth's evidence was insufficient as a matter of law, we need not address the Commonwealth's argument that a dismissal based on a fatal variance does not bar retrial under the Double Jeopardy Clause."). Commonwealth v. Flythe, Record No. 0592-15-4, 6-7 (Va. Ct. App. Sep. 1, 2015) (" Poole v. Commonwealth, 211 Va. 258, 260, 176 S.E.2d 821, 823(1970) ("The office of a motion to strike the evidence, made at the conclusion of the Commonwealth's case, is to challenge the sufficiency . . . of the evidence."). Under Rule 3A:15(c), a successful motion must result in an acquittal. Rule 3A:15(c)"). Commonwealth v. Fields, FE-2012-0000773, 14 n.13 (Va. Cir. Ct. Apr. 10, 2014) ("This last requirement has been expressed in a number of ways by the higher courts of Virginia. See, e.g., Lamm, 55 Va. App. at 642 ("[A] defendant must prove . . . that the evidence is material to the extent that it is likely to produce different

results from a new trial."); see also Carter v. Commonwealth, 10 Va. App. 507, 513 (1990) (citation omitted) ("Before setting aside a verdict [on the basis of new evidence being offered to establish perjury], the trial court must have evidence before it to show in a clear and convincing manner 'as to leave no room for doubt' that the after-discovered evidence, if true would produce a different result at another trial.")"). Gorham v. Commonwealth, 15 Va. App. 673, 679 (Va. Ct. App. 1993) ("(6) This practice is consistent with case law from other jurisdictions that holds that a post-trial finding of insufficient evidence to support a conviction requires an acquittal only as to the greater charge for which the evidence was insufficient, but does not require acquittal of a lesser-included offense adequately supported by the evidence. See e.g., Ex Parte Beverly, supra; Dickenson v. Israel, 482 F. Supp. 1223, 1225 (E.D. Wis. 1980), aff'd, 644 F.2d 308 (7th Cir. 1981); Edwards v. State, 452 So.2d 506, 507-08 (Ala. Crim. App. 1983), aff'd, 457 So.2d 508 (1984); State v. Edwards, 201 Conn. 125, 134 n.6, 513 A.2d 669, 675 n.6 (1986); Brooks v. State, 314 Md. 585, 601, 552 A.2d 872, 880-81 (1989). But see Garrett v. State, 749 S.W.2d 784, 791 (Tex.Crim. App. 1986)."). That issue is preserved on appeal as the ultimate fact of what final judgment aka the criminal conviction which the Motion for Judgment of Acquittal was attempting to challenge. 5

Assignment of error 3. The Circuit Court erred as a matter of law in its order (Record-pages 1550-1550) by misconstruing a Motion under Virginia Rules of the Sup. Ct. 3A:15 (Record-pages 1029-1030, and 1029-1237) which Appellant's motion had invoked newly available evidence (See Statement of the Facts paragraphs 2-7; or specifically paragraph 3 and all subparagraphs of the Statement of the Facts is the new evidence including the legal arguments and exhibit indexes) not admissible at the time the conviction was entered (See RECORD 454-455, see paragraph 16 of the Statement of the Facts) when that motion properly invoked Virginia Code § 19.2-271.6. Properly preserved in the trial court for issues of appeal. See Record-pages 1030, 1033, 1034, 1035, 1036, 1038, 1040, 1041. That motion (See RECORD 1029-1237) even invoked the actual innocence exception (See Record-pages 1031, 1032, 1033, 1034, 1036, 1038, 1039, 1064) to any procedural bar by invoking the U.S. Supreme Court's case law of 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). See Record-pages 1029, 1030. Actual Innocence exception by demonstrating a fundamental miscarriage of justice proves that the criminal conviction cannot be sustained and thus acquittal is warranted in that case. When actual innocence is proven in any way, shape, or form, then the evidence presented originally by the Commonwealth's Attorney cannot sustain a conviction (See paragraph 16 of Statement of the Facts) even upon Appellant withdrawing his appeal as no guilty plea was ever entered (See paragraphs 17 and 18 of Statement of the Facts). The new evidence (See Statement of the Facts, paragraph 3; subparagraphs EXHIBIT 1 through ADDITIONAL EVIDENCE 20.of paragraph 3 of the statement of the Facts) changes the outlook of whether Appellant is guilty or innocent of his original

was invoked) Rule 1:1 finality of criminal convictions when Rule 1:1 over judgments does not apply to a clearly erroneous judgment and to new evidence not legally admissible at the time of Appellant's conviction of guilt (See RECORD 454-455). This issue was preserved on appeal because the Trial Court had invoked that they did not have jurisdiction (Record-pages 1550-1550) which opens up the issue of the arguments in the assignment of error for clear error (clear legal error) when claiming to have not had jurisdiction. Appellant interprets that the judge used Rule 1:1. The preservation of issue does not require exact claim of statute the judge used or preservation of the exact statute cited that the judge used in its short order without any memorandum of opinion when the judge leaves the interpretation up to the appellate courts, this judge is corrupt, clearly corrupt. The judge should have brought up any applicable law or any applicable rules or even any supporting case law in its order but clearly did not. Appellant does prove that issues raised as to why the motion was erroneously denied was preserved for purposes of appeal. New evidence (Again, See paragraph 3 of the Statement of the Facts) became available after the date of Virginia Code § 19.2-271.6 going into effect as law on July 1, 2021. It is erroneous because the Commonwealth of Virginia's evidence only shown that Appellant was naked at night between midnight and 3:00AM. Witnesses to his nudity were hardly anybody as nobody in the record claimed to have been a victim. The unidentified person who called 911 or police on Appellant had claimed that Appellant was seen running naked (See RECORD 1-3, see the evidence filed by the Commonwealth of Virginia in the Trial Court), not standing around naked when the person in a vehicle saw Appellant (See record 1227-1230, 1237 declaration "under penalty of perjury"). The unidentified person who called first responders, reported in the CRIMINAL COMPLAINT (See RECORD 1-3) did not say that whoever had called the police saw Appellant standing around actually displaying his genitals clear to see but the CRIMINAL COMPLAINT on record (See record-3-3) said that Appellant was seen "running" naked according to that CRIMINAL COMPLAINT affidavit of the charge. None of that happened with whoever unidentified individual had called 911. The caller did not claim to be a victim and no restitution was ordered. Appellant was not being sexual and that means he was not being obscene according to the charge. Simply being naked is no evidence of being obscene. See paragraph 21 of the Statement of the Facts. See Price v. Commonwealth, 214 Va. 490, 493 (Va. 1974) ("There we held that a portrayal of nudity is not, as a matter of law, a sufficient basis for a finding that a work is obscene. See also Upton v. Commonwealth, 211 Va. 445, 447, 177 S.E.2d 528, 530 (1970)."). This proves the Appellees' wrongfully prosecuted Appellant for obscenity when there is no evidence of obscenity. Appellant even written under penalty of perjury that he never masturbated (See record 1227 and 1235 "…I never masturbated, it was a crazy incident.", 1174-1175, 1237 declaration "under penalty of perjury") when he was naked on September 21, 2018, and nobody ever said in the entire criminal case that he ever masturbated on September 21, 2018. Never

indicated any masturbation, never indicated any sexual arousal. Nothing in the entire record of the Circuit Court indicates sexual arousal or sexual enjoyment. See paragraph 10 of the Statement of the Facts. That issue was preserved for appeal under Record-pages 1035-1038. See paragraph 22 of the Statement of the Facts. E.G. Nudists in a nudist colony enjoy being naked and doing fun activities naked socially around other nudists but are not sexually aroused. Even the alleged photographs do not prove sexual arousal and nobody of the public was in the alleged photos, which may do gawking or even looking at Appellant, nobody around giving a shocked look saying "oh my god". Arguably, adults naked in photographs is not illegal, it is not obscene, and naked statues in Rome is not illegal. Being naked as a matter of law does not make Appellant obscene in any way, shape, or form. There are public bathhouses where men and women are naked for the purposes of hygiene. There are nudist colonies of people who live their everyday lives and even enjoy fun activities with their families completely naked with non-sexual nudity. Even the U.S. Supreme Court had ruled that nudity is not the same as obscenity. Simply being naked is not obscenity. See Sunshine Book Co. v. Summerfield, Postmaster General, 355 U.S. 372. Appellant was naked in photographs but was not around anybody in the photos in their appearance. Appellant has a neurological disorder of "autism spectrum disorder" (Record 1251, 1271-1274, 1032-1034, 1074-1076, 1102, 1200-1203, 1221-1224) and "obsessive compulsive disorder" (Record 1481, 1462, 1151-1152, 1211-1212). Under Virginia Code § 19.2-271.6 that "autism", developmental disabilities, and mental illnesses can be a defense of lack of intent to commit an actus reus without any justification, excuse, or other defense. See paragraph 23 of Statement of the Facts. Appellant admitted under penalty of perjury that he "never masturbated" (See record 1227 and 1235 "…I never masturbated, it was a crazy incident.", 1174-1175, 1237 declaration "under penalty of perjury"). The finality of the judgment (Record-pages 1550-1550) is plainly erroneous because the Appellant had never been obscene, the Appellant had never shown any evidence or behavior that he would intentionally appeal to the prurient interest in sex. Appellant didn't walk around in a long coat flashing people. The only person who had called the police on Appellant had saw a "naked man running" without understanding even why. See (Record 3) and read where it actually says in the charge that "…a naked white male that had been seen running on Hooker St from Church St." It is more difficult to see somebodies genitals when a naked person is running. Especially when Appellant was only naked at night. Nothing in the Trial Court record shown any other law enforcement incidents involving "naked" or nakedness. That does not sound like an intentional obscene behavior. Especially when the officers did not know or did not want to believe that Appellant had "Autism Spectrum Disorder" (See Record 1231 quoting from the record: "…*I said over and over again while complying "I have Autism, I have Autism, I have AUTISM, I have Autism." I felt they couldn't hear me out*…", "…*People with Autism can give false confessions and misleading statements. Officer you misunderstood what I said about the*

YMCA building after or before my answer to his "how do I know you even have Autism" was "it was in federal court records." He gave me that look where he didn't want to accept anything I said…"). See the Federal Court Transcript under record 1103-1184, in the record of the Trial Court as part of the evidence presented in that Motion (See record 1066). The Officer Robert Jones said that he was not aware that Appellant was even diabetic (See record 1137). The invocation of Virginia Code § 19.2-271.6 (See record 1029, 1030, 1032) was appropriate to prove that the Circuit Court had erred and should not have permanently entered a final judgment (Record-pages 1550-1550) convicting the Appellant of a crime (Record-pages 1-3) that he clearly did not commit because he was not being obscene and did not intend to appeal to the prurient interest in sex. Meaning he did not intend to be obscene on September 21, 2018. Yes, he was naked in a reasonably public place at night (Record-pages 3), and yes he was seen running by somebody who had called the Martinsville Police (Record-pages 3). However, the Commonwealth of Virginia did not prove that Appellant had no drugs in his body at the time he was arrested (See Record 1248, 1049-1050, 1132, 546). The Police and the Hospital never conducted any drug testing of any kind or covered it up if there was. The Officer Robert Jones clearly lied under oath by saying that "he was medically and psychologically cleared" (See Record 3) when Appellant was arrested for the charge of obscenity (See Record 1) in the Local Ordinance and Virginia statute of indecent exposure. Either lied under oath or was incorrect and made an error of judgement when evidence shown Appellant's health was not completely checked out by the Hospital (See Record 1044, 1049, 1061) which does not make him medically and psychologically cleared when lab tests were cancelled and to be deleted from the chart (See Record 546). He admitted later under penalty of perjury in Federal Court in regards to the indecent exposure case that he never got Appellant's medical records and was not fully aware of the health problems of the Appellant. See Record 1138, 618, 892, 922. He didn't know Appellant was diabetic, yet he said for a fact clearly in the CRIMINAL COMPLAINT under oath that Appellant was "medically and psychologically cleared" (See Record 3). See paragraph 24 of Statement of the Facts. That issue was preserved in the Trial Court for appeal (See Record-pages 1058, 1063, 1064). You can't credibly say for a fact that a criminal suspect is medically cleared and then later admit that you were not aware of all of the health issues which could have caused or triggered what led up to the running naked. It is clear that Officer Robert Jones was ignorant, just charged Appellant and forgot about it, let the Courts deal with Appellant and testify when subpoenaed. Then just walk away and move on. Well Appellant did not move on which was why he had filed a Motion for Judgment of Acquittal. See RECORD 1029-1237, paragraph 3 of Statement of the Facts. "The 'obscenity' element of Code § 18.2–387 may be satisfied when: (1) the accused admits to possessing such intent, Moses v. Commonwealth, 611 S.E.2d 607, 608 (Va. App. 2005)(en banc); (2) the defendant is visibly aroused, Morales v. Commonwealth, 525 S.E.2d 23, 24 (Va. App. 2000); (3) the defendant

engages in masturbatory behavior, Copeland v. Commonwealth, 525 S.E.2d 9, 10 (Va. App. 2000); or (4) in other circumstances when the totality of the circumstances supports an inference that the accused had as his dominant purpose a prurient interest in sex, Hart, 441 S.E.2d at 707–08. The mere exposure of a naked body is not obscene. See Price v. Commonwealth, 201 S.E.2d 798, 800 (Va. 1974) (finding that `[a] portrayal of nudity is not, as a matter of law, a sufficient basis for finding that [it] is obscene')." Romick v. Commonwealth, No. 1580-12-4, 2013 WL 6094240, at *2 (Va. Ct. App. Nov. 19, 2013)(unpublished)(internal citations reformatted). While the evidence may show that Appellant was naked in public, as stated above (See pages RECORD 1-3), nudity, without more, is not obscene under Virginia law. Rather, "[t]he word 'obscene' where it appears in this article shall mean that which, considered as a whole, has as its dominant theme or purpose an appeal to the prurient interest in sex, that is a shameful or morbid interest in nudity, sexual conduct, sexual excitement, excretory functions or products thereof or sadomasochistic abuse, and which goes substantially beyond customary limits of candor in description or representation of such matters and which, taken as a whole, does not have serious literary, artistic, political or scientific value." Va. Code § 18.2-372 (emphasis added). While Virginia does not appear to have established a clean definition of criminal intent, Black's Law Dictionary defines it as "[a]n intent to commit an actus reus without any justification, excuse, or other defense." In summary, in order to show that Appellant violated the indecent exposure statute under Virginia law, the Commonwealth was required to prove, among other things, that Appellant had the intent to display or expose himself in a way which has, as its dominant theme or purpose, appeal to the prurient interest in sex, as further defined above, without any justification, excuse, or other defense. The Commonwealth failed to do so. Rather, the Commonwealth's evidence, presented through its own witnesses such as Officer Robert Jones (See record 3), showed Appellant as someone who was running around naked between midnight and 3:00 a.m. and taking pictures of himself (*note: was filed by Commonwealth Attorney Glen Andrew Hall, Esq. as evidence but was not noted where in the record the filed photographs are, the CAV should ask the Clerk for details of filed evidence photographs*) because he believed that someone was going to hurt his family if he did not do so. (See Record-pages 1118-1119, 1129). His autism makes it clear that he can easily be taken advantage of when threatened or bribed or even drugged. He can be taken advantage of due to his autism spectrum disorder (E.G. (exempli gratia) See record 76-78). With the passage of the new Virginia Code § 19.2-271.6 law, now this can be brought up as facts from the Appellant's side of the criminal case story. He is entitled to acquittal or new trial. This new law makes it indisputable that new evidence material to the criminal charge and the autism spectrum disorder of Appellant warrant acquittal or new trial. Again, see paragraph 23 of Statement of the Facts. The General District Court for the City of Martinsville (See pages RECORD 1-3)(transcript not available) and the Circuit Court for the City of Martinsville (See pages record 442-453) did not hear, however, any evidence of Appellant

having his dominant theme, or purpose being an appeal to the prurient interest in sex. Despite withdrawing his appeal due to clearly unconstitutional circumstances (See pages record 442-453), nothing on the record throughout the Trial Court proved that Appellant was having his dominant theme, or purpose being an appeal to the prurient interest in sex. For example, there was no evidence of Appellant making any sexual remarks, being aroused, masturbating (See record 1227 and 1235, 1174-1175, 1237 declaration "under penalty of perjury"), or enjoying his conduct, sexually or otherwise. If a person was purposing to expose himself in public because he or she found it sexually arousing, it would be logical that he or she would pick a place and time where he or she would expect to encounter lots of members of the public. Appellant did not do that. That argument was preserved in the Trial Court record on appeal as this argument was raised in his motion (See Record-pages 1036-1040). Rather, he was running around between midnight and 3:00 a.m. and the witnesses to his nudity were few, the CRIMINAL COMPLAINT (See pages RECORD 1-3) shown just one person who called the police because not just of seeing Appellant naked but only "running" in the nude. Hence, the statements Appellant made to police and his conduct both indicate that, in the light most favorable to the Commonwealth, he was naked in public at night while having a psychiatric episode, but without the intent necessary to commit indecent exposure under Virginia law. The requirement of the Court's past standard of only allowing proving of a defense of mental insanity pursuant to Virginia Code § 19.2-182.2 to demonstrate proof of having a "psychiatric episode" to be found not guilty by reason of insanity is no longer required as the only remedy due to the passage of Virginia Code § 19.2-271.6. Now Virginia Code § 19.2-271.6 creates new remedy not previously available to criminal-defendants. No longer is the bar set so high that the only means of acquittal for the mentally ill and mentally disabled are the defense for mental insanity under Virginia Code § 19.2-182.2 which was the set standard prior to the lawmakers' creation of Virginia Code § 19.2-271.6 . Consequently, the Circuit Court erred, as a matter of law, when claimed it had no jurisdiction when the new evidence and the passage of Virginia Code § 19.2-271.6 changed the dynamics of allowing new evidence of mental disabilities and mental health as well as developmental disabilities without requiring only the defense of mental insanity at the time of an offense. The law allows evidence of mental health and developmental disabilities at the time of an offense in regard to the intent. The new evidence had shown that Appellant is not guilty of the charge of indecent exposure as per Virginia Code § 18.2-387 and Local Ordinance 13-17; because he was charged with "intentionally making an obscene display" without any laboratory tests (Paragraph 24 of Statement of the Facts) conducted to have proved that Appellant was medically cleared and without clear and convincing evidence proving obscenity. Appellant cannot be medically cleared without laboratory tests including blood alcohol levels test. No tests were conducted after blood drawn out of his arm which prompted tests ordered but were then cancelled (See record 1287, 1049-1050, 1132, 546).

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STATUTES

GLOSSARY

Appellant	Brian David Hill the Appellant of the case
CAV	Court of Appeals of Virginia
Trial Court	Circuit Court for the City of Martinsville The Tribunal being appealed from.
CA CA	Commonwealth Attorney for the City of Martinsville and the Commonwealth of VA

SUMMARY

Brian David Hill, ("Appellant") files this Opening Brief pursuant to Rule 5A:16(a) of this Court, and this is direct appeal of the Circuit Court's final judgment (Record-pages 1550-1550) denying Appellant's motion for Judgment of Acquittal (Record-pages 1029-1237). That decision was made on February 10, 2022. This is a criminal appeal of right.

This case concerns the Appellant's due process right or entitlement to a Judgment of Acquittal upon filing new evidence which could not have been filed or accepted previously at the time of the final criminal conviction which is the judgment of guilty (Record-pages 454-455).

There exists case law from both the Supreme Court of Virginia and the CAV about the exercise of Rule 3A:15(c) and the standards of either a new trial or acquittal, especially upon light of new evidence when that evidence wasn't available as a matter of law at the time of the verdict of guilty or when evidence wasn't discoverable until after the finding of guilty of a crime.

Commonwealth v. Flythe, Record No. 0592-15-4, 6-7 (Va. Ct. App. Sep. 1, 2015) (" Poole v. Commonwealth, 211 Va. 258, 260, 176 S.E.2d 821, 823(1970) ("The office of a motion to strike the evidence, made at the conclusion of the Commonwealth's case, is to challenge the sufficiency . . . of the evidence."). Under Rule 3A:15(c), a successful motion must result in an acquittal. Rule 3A:15(c)").

Commonwealth v. Fields, FE-2012-0000773, 14 n.13 (Va. Cir. Ct. Apr. 10, 2014) (“This last requirement has been expressed in a number of ways by the higher courts of Virginia. See, e.g., Lamm, 55 Va. App. at 642 ("[A] defendant must prove . . . that the evidence is material to the extent that it is likely to produce different results from a new trial."); see also Carter v. Commonwealth, 10 Va. App. 507, 513 (1990) (citation omitted) ("Before setting aside a verdict [on the basis of new evidence being offered to establish perjury], the trial court must have evidence before it to show in a clear and convincing manner 'as to leave no room for doubt' that the after-discovered evidence, if true would produce a different result at another trial.")”). Gorham v. Commonwealth, 15 Va. App. 673, 679 (Va. Ct. App. 1993) (“(6) This practice is consistent with case law from other jurisdictions that holds that a post-trial finding of insufficient evidence to support a conviction requires an acquittal only as to the greater charge for which the evidence was insufficient, but does not require acquittal of a lesser-included offense adequately supported by the evidence. See e.g., Ex Parte Beverly, supra; Dickenson v. Israel, 482 F. Supp. 1223, 1225 (E.D. Wis. 1980), aff'd, 644 F.2d 308 (7th Cir. 1981); Edwards v. State, 452 So.2d 506, 507-08 (Ala. Crim. App. 1983), aff'd, 457 So.2d 508 (1984); State v. Edwards, 201 Conn. 125, 134 n.6, 513 A.2d 669, 675 n.6 (1986); Brooks v. State, 314 Md. 585, 601, 552 A.2d 872, 880-81 (1989). But see Garrett v. State, 749 S.W.2d 784, 791 (Tex.Crim. App. 1986).”). See Assignment of Error 2.

Assignments of Error

Assignment of error 1. The Circuit Court erred as a matter of law in its order (Record-pages 1550-1550) by misconstruing a Motion under Virginia Rules of the Sup. Ct. 3A:15 (Record-pages 1029-1030, and 1029-1237) as a "Petition for the Writ of Actual Innocence" under Virginia Code Chapter 19.2 or Chapter 19.3 (Record-pages 1550-1550) then claiming they do not have jurisdiction for such petitions when Chapter 19.2 or Chapter 19.3 was never invoked in that motion for Judgment of Acquittal. The Circuit Court misconstrued the motion (RECORD 1029-1237, see paragraph 3 of Statement of Facts). Misconstruing a motion which does not even invoke the statutes of a Petition for the Writ of Actual Innocence (Record 1029-1032, see paragraph 3 of Statement of Facts) is an error of law and had abused discretion. Appellant would not waste his time invoking a Writ Petition under Chapter 19.2 or Chapter 19.3 in a Circuit Court which does not hold jurisdiction over such petitions. Appellant had read the Actual Innocence Writ Petition statutes wrongfully misconstrued by the Circuit Court when the motion did not even invoke Chapter 19.2 or Chapter 19.3 of the Code of Virginia (See record 1029-1073). Appellant never fixed the motion where the only relief sought was a Petition for the Writ of Actual Innocence. However, the Appellant had used the terms "actual innocence" (See Record-pages 1031, 1032, 1033, 1034, 1036, 1038, 1039, 1064) in the Motion because he had asserted that the new evidence (See Statement of the Facts, paragraph 3; subparagraphs EXHIBIT 1 through ADDITIONAL EVIDENCE

20.of paragraph 3 of the statement of the Facts) which was unavailable at the time of his criminal conviction (See RECORD 454-455) demonstrates actual innocence evidence. See paragraph 16 of the Statement of the Facts. That alone should warrant acquittal. When the Commonwealth of Virginia had presented a lack of evidence or lack of facts necessary to convict the Appellant with violation of Martinsville Local Ordinance 13-17. - Indecent exposure (See RECORD 1-3), or Virginia Code § 18.2-387 (See RECORD 1-3). The Circuit Court which is the final state-court-of-record (State/Commonwealth) had convicted the Appellant of violating Virginia Code § 18.2-387 (however placed it as a "Local Ordinance" in the disposition of finding of guilty) (See RECORD 454-455). His charge had nothing to do with being "indecent" but was a charge of intention of obscenity. The arrest warrant had stated in its own alleged fact or probable cause in the original criminal charge that the basis of Appellant's arrest was over the accusation of intentionally being obscene. Read the original charge (See RECORD 1-3) where it actually said Appellant was charged with "13-17/18.2-387 , Code or Ordinances of this city, county or town: 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.". However, Appellant was overcharged for a crime he did not commit because the Commonwealth of Virginia did not prove their charge of Appellant intending to be obscene on September 21, 2018. That was why the "actual innocence" issue was preserved in the Trial Court (See Record-pages 1031, 1032, 1033, 1034, 1036, 1038, 1039, 1064), because the new evidence

demonstrates a lack of intent and that Appellant was not being obscene on September 21, 2018, as charged (See RECORD 1-3). Appellant did not commit that charged crime because he did not intend to appeal to the prurient interest in sex (See RECORD 1-3; record 1036-1041). Acquittal is warranted in response to the Appellant's motion (See record 1029-1237) and additional evidences listed in the Trial-Court-record's Table of Contents, but for reference you should review the evidences in all subparagraphs of paragraph 3 of Statement of the Facts. See Statement of the Facts paragraphs 2-7. Instead the Circuit Court erred (Record-pages 1550-1550) by denying the motion by misconstruing it as an Actual Innocence Writ Petition under the Virginia Codes of Chapter 19.2 or Chapter 19.3. Those codes were not invoked and the courts are usually strict about not granting a motion if rule or law was not properly invoked. Chapter 19.2 or Chapter 19.3 was never invoked in that Motion filed January 20, 2022 (See RECORD 1029-1237). The Circuit Court erred as a matter of fact and as a matter of law. See paragraph 3 and all of its subparagraphs of the Statement of the Facts for the new evidence citations. That issue is preserved on appeal as the ultimate fact of what final judgment aka the criminal conviction which the Motion for Judgment of Acquittal was attempting to challenge.

Assignment of error 2. The Circuit Court erred as a matter of law in its order (Record-pages 1550-1550) by misconstruing a Motion under Virginia Rules of the Sup. Ct. 3A:15 (Record-pages 1029-1030, and 1029-1237) as a "Petition for the

Writ of Actual Innocence" under Virginia Code Chapter 19.2 or Chapter 19.3 instead of ruling that the Motion had invoked "Rule 3A:15 - Motion to Strike or to Set Aside Verdict; Judgment of Acquittal or New Trial" (Record-pages 1029-1030). That issue was preserved for appeal, even though Chapter 19.2 or Chapter 19.3 was not said in its quick order because the judge is corrupt or didn't want to take the time to file any additional legal opinions or memorandums to invoke the statutes or any laws or rules as to why the Trial Court had improperly denied the motion. Misconstruing a motion which does not even invoke the statutes of a Petition for the Writ of Actual Innocence. That is because the very Rule of 3A:15 in the rules of the Supreme Court of Virginia permits a Appellant to request acquittal after a finding of guilty if the Commonwealth of Virginia had a lack of enough evidence to sustain a criminal conviction. Proving actual innocence (See Record-pages 1031, 1032, 1033, 1034, 1036, 1038, 1039, 1064) to a criminal conviction (See RECORD 454-455) of a criminal charge (See RECORD 1-3) is enough to warrant acquittal since it disproves the Commonwealth's case and thus did not have the evidence necessary to sustain a conviction. See paragraph 16 of the Statement of the Facts. 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."). The rule which is the law of

the Virginia Court System actually says: “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”. Commonwealth v. Flythe, Record No. 0592-15-4, 9 (Va. Ct. App. Sep. 1, 2015) (“Having found that the granting of the motion to strike constituted an acquittal because the Commonwealth's evidence was insufficient as a matter of law, we need not address the Commonwealth's argument that a dismissal based on a fatal variance does not bar retrial under the Double Jeopardy Clause.”). Commonwealth v. Flythe, Record No. 0592-15-4, 6-7 (Va. Ct. App. Sep. 1, 2015) (“ Poole v. Commonwealth, 211 Va. 258, 260, 176 S.E.2d 821, 823(1970) ("The office of a motion to strike the evidence, made at the conclusion of the Commonwealth's case, is to challenge the sufficiency . . . of the evidence."). Under Rule 3A:15(c), a successful motion must result in an acquittal. Rule 3A:15(c)”). Commonwealth v. Fields, FE-2012-0000773, 14 n.13 (Va. Cir. Ct. Apr. 10, 2014) (“This last requirement has been expressed in a number of ways by the higher courts of Virginia. See, e.g., Lamm, 55 Va. App. at 642 ("[A] defendant must prove . . . that the evidence is material to the extent that it is likely to produce different results from a new trial."); see also Carter v. Commonwealth, 10 Va. App. 507, 513 (1990) (citation omitted) ("Before setting aside a verdict [on the basis of new evidence being offered to establish perjury], the trial court must have evidence before it to show in a clear and convincing manner 'as to leave no room for doubt' that the after-discovered evidence, if true would produce a different

result at another trial.")"). Gorham v. Commonwealth, 15 Va. App. 673, 679 (Va. Ct. App. 1993) ("(6) This practice is consistent with case law from other jurisdictions that holds that a post-trial finding of insufficient evidence to support a conviction requires an acquittal only as to the greater charge for which the evidence was insufficient, but does not require acquittal of a lesser-included offense adequately supported by the evidence. See e.g., Ex Parte Beverly, supra; Dickenson v. Israel, 482 F. Supp. 1223, 1225 (E.D. Wis. 1980), aff'd, 644 F.2d 308 (7th Cir. 1981); Edwards v. State, 452 So.2d 506, 507-08 (Ala. Crim. App. 1983), aff'd, 457 So.2d 508 (1984); State v. Edwards, 201 Conn. 125, 134 n.6, 513 A.2d 669, 675 n.6 (1986); Brooks v. State, 314 Md. 585, 601, 552 A.2d 872, 880-81 (1989). But see Garrett v. State, 749 S.W.2d 784, 791 (Tex.Crim. App. 1986)."). That issue is preserved on appeal as the ultimate fact of what final judgment aka the criminal conviction which the Motion for Judgment of Acquittal was attempting to challenge.

Assignment of error 3. The Circuit Court erred as a matter of law in its order (Record-pages 1550-1550) by misconstruing a Motion under Virginia Rules of the Sup. Ct. 3A:15 (Record-pages 1029-1030, and 1029-1237) which Appellant's motion had invoked newly available evidence (See Statement of the Facts paragraphs 2-7; or specifically paragraph 3 and all subparagraphs of the Statement of the Facts is the new evidence including the legal arguments and exhibit indexes) not admissible at the time the conviction was entered (See RECORD 454-455, see paragraph 16 of the Statement of the Facts) when that motion properly invoked

Virginia Code § 19.2-271.6. Properly preserved in the trial court for issues of appeal. See Record-pages 1030, 1033, 1034, 1035, 1036, 1038, 1040, 1041. That motion (See RECORD 1029-1237) even invoked the actual innocence exception (See Record-pages 1031, 1032, 1033, 1034, 1036, 1038, 1039, 1064) to any procedural bar by invoking the U.S. Supreme Court's case law of 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). See Record-pages 1029, 1030. Actual Innocence exception by demonstrating a fundamental miscarriage of justice proves that the criminal conviction cannot be sustained and thus acquittal is warranted in that case. When actual innocence is proven in any way, shape, or form, then the evidence presented originally by the Commonwealth's Attorney cannot sustain a conviction (See paragraph 16 of Statement of the Facts) even upon Appellant withdrawing his appeal as no guilty plea was ever entered (See paragraphs 17 and 18 of Statement of the Facts). The new evidence (See Statement of the Facts, paragraph 3; subparagraphs EXHIBIT 1 through ADDITIONAL EVIDENCE 20.of paragraph 3 of the statement of the Facts) changes the outlook of whether Appellant is guilty or innocent of his original charge (See paragraph 19 of Statement of the Facts) when new evidence was made available in July 1, 2021 with the passage of Virginia Code § 19.2-271.6. New evidence (See Statement of the Facts, paragraph 3; subparagraphs EXHIBIT 1 through ADDITIONAL EVIDENCE 20.of paragraph 3 of the statement of the Facts) proving lack of intent (See paragraph 19 of Statement of the Facts, referencing record, page

1) because of autism spectrum disorder, and other health issues (See Statement of the Facts, paragraph 3; subparagraphs EXHIBIT 1 through ADDITIONAL EVIDENCE 20.of paragraph 3 of the statement of the Facts). The Court should have conducted further inquiry and examined the filed evidence instead of outright denying the motion erroneously as a Petition for the Writ of Actual Innocence then wrongfully invoked the ground of lack of jurisdiction. Actual innocence was also shown in that Motion for Judgment of Acquittal by demonstrating that the Court's orders for discovery were violated (See Record-pages 1040-1067) by destruction of evidence material to the innocence of Appellant. Destruction of blood vials which means the Commonwealth of Virginia can never prove in its Statement of Facts in the criminal case that Appellant had no drugs in his body at the time he was arrested because the laboratory tests were cancelled by the Hospital and the blood samples disposed of while in police custody. Commonwealth of Virginia can never prove in its own (to be submitted by Appellees') Statement of Facts in the criminal case that Appellant had no drugs in his body at the time he was arrested because the laboratory tests were cancelled by the Hospital (See Record-pages 1287, 1049-1050, 1132, 546) and the blood samples disposed of while in police custody (Record 546). See paragraph 20 of the Statement of the Facts. The Commonwealth of Virginia has no evidence proving that Appellant was medically and psychologically cleared which proves that the Arrest Warrant and CRIMINAL COMPLAINT was erroneous. The Circuit Court knew this when they denied the Motion for Judgment of Acquittal, it's

in their record since 2018 through 2019. The Motion should have been considered and possibly granted based on the evidence of not being medically and psychologically cleared. Appellant should not be held criminally culpable here under these circumstances of destroyed evidence at the fault of Martinsville Police Department represented by the City of Martinsville and Commonwealth of Virginia. That issue was held at the Trial Court when you examine the record referenced areas in paragraph 20 of the Statement of the Facts. Motion was erroneously denied. The issue of new evidence was preserved for appeal due to the new evidence listed in paragraphs 2 and 3 of Statement of the Facts. That issue is preserved on appeal as the ultimate fact of what final judgment aka the criminal conviction which the Motion for Judgment of Acquittal was attempting to challenge.

Assignment of error 4. The Circuit Court erred as a matter of law in its order (Record-pages 1550-1550) by arguing that the Trial Court does not have jurisdiction to have considered and even granted a Motion for Judgment of Acquittal (Record-pages 1029-1030, and 1029-1237) because the Trial Court had used (*without actually mentioning the exact rule but the issue of that rule was invoked*) Rule 1:1 finality of criminal convictions when Rule 1:1 over judgments does not apply to a clearly erroneous judgment and to new evidence not legally admissible at the time of Appellant's conviction of guilt (See RECORD 454-455). This issue was preserved on appeal because the Trial Court had invoked that they did not have jurisdiction (Record-pages 1550-1550) which opens up the issue of the arguments in the

assignment of error for clear error (clear legal error) when claiming to have not had jurisdiction. Appellant interprets that the judge used Rule 1:1. The preservation of issue does not require exact claim of statute the judge used or preservation of the exact statute cited that the judge used in its short order without any memorandum of opinion when the judge leaves the interpretation up to the appellate courts, this judge is corrupt, clearly corrupt. The judge should have brought up any applicable law or any applicable rules or even any supporting case law in its order but clearly did not. Appellant does prove that issues raised as to why the motion was erroneously denied was preserved for purposes of appeal. New evidence (Again, See paragraph 3 of the Statement of the Facts) became available after the date of Virginia Code § 19.2-271.6 going into effect as law on July 1, 2021. It is erroneous because the Commonwealth of Virginia's evidence only shown that Appellant was naked at night between midnight and 3:00AM. Witnesses to his nudity were hardly anybody as nobody in the record claimed to have been a victim. The unidentified person who called 911 or police on Appellant had claimed that Appellant was seen running naked (See RECORD 1-3, see the evidence filed by the Commonwealth of Virginia in the Trial Court), not standing around naked when the person in a vehicle saw Appellant (See record 1227-1230, 1237 declaration "under penalty of perjury"). The unidentified person who called first responders, reported in the CRIMINAL COMPLAINT (See RECORD 1-3) did not say that whoever had called the police saw Appellant standing around actually displaying his genitals clear to see but the

CRIMINAL COMPLAINT on record (See record-3-3) said that Appellant was seen "running" naked according to that CRIMINAL COMPLAINT affidavit of the charge. None of that happened with whoever unidentified individual had called 911. The caller did not claim to be a victim and no restitution was ordered. Appellant was not being sexual and that means he was not being obscene according to the charge. Simply being naked is no evidence of being obscene. See paragraph 21 of the Statement of the Facts. See Price v. Commonwealth, 214 Va. 490, 493 (Va. 1974) ("There we held that a portrayal of nudity is not, as a matter of law, a sufficient basis for a finding that a work is obscene. See also Upton v. Commonwealth, 211 Va. 445, 447, 177 S.E.2d 528, 530 (1970)."). This proves the Appellees' wrongfully prosecuted Appellant for obscenity when there is no evidence of obscenity. Appellant even written under penalty of perjury that he never masturbated (See record 1227 and 1235 "…I never masturbated, it was a crazy incident.", 1174-1175, 1237 declaration "under penalty of perjury") when he was naked on September 21, 2018, and nobody ever said in the entire criminal case that he ever masturbated on September 21, 2018. Never indicated any masturbation, never indicated any sexual arousal. Nothing in the entire record of the Circuit Court indicates sexual arousal or sexual enjoyment. See paragraph 10 of the Statement of the Facts. That issue was preserved for appeal under Record-pages 1035-1038. See paragraph 22 of the Statement of the Facts. E.G. Nudists in a nudist colony enjoy being naked and doing fun activities naked socially around other nudists but are not sexually aroused. Even

the alleged photographs do not prove sexual arousal and nobody of the public was in the alleged photos, which may do gawking or even looking at Appellant, nobody around giving a shocked look saying "oh my god". Arguably, adults naked in photographs is not illegal, it is not obscene, and naked statues in Rome is not illegal. Being naked as a matter of law does not make Appellant obscene in any way, shape, or form. There are public bathhouses where men and women are naked for the purposes of hygiene. There are nudist colonies of people who live their everyday lives and even enjoy fun activities with their families completely naked with non-sexual nudity. Even the U.S. Supreme Court had ruled that nudity is not the same as obscenity. Simply being naked is not obscenity. See Sunshine Book Co. v. Summerfield, Postmaster General, 355 U.S. 372. Appellant was naked in photographs but was not around anybody in the photos in their appearance. Appellant has a neurological disorder of "autism spectrum disorder" (Record 1251, 1271-1274, 1032-1034, 1074-1076, 1102, 1200-1203, 1221-1224) and "obsessive compulsive disorder" (Record 1481, 1462, 1151-1152, 1211-1212). Under Virginia Code § 19.2-271.6 that "autism", developmental disabilities, and mental illnesses can be a defense of lack of intent to commit an actus reus without any justification, excuse, or other defense. See paragraph 23 of Statement of the Facts. Appellant admitted under penalty of perjury that he "never masturbated" (See record 1227 and 1235 "…I never masturbated, it was a crazy incident.", 1174-1175, 1237 declaration "under penalty of perjury"). The finality of the judgment (Record-pages 1550-1550)

is plainly erroneous because the Appellant had never been obscene, the Appellant had never shown any evidence or behavior that he would intentionally appeal to the prurient interest in sex. Appellant didn't walk around in a long coat flashing people. The only person who had called the police on Appellant had saw a "naked man running" without understanding even why. See (Record 3) and read where it actually says in the charge that "…a naked white male that had been seen running on Hooker St from Church St." It is more difficult to see somebodies genitals when a naked person is running. Especially when Appellant was only naked at night. Nothing in the Trial Court record shown any other law enforcement incidents involving "naked" or nakedness. That does not sound like an intentional obscene behavior. Especially when the officers did not know or did not want to believe that Appellant had "Autism Spectrum Disorder" (See Record 1231 quoting from the record: "…*I said over and over again while complying "I have Autism, I have Autism, I have AUTISM, I have Autism." I felt they couldn't hear me out*…", "…*People with Autism can give false confessions and misleading statements. Officer you misunderstood what I said about the YMCA building after or before my answer to his "how do I know you even have Autism" was "it was in federal court records." He gave me that look where he didn't want to accept anything I said*…"). See the Federal Court Transcript under record 1103-1184, in the record of the Trial Court as part of the evidence presented in that Motion (See record 1066). The Officer Robert Jones said that he was not aware that Appellant was even diabetic (See record 1137). The invocation of Virginia Code §

19.2-271.6 (See record 1029, 1030, 1032) was appropriate to prove that the Circuit Court had erred and should not have permanently entered a final judgment (Record-pages 1550-1550) convicting the Appellant of a crime (Record-pages 1-3) that he clearly did not commit because he was not being obscene and did not intend to appeal to the prurient interest in sex. Meaning he did not intend to be obscene on September 21, 2018. Yes, he was naked in a reasonably public place at night (Record-pages 3), and yes he was seen running by somebody who had called the Martinsville Police (Record-pages 3). However, the Commonwealth of Virginia did not prove that Appellant had no drugs in his body at the time he was arrested (See Record 1248, 1049-1050, 1132, 546). The Police and the Hospital never conducted any drug testing of any kind or covered it up if there was. The Officer Robert Jones clearly lied under oath by saying that "he was medically and psychologically cleared" (See Record 3) when Appellant was arrested for the charge of obscenity (See Record 1) in the Local Ordinance and Virginia statute of indecent exposure. Either lied under oath or was incorrect and made an error of judgement when evidence shown Appellant's health was not completely checked out by the Hospital (See Record 1044, 1049, 1061) which does not make him medically and psychologically cleared when lab tests were cancelled and to be deleted from the chart (See Record 546). He admitted later under penalty of perjury in Federal Court in regards to the indecent exposure case that he never got Appellant's medical records and was not fully aware of the health problems of the Appellant. See Record 1138, 618, 892, 922. He didn't

know Appellant was diabetic, yet he said for a fact clearly in the CRIMINAL COMPLAINT under oath that Appellant was "medically and psychologically cleared" (See Record 3). See paragraph 24 of Statement of the Facts. That issue was preserved in the Trial Court for appeal (See Record-pages 1058, 1063, 1064). You can't credibly say for a fact that a criminal suspect is medically cleared and then later admit that you were not aware of all of the health issues which could have caused or triggered what led up to the running naked. It is clear that Officer Robert Jones was ignorant, just charged Appellant and forgot about it, let the Courts deal with Appellant and testify when subpoenaed. Then just walk away and move on. Well Appellant did not move on which was why he had filed a Motion for Judgment of Acquittal. See RECORD 1029-1237, paragraph 3 of Statement of the Facts. "The 'obscenity' element of Code § 18.2–387 may be satisfied when: (1) the accused admits to possessing such intent, Moses v. Commonwealth, 611 S.E.2d 607, 608 (Va. App. 2005)(en banc); (2) the defendant is visibly aroused, Morales v. Commonwealth, 525 S.E.2d 23, 24 (Va. App. 2000); (3) the defendant engages in masturbatory behavior, Copeland v. Commonwealth, 525 S.E.2d 9, 10 (Va. App. 2000); or (4) in other circumstances when the totality of the circumstances supports an inference that the accused had as his dominant purpose a prurient interest in sex, Hart, 441 S.E.2d at 707–08. The mere exposure of a naked body is not obscene. See Price v. Commonwealth, 201 S.E.2d 798, 800 (Va. 1974) (finding that `[a] portrayal of nudity is not, as a matter of law, a sufficient basis for finding that [it] is obscene')."

Romick v. Commonwealth, No. 1580-12-4, 2013 WL 6094240, at *2 (Va. Ct. App. Nov. 19, 2013)(unpublished)(internal citations reformatted). While the evidence may show that Appellant was naked in public, as stated above (See pages RECORD 1-3), nudity, without more, is not obscene under Virginia law. Rather, "[t]he word 'obscene' where it appears in this article shall mean that which, considered as a whole, has as its dominant theme or purpose an appeal to the prurient interest in sex, that is a shameful or morbid interest in nudity, sexual conduct, sexual excitement, excretory functions or products thereof or sadomasochistic abuse, and which goes substantially beyond customary limits of candor in description or representation of such matters and which, taken as a whole, does not have serious literary, artistic, political or scientific value." Va. Code § 18.2-372 (emphasis added). While Virginia does not appear to have established a clean definition of criminal intent, Black's Law Dictionary defines it as "[a]n intent to commit an actus reus without any justification, excuse, or other defense." In summary, in order to show that Appellant violated the indecent exposure statute under Virginia law, the Commonwealth was required to prove, among other things, that Appellant had the intent to display or expose himself in a way which has, as its dominant theme or purpose, appeal to the prurient interest in sex, as further defined above, without any justification, excuse, or other defense. The Commonwealth failed to do so. Rather, the Commonwealth's evidence, presented through its own witnesses such as Officer Robert Jones (See record 3), showed Appellant as someone who was running around naked between midnight

and 3:00 a.m. and taking pictures of himself (*note: was filed by Commonwealth Attorney Glen Andrew Hall, Esq. as evidence but was not noted where in the record the filed photographs are, the CAV should ask the Clerk for details of filed evidence photographs*) because he believed that someone was going to hurt his family if he did not do so. (See Record-pages 1118-1119, 1129). His autism makes it clear that he can easily be taken advantage of when threatened or bribed or even drugged. He can be taken advantage of due to his autism spectrum disorder (E.G. (exempli gratia) See record 76-78). With the passage of the new Virginia Code § 19.2-271.6 law, now this can be brought up as facts from the Appellant's side of the criminal case story. He is entitled to acquittal or new trial. This new law makes it indisputable that new evidence material to the criminal charge and the autism spectrum disorder of Appellant warrant acquittal or new trial. Again, see paragraph 23 of Statement of the Facts. The General District Court for the City of Martinsville (See pages RECORD 1-3)(transcript not available) and the Circuit Court for the City of Martinsville (See pages record 442-453) did not hear, however, any evidence of Appellant having his dominant theme, or purpose being an appeal to the prurient interest in sex. Despite withdrawing his appeal due to clearly unconstitutional circumstances (See pages record 442-453), nothing on the record throughout the Trial Court proved that Appellant was having his dominant theme, or purpose being an appeal to the prurient interest in sex. For example, there was no evidence of Appellant making any sexual remarks, being aroused, masturbating (See record 1227 and 1235, 1174-1175, 1237

declaration “under penalty of perjury”), or enjoying his conduct, sexually or otherwise. If a person was purposing to expose himself in public because he or she found it sexually arousing, it would be logical that he or she would pick a place and time where he or she would expect to encounter lots of members of the public. Appellant did not do that. That argument was preserved in the Trial Court record on appeal as this argument was raised in his motion (See Record-pages 1036-1040). Rather, he was running around between midnight and 3:00 a.m. and the witnesses to his nudity were few, the CRIMINAL COMPLAINT (See pages RECORD 1-3) shown just one person who called the police because not just of seeing Appellant naked but only “running” in the nude. Hence, the statements Appellant made to police and his conduct both indicate that, in the light most favorable to the Commonwealth, he was naked in public at night while having a psychiatric episode, but without the intent necessary to commit indecent exposure under Virginia law. The requirement of the Court’s past standard of only allowing proving of a defense of mental insanity pursuant to Virginia Code § 19.2-182.2 to demonstrate proof of having a “psychiatric episode” to be found not guilty by reason of insanity is no longer required as the only remedy due to the passage of Virginia Code § 19.2-271.6. Now Virginia Code § 19.2-271.6 creates new remedy not previously available to criminal-defendants. No longer is the bar set so high that the only means of acquittal for the mentally ill and mentally disabled are the defense for mental insanity under Virginia Code § 19.2-182.2 which was the set standard prior to the lawmakers’

creation of Virginia Code § 19.2-271.6 . Consequently, the Circuit Court erred, as a matter of law, when claimed it had no jurisdiction when the new evidence and the passage of Virginia Code § 19.2-271.6 changed the dynamics of allowing new evidence of mental disabilities and mental health as well as developmental disabilities without requiring only the defense of mental insanity at the time of an offense. The law allows evidence of mental health and developmental disabilities at the time of an offense in regard to the intent. The new evidence had shown that Appellant is not guilty of the charge of indecent exposure as per Virginia Code § 18.2-387 and Local Ordinance 13-17; because he was charged with "intentionally making an obscene display" without any laboratory tests (Paragraph 24 of Statement of the Facts) conducted to have proved that Appellant was medically cleared and without clear and convincing evidence proving obscenity. Appellant cannot be medically cleared without laboratory tests including blood alcohol levels test. No tests were conducted after blood drawn out of his arm which prompted tests ordered but were then cancelled (See record 1287, 1049-1050, 1132, 546). Again, see paragraph 24 of Statement of the Facts. The Commonwealth cannot argue that Appellant had no drugs or alcohol in his system at the time he was found naked and subsequently, arrested after being discharged from the Hospital without completed laboratory tests: record 199, 202. The Commonwealth has no evidence because they destroyed biological evidence by disposing of the blood vials after lab tests cancelled and order to be deleted from his medical chart (See record 199, 202). Again, this

issue was raised and was preserved in the trial court for this appeal in the very motion (See Record 1034, 1043, 1044, 1045). Appellant should be acquitted as a matter of law. Brian David Hill = Innocence. The Court had not held when they should have held whether the new evidence was sufficient or insufficient to disprove the Commonwealth's criminal prosecution and the very nature of his cause to have granted the motion requesting a Judgment of Acquittal. Therefore the Court did not make a ruling or sound discretion on the merits of that motion by such misconstruing (Record-pages 1550-1550) of the motion, its merits, its spirit of the law, and its intent. The issues described regarding Appellant's mental health disorders and developmental disorder issues were all preserved in the trial court. See Record-pages 1040, 1041, 1043). The issues described regarding the lab tests not being conducted, blood vials being destroyed were all preserved in the trial court. See Record-pages 1043, 1044. The preservation of the issue of Virginia Code § 19.2-271.6 was preserved in the trial court for appeal. See Record-pages 1031, 1033, 1034, 1035, 1036, 1038, 1040, 1041. That issue is preserved on appeal as the ultimate fact of what final judgment aka the criminal conviction which the Motion for Judgment of Acquittal was attempting to challenge.

Assignment of error 5. The Circuit Court erred as a matter of law in its order (Record-pages 1550-1550) or abused discretion in its order (Record-pages 1550-1550) when misconstruing a Motion (Record-pages 1029-1030, and 1029-1237) as a Petition for the Writ of Actual Innocence (Record-pages 1550-1550) to justify its

erroneous claim that the Trial Court had lacked jurisdiction when that decision violated the 'procedural' and 'substantial' due process clauses in U.S. Const. amend. XIV of the U.S. Constitution and the Virginia Constitution's Article I., Section 11. due process clause require that the Virginia Courts consider a motion attacking a conviction (See Statement of the Facts, paragraph 18, 19) by requesting a judgment of acquittal (RECORD 1029-1237) based upon new evidence (See Statement of the Facts, paragraph 3; subparagraphs EXHIBIT 1 through ADDITIONAL EVIDENCE 20.of paragraph 3 of the statement of the Facts) under the acceptable standards set by the highest Courts. In this case, that highest Court would be the Supreme Court of Virginia, and the higher court below that court would be the CAV. Due process requires that a Court follow the acceptable and recognized standards as set by the Supreme Court or of a higher Court in published opinions as well as set precedents. This Assignment of Error is not based on an error of fact but is based on an error of law. The issue was preserved for appeal, the issue regarding "due process" being impeded by the Trial Court (See Record 40) Search the word "due process" and it is there on page 40. Simply bringing up the issue by saying "due process" being impeded preserved that issue for appeal. You don't have to cite the exact statute to preserve it for appeal as the Trial Court misconstrued a motion which didn't cite the statute but was misconstrued under a different statute. The judge is allowed to misinterpret the words said in a motion as invocation of another statute not technically invoked, so Appellant can argue that the preservation of issues can be

based on implied argument or statement of issues whether they go into great detail or into little detail. The rules of CAV do not state that the exact statute or exact rule has to said or cited to be preserved in the Trial Court, just the "issue" has to be preserved in the trial court. If proper citation of a statute or rule in a pleading is required, then the judge erred and his ruling is corrupt because then the judge didn't cite the exact rule or statute as cause as to why a motion is denied.

STATEMENT OF THE NATURE OF THE CASE AND MATERIAL PROCEEDINGS BELOW

The Appellant, filed a motion on or about January 20, 2022 entitled: "MOTION FOR JUDGMENT OF ACQUITTAL BASED UPON NEW EVIDENCE …" (Record 1029-1237). This motion itself has fourteen (14) Exhibits of evidence.

In summary, the Appellant had filed a motion for a Judgment of Acquittal in his criminal case with new evidence. That was in the Circuit Court for the City of Martinsville. Case number is CR19000009-00 (Record-pages 1-455). Appellant filed new evidence in four or five parts aka separate pleadings (RECORD 1029-1237, 216-235, 239-290, 293-354, and 357-519).

Appellant had filed evidence of being diagnosed with a "psychosis disorder" regarding his statements of the time of the offense so it is relevant (Record-pages 1213-1219) by a forensic psychiatrist Dr. Conrad Daum who worked for Piedmont

Community Services (Record 1220-1225). Appellant had filed evidence of being diagnosed with an "autism spectrum disorder" regarding his statements of the time of the offense so it is relevant (Record 1032-1237). Appellant had filed evidence of being diagnosed with a Type 1 brittle Diabetes which is relevant to the time of the offense due to being a permanent health condition of severe health issues (Record-III pages 1051-1059, 1288-1291, 1218, 1398-1406, 1501). Appellant had filed evidence of being diagnosed with an "obsessive compulsive disorder" regarding his statements or behavior at the time of the offense, so it is relevant (Record-pages 1501, 1217). Appellant had filed evidence of medical records from the Martinsville City Jail proving "further new evidence in support of Defendant's "MOTION FOR JUDGMENT OF ACQUITTAL BASED UPON NEW EVIDENCE WHICH COULD NOT BE ADMISSIBLE AT THE TIME OF CONVICTION…" (Record 1029-1237). It proved that something was medically wrong with Appellant around the time he was in jail after being arrested for indecent exposure.

On or about February 8, 2022, the Appellant had also filed a memorandum entitled: "NEW MEDICAL EVIDENCE IN SUPPORT OF DEFENDANT'S "MOTION…" (Record 1372-1534).

On or about January 24, 2022, the Appellant had also filed a memorandum entitled: "2ND WITNESS LETTER; AMENDED WITNESS LETTER; LEGAL ARGUMENTS AND AFFIDAVITS IN SUPPORT OF DEFENDANT'S "MOTION…" (Record 1258-1309).

On or about January 31, 2022, the Appellant had also filed a memorandum entitled: “LAST MINUTE EVIDENCE IN SUPPORT OF DEFENDANT'S “MOTION FOR JUDGMENT OF ACQUITTAL…” (Record 1310-1371).

Originally Appellant was charged in the General District Court for the City of Martinsville, under case number C18-3138, on September 21, 2018. The reason was over a CRIMINAL COMPLAINT (Record-pages 1-3) of Martinsville Police Department through its officer Robert Jones charging Appellant with violation of “13-17/18.2-387”. Referencing Virginia Code § 18.2-387 and/or Local Ordinance 13-17. Indecent exposure. 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.” (Record-pages 1-1).

Appellant had a bench trial on December 21, 2018, and was found guilty by a judge (Record-pages 46-46). Was given time served sentence (Record-pages 46-46, 4) but Appellant had appealed the case to the Circuit Court for the City of Martinsville by Trial De Novo (Record-pages 45, 47-52).

The disposition paper of conviction after being found guilty doesn’t specify being convicted of the crime of Virginia Code § 18.2-387. Indecent exposure. Only specifies being found guilty of and convicted of the crime of Local Ordinance 13-17. In the original charge Appellant was charged with violation of “13-17/18.2-387” meaning Local Ordinance 13-17 and Virginia Code § 18.2-387. However, the conviction only consists of being convicted of violating Local Ordinance 13-17

(Record-pages 46-46).

Appellant's appeal was successful, case was filed in the Circuit Court and the conviction was reset for a New Trial by Trial De Novo in the Virginia's constitutional court of record (Record-pages 68-68).

Appellant had filed a Motion to Withdraw Appeal on November 12, 2019, Record 442-453).

Appellant had been convicted by the Circuit Court on November 18, 2019 (Record-pages 454-455). However, there was no guilty plea by Appellant. record page 454-454 written this: "Other: DEF ~~CHANGED HIS PLEA TO GUILTY AND~~ AFFIRMED JUDG GDC, PAY COURT COSTS." Appellant is showing the true strikethrough, the Judge had stricken the words "CHANGED HIS PLEA TO GUILTY AND…" with what appeared to be a black marker pen. So, the Judge of the Trial Court did not consider that Appellant honestly decided that he was guilty because in his Motion to Withdraw Appeal he said that he did not waive his actual innocence or legal innocence, he did not plead guilty by any stretch of technicality (record page 454-454).

There is no transcript as there were no hearings by the Circuit Court in regard to the Motion for Judgment of Acquittal.

STATEMENT OF THE FACTS

1. The Commonwealth may have their own "Statement of the Facts" as is their right, but the Appellant will present his own Statement of the Facts based upon

what was filed in the Motion for Judgment of Acquittal.

2. For the sake of brevity, Appellant will not reproduce the entire "STATEMENT OF THE NATURE OF THE CASE AND MATERIAL PROCEEDINGS BELOW" in this Opening Appeal Brief. Therefore, Appellant hereby incorporates by reference, as if fully set forth herein, all paragraphs in pages 39-43 of this brief.

3. Appellant had filed a "MOTION FOR JUDGMENT OF ACQUITTAL OR BASED UPON NEW EVIDENCE WHICH COULD NOT BE ADMISSIBLE AT THE TIME OF CONVICTION…" (RECORD 1029-1237). This was pursuant to Virginia Rules of the Sup. Ct. 3A:15; Virginia Code § 19.2-271.6; and 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). This motion itself has fourteen (14) Exhibits of evidence (Record-pages 1074-1237).

EXHIBIT 1. DISABLED PARKING PLACARDS OR LICENSE PLATES APPLICATION (record 1074-1076)

EXHIBIT 2. Copy of pro se motion for discovery with proof that Police Chief G. E. Cassady was mailed letters requesting police body-camera footage (record 1077-1100)

EXHIBIT 3. One page excerpt of Document #163, Filed 12/12/18, Page 4 of 6, one page of Federal Court Affidavit/Declaration or written filing, Document #163. Case #1:13-cr-435-1. (record

1101-1102)

EXHIBIT 4. FEDERAL COURT TRANSCRIPT of Supervised Release Violating hearing regarding the criminal charge of September 21, 2018, in General District Court. Officer Robert Jones of Martinsville Police Department had testified and thus is relevant to this MOTION. (record 1103-1184)

EXHIBIT 5. COURT ORDER – GENERAL DISTRICT COURT (record 1185-1187)

EXHIBIT 6. COURT ORDER – CIRCUIT COURT (record 1188-1191)

EXHIBIT 7. COURT ORDER – CIRCUIT COURT (record 1192-1195)

EXHIBIT 8. Article: Body Cameras Proving Useful for Martinsville Police; Wednesday, May 1st 2013; WSET/ABC13 NEWS (record 1196-1199)

EXHIBIT 9. Interview and Interrogation of people with autism (including Asperger syndrome) By Dennis Debbaudt - EXPERT WITNESS (record 1200-1203)

EXHIBIT 10. "DIVISION FOR TREATMENT AND EDUCATION OF AUTISTIC AND RELATED COMMUNICATION HANDICAPPED CHILDREN,

Department of Psychiatry, University of North Carolina, DIAGNOSTIC EVALUATION" (record 1204-1210)

EXHIBIT 11. Letter from "Dr. Shyam E. Balakrishnan, MD". (record 1211-1212)

EXHIBIT 12. PSYCHIATRIC EVALUATION from Dr. Conrad Daum in October, 2018 (record 1213-1219)

EXHIBIT 13. Information about Dr. Conrad Daum being a certified Forensic Psychiatrist (record 1220-1225)

EXHIBIT 14. Case 1:13-cr-00435-TDS, Document #153, Filed 10/17/18, Pages 1 through 11; DECLARATION/AFFIDAVIT OF BRIAN DAVID HILL regarding what happened on September 21, 2018 (record 1226-1237)

ADDITIONAL EVIDENCE 1. NEW MEDICAL EVIDENCE IN SUPPORT OF DEFENDANT'S "MOTION FOR JUDGMENT OF ACQUITTAL…" (record 1372-1384)

ADDITIONAL EVIDENCE 2. EXHIBIT 1 of "NEW MEDICAL EVIDENCE…". (record 1385-1386)

ADDITIONAL EVIDENCE 3. EXHIBIT 2 of "NEW MEDICAL EVIDENCE…". (record 1387-1423)

ADDITIONAL EVIDENCE 4. EXHIBIT 3 of "NEW

MEDICAL EVIDENCE…". (record 1424-1448)

ADDITIONAL EVIDENCE 5. EXHIBIT 4 of "NEW MEDICAL EVIDENCE IN SUPPORT OF DEFENDANT'S" MOTION. (record 1449-1477)

ADDITIONAL EVIDENCE 6. EXHIBIT 5 of "NEW MEDICAL EVIDENCE IN SUPPORT OF DEFENDANT'S" MOTION. (record 1478-1534)

ADDITIONAL EVIDENCE 7. 2ND WITNESS LETTER; AMENDED WITNESS LETTER; LEGAL ARGUMENTS AND AFFIDAVITS IN SUPPORT OF DEFENDANT'S MOTION (record 1555-1580)

ADDITIONAL EVIDENCE 8. AMENDED WITNESS LETTER #1 (record 1581-1590)

ADDITIONAL EVIDENCE 9. UNSWORN DECLARATION FROM ROBERTA HILL IN SUPPORT (record 1591-1594)

ADDITIONAL EVIDENCE 10. WITNESS LETTER #2 (record 1595-1602)

ADDITIONAL EVIDENCE 11. WARRANT FOR ARREST OF SUPERVISED RELEASE VIOLATOR In December 22, 2018, PROVING CAPIAS WAS WRONGFUL (record

1603-1603)

ADDITIONAL EVIDENCE 12. PHOTOCOPY OF SERVED FEDERAL ARREST DETAINER DATED NOVEMBER 15, 2018 (record 1604-1604)

ADDITIONAL EVIDENCE 13. JUDGMENT AND COMMITMENT, Supervised Release Violation Hearing dated October 7, 2019 (record 1605-1606)

ADDITIONAL EVIDENCE 14. DEFENDANT SUBMITS THE FOLLOWING VIDEO EVIDENCE: https://www.youtube.com/watch?v=5PMalR45MSo - Video Testimony of Appellant on January 5, 2022 2nd Iteration Dated January 6, 2022 (record 1276-1277)

ADDITIONAL EVIDENCE 15. DEFENDANT SUBMITS THE FOLLOWING AUDIO EVIDENCE: https://archive.org/details/e-3-20190924130648-i-2766344000 - Digital audio file of what is being filed in Federal Court in the new 2255 Motion. As part of Exhibit 3 in Brian's Federal 2255 Motion: An Audio CD disc (digital audio file located at the link given by Brian's family to present to the Court for quickly review by the Judge) containing a 21 Minute, 25 Seconds audio clip of a phone

call conference recording between Brian David Hill 276-790-3505 and Attorney Matthew Scott Thomas Clark 276-634-4000. Dated September 24, 2019. File reports time of 2:27PM. Attorney/client privilege for this audio waived. Audio for Exhibit 3 for usage in Federal 2255 Motion and for Martinsville Commonwealth case as well. (record 1277-1277)

ADDITIONAL EVIDENCE 16. LAST MINUTE EVIDENCE IN SUPPORT OF DEFENDANT'S "MOTION FOR JUDGMENT OF ACQUITTAL…" (record 1310-1341)

ADDITIONAL EVIDENCE 17. EXHIBIT 1: Witness "Letter of Support from Brian Hill's Grandparents asking for an Investigation Into Brian's sex setup in Martinsville, VA in 2018…" (record 1342-1352)

ADDITIONAL EVIDENCE 18. EXHIBIT 2: Photocopy of Letter to Martinsville Police Chief G. E. Cassady dated March 13, 2019; and copies of return receipt (front and back) and USPS receipt and Certified Mail receipt. (record 1353-1358)

ADDITIONAL EVIDENCE 19. EXHIBIT 3: Witness Letter from Stella Forinash of "photos of Brian with his black

camera bag, black camera & baseball hat through the years on 1/26/2022." (record 1359-1371)

ADDITIONAL EVIDENCE 20. LETTER (record 1535-1549)

4. The Judge denied the motion (Record-pages 1550-1550) on February 10, 2022, despite the new evidence proving that Brian David Hill did not have the intent necessary to violate Virginia Code § 18.2-387. Indecent exposure, and Local Ordinance 13-17. That is because he has (1) Autism Spectrum Disorder at the time of the alleged offense, (2) Psychosis Disorder at the time of the alleged offense, (3) Type 1 Brittle Diabetes at the time of the alleged offense, and (4) Obsessive Compulsive Disorder at the time of the alleged offense. This is due to the new law under the passage of Virginia Code § 19.2-271.6. Evidence of defendant's mental condition admissible; notice to Commonwealth. The Commonwealth of Virginia had destroyed court ordered Brady material evidence favorable to Appellant such as the police body-camera footage and blood vials drawn from Brian David Hill on September 21, 2018. All material or relevant evidence to Appellant and his criminal case. The Appellees' destroyed evidence so the Commonwealth Attorney has no right to say whether Appellant was not on drugs and was not on any alcohol levels at the time he was arrested because they did not drug test him despite lab tests being ordered then cancelled (See record 1287, 1049-1050, 1132, 546). Appellant was not proven to be medically cleared and psychologically cleared as charged in the CRIMINAL COMPLAINT (Record 3-3). The Commonwealth did

not know Appellant had “diabetes” or was type 1 diabetic when he was charged and did not believe his claim of having autism despite the mountain of evidence as to having autism spectrum disorder. Therefore, the Commonwealth of Virginia and City of Martinsville lied about Appellant being medically and psychologically cleared. Read Assignment of Error 4 for more details.

5. Appellant was pushing for a Judgment of Acquittal with a lot of evidence exhibits and attachments prior to the Circuit Court denying that motion (See APPELLANT DESIGNATION // DESIGNATION OF Record-pages 2-12) because that new Virginia law opened up the admissibility of evidence being allowed to use all of the proof of mental illnesses and developmental disabilities diagnosed in his mental evaluation report in the General District Court (Record-pages 58-67, SEALED-61-67) and by Dr. Conrad Daum the forensic psychiatrist (Record-pages 2228-2240). The report was only conducted for sanity and competency, because at the time this law had not been in effect nor did that law even exist at the time. The law referred to Virginia Code § 19.2-271.6. Evidence of defendant's mental condition admissible; notice to Commonwealth.

6. On September 21, 2018, Appellant was arrested and charged with “13-17/18.2-387, Code or Ordinances of this city, county or town: 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.”

7. Appellant filed the new evidence for the purposes of a Judgment of

Acquittal due to the Virginia Code § 19.2-271.6. Previously, none of Appellant's mental illnesses, developmental disabilities, or any disorders could be used at the jury trial or bench trial concerning his criminal charge. The jury would not see it nor know about it. He could not legally admit it as evidence for any jury trial or bench trial. That law made such evidence admissible in 2021 when his criminal conviction had been adjudged on November 18, 2019. The new evidence at issue does justify the need for a Judgment of Acquittal or even a New Trial.

8. With the word limit, Appellant will let the Commonwealth of Virginia argue their side of the Statement of the Facts in the case, their side of the story regarding Appellant's indecent exposure charge. Appellant will reply if he feels that anything the Commonwealth says is untruthful, does not represent all facts in the record, or is not factual. Appellant does not appreciate the Commonwealth destroying evidence and wants them held accountable for it.

9. The arrest warrant had stated in its own stated alleged fact or probable cause and the original criminal charge had the basis of Appellant intentionally being obscene. Read the original charge (See RECORD 1-3) where it actually said Appellant was charged with "13-17/18.2-387 , Code or Ordinances of this city, county or town: 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.". However, Appellant was overcharged for a crime he did not commit because the Commonwealth of Virginia did not prove their charge of Appellant intending to be

obscene on September 21, 2018. See Assignment of Error 1.

10. Rule 1:1 used by the Trial Court to justify claiming not having jurisdiction over a motion for new trial when Rule 1:1 does not apply to a clearly erroneous judgment and to new evidence not legally admissible at the time of Appellant's conviction of guilt (See RECORD 454-455). New evidence became available after the date of Virginia Code § 19.2-271.6 going into effect as law on July 1, 2021. It is erroneous because the Commonwealth of Virginia's evidence only shown that Appellant was naked at night between midnight and 3:00AM. Witnesses to his nudity were hardly anybody. The person who called 911 on Appellant had claimed that Appellant was seen running naked (See RECORD 1-3), not standing around naked when the person in a vehicle saw Appellant (See record 1227-1230, 1237 declaration "under penalty of perjury") not standing around actually displaying his genitals clear to see but was seen "running" according to the CRIMINAL COMPLAINT affidavit of the charge. None of that happened with whoever unidentified individual had called 911. The caller did not claim to be a victim and no restitution was ordered. Appellant was not being sexual and that means he was not being obscene according to the charge. Simply being naked is no evidence of being obscene according to Price v. Commonwealth, 214 Va. 490, 493 (Va. 1974) ("There we held that a portrayal of nudity is not, as a matter of law, a sufficient basis for a finding that a work is obscene. See also Upton v. Commonwealth, 211 Va. 445, 447, 177 S.E.2d 528, 530 (1970)."). This proves the

Appellees' wrongfully prosecuted Appellant for obscenity when there is no evidence of obscenity. Appellant even written under penalty of perjury that he never masturbated (See record 1227 and 1235 "…I never masturbated, it was a crazy incident.", 1174-1175, 1237 declaration "under penalty of perjury") when he was naked on September 21, 2018, and nobody ever said in the entire criminal case that he ever masturbated on September 21, 2018. Never indicated any masturbation, never indicated any sexual arousal. See Assignment of Error 4.

11. Appellant's motion had invoked newly available evidence not admissible at the time the conviction was entered (See RECORD 454-455) when that motion properly invoked Virginia Code § 19.2-271.6. Properly preserved in the trial court for issues of appeal. See Record-pages 1031, 1033, 1034, 1035, 1036, 1038, 1040, 1041. That motion (See RECORD 1029-1237) even invoked the actual innocence exception to any procedural bar by invoking the U.S. Supreme Court's case law of 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). See Record-pages 1029, 1030. Actual Innocence exception by demonstrating a fundamental miscarriage of justice proves that the criminal conviction cannot be sustained and thus acquittal is warranted in that case. See Assignment of Error 3.

15. Appellant never fixed the motion where the only relief sought was a Petition for the Writ of Actual Innocence. However, the Appellant had used the terms "actual innocence" (See Record-pages 1031, 1032, 1033, 1034, 1036, 1038,

1039, 1064) in the Motion because he had asserted that the new evidence (See Statement of the Facts, paragraph 3; subparagraphs EXHIBIT 1 through ADDITIONAL EVIDENCE 20.of paragraph 3 of the statement of the Facts) which was unavailable at the time of his criminal conviction (See RECORD 454-455) demonstrates actual innocence evidence. See Assignments of Error 1, 2, 3, 4, and 5.

16. The Motion for Judgment of Acquittal was to challenge the criminal conviction (See RECORD 454-455) of a criminal charge (See RECORD 1-3) against Appellant.

17. The Appellant's motion to Withdraw Appeal (See Record 442-453) is material and relevant to the preserved issues of this appeal regarding the very motion challenging the conviction (See RECORD 454-455) in a Motion for Judgment of Acquittal (See RECORD 1029-1237) when the issues of "actual innocence" in Appellant's attempt in pushing the Trial Court for a judgment of acquittal or Appellant preserving his right at a later time to overturn his conviction on new evidence proving or at least demonstrating actual innocence (which can also imply the usage of new evidence to help demonstrate actual innocence). On the record in the appealed criminal case, Appellant said in writing on record-page 443, the quote: "However Brian does NOT waive his right to collaterally attack/challenge his conviction in General District Court and also does NOT waive his right to file a Writ of Actual Innocence." In page 450 of record, Appellant also

had said: “Brian is requesting appeal be withdrawn and accepts the conviction in the General District Court, and will find other legal ways to overturn his wrongful conviction on December 21, 2018, in the Martinsville General District Court.” Appellant had preserved the issues of overturning his original conviction in the General District Court (See Record-pages 39, 46) which was affirmed in the Trial Court (See RECORD 454-455). However, the issues Appellant had raised in his motion to withdraw appeal (See Record 442-453) had given him the preservation of issues in the Trial Court to later overturn his wrongful conviction on new evidence and “actual innocence”. Those rights were preserved by Appellant prior to the Motion for Judgment of Acquittal referenced in Paragraph 3 and all subparagraphs in this Statement of the Facts.

18. Appellant had been convicted by the Circuit Court on November 18, 2019 (Record-pages 454-455). However, there was no guilty plea by Appellant. record page 454-454 written this: “Other: DEF ~~CHANGED HIS PLEA TO GUILTY AND~~ AFFIRMED JUDG GDC, PAY COURT COSTS.” Appellant is showing the true strikethrough, the Judge had stricken the words “CHANGED HIS PLEA TO GUILTY AND…” with what appeared to be a black marker pen. So, the Judge of the Trial Court did not consider that Appellant honestly decided that he was guilty because in his Motion to Withdraw Appeal he said that he did not waive his actual innocence or legal innocence, he did not plead guilty by any stretch of technicality (record page 454-454).

19. Appellant's original criminal charge came from record pages 1-3.

20. Actual innocence was also shown in that Motion for Judgment of Acquittal by demonstrating that the Court's orders for discovery were violated (See Record-pages 1040-1067) by destruction of evidence material to the innocence of Appellant. Destruction of blood vials which means the Commonwealth of Virginia can never prove in its Statement of Facts in the criminal case that Appellant had no drugs in his body at the time he was arrested because the laboratory tests were cancelled by the Hospital and the blood samples disposed of while in police custody. Commonwealth of Virginia can never prove in its own (to be submitted by Appellees') Statement of Facts in the criminal case that Appellant had no drugs in his body at the time he was arrested because the laboratory tests were cancelled by the Hospital (See record 1287, 1049-1050, 1132, 546) and the blood samples disposed of while in police custody (Record 546). The Commonwealth of Virginia has no evidence proving that Appellant was medically and psychologically cleared which proves that the Arrest Warrant and CRIMINAL COMPLAINT was erroneous. The issue of destruction of evidence, Glen Andrew Hall's alleged contempt of court by not following court orders, and issues of the non-compliance with three orders for discovery were preserved in the motion for Judgment of Acquittal (Again, See Record-pages 1040-1067).

21. The unidentified person who called 911 or police on Appellant had claimed that Appellant was seen running naked (See RECORD 1-3, see the

evidence filed by the Commonwealth of Virginia in the Trial Court), not standing around naked when the person in a vehicle saw Appellant (See record 1227-1230, 1237 declaration "under penalty of perjury"). The unidentified person who called first responders, reported in the CRIMINAL COMPLAINT (See RECORD 1-3) did not say that whoever had called the police saw Appellant standing around actually displaying his genitals clear to see but the CRIMINAL COMPLAINT on record (See record 3) said that Appellant was seen "running" naked according to that CRIMINAL COMPLAINT affidavit of the charge. None of that happened with whoever unidentified individual had called 911. The caller did not claim to be a victim and no restitution was ordered. Appellant was not being sexual and that means he was not being obscene according to the charge. Simply being naked is no evidence of being obscene.

22. Appellees' wrongfully prosecuted Appellant for obscenity when there is no evidence of obscenity. Appellant even written under penalty of perjury that he never masturbated (See record 1227 and 1235 "…I never masturbated, it was a crazy incident.", 1174-1175, 1237 declaration "under penalty of perjury") when he was naked on September 21, 2018, and nobody ever said in the entire criminal case that he ever masturbated on September 21, 2018. Never indicated any masturbation, never indicated any sexual arousal. Nothing in the entire record of the Circuit Court indicates sexual arousal or sexual enjoyment. See paragraph 10 of the Statement of the Facts. That issue was preserved for appeal under Record-

pages 1035-1038.

23. Appellant has a neurological disorder of “autism spectrum disorder” (Record 1251, 1271-1274, 1032-1033, 1074-1076, 1102, 1200-1203, 1214-1225) and “obsessive compulsive disorder” (Record 1481, 1462, 1151-1152, 1212). Under Virginia Code § 19.2-271.6 that “autism”, developmental disabilities, and mental illnesses can be a defense of lack of intent to commit an actus reus without any justification, excuse, or other defense. All of that was brought up in the Motion for Judgment of Acquittal and all of its supporting additional evidence and memorandum pleadings. Again, see paragraph 3 of this Statement of the Facts. Issue is preserved in the record of the Trial Court.

24. Evidence shown Appellant’s health was not completely checked out by the Hospital (See record 1044, 1049, 1061) which does not make him medically and psychologically cleared when lab tests were cancelled and to be deleted from the chart (See record 546). He admitted later under penalty of perjury in Federal Court in regards to the indecent exposure case that he never got Appellant’s medical records and was not fully aware of the health problems of Brian David Hill, the Appellant. See record 966, 1138, 891, 915. He didn’t know Appellant was diabetic, yet he said for a fact clearly in the CRIMINAL COMPLAINT under oath that Appellant was “medically and psychologically cleared” (See Record-pages 3-3). No tests were conducted after blood drawn out of his arm which prompted tests ordered but were then cancelled (See record 1287, 1049-1050, 1132, 546). The

Commonwealth cannot argue in its own Statement of the Facts that Appellant had no drugs or alcohol in his system at the time he was found naked and subsequently, arrested after being discharged from the Hospital without completed laboratory tests: Record 199, 202.

ARGUMENT

i. Standard of Review

All errors assigned on appeal are errors of law. All Assignments of error involve mixed questions of law and fact. All assignments of error challenges the legal components of the decision appealed therefrom. This Court's review therefore is de novo and based on the facts of the case. For all assignments of error, the Court must conduct an "independent examination of the entire record" to ensure that the judgment/order does not violate constitutional rights.

ii. The Assignment of error 1. Brief pages 7-11.

The assignment of error is about the Circuit Court erring as a matter of law by misconstruing a Motion under Virginia Rules of the Sup. Ct. 3A:15 as a "Petition for the Writ of Actual Innocence" under Virginia Code Chapter 19.2 or Chapter 19.3 then claiming they do not have jurisdiction for such petitions when Chapter 19.2 or Chapter 19.3 was never invoked in that motion for Judgment of Acquittal.

The evidence is in the very Motion for Judgment of Acquittal itself. See record

pages 1029-1073.

Now I will cite one part of the motion which may have caused the Circuit Court to misconstrue the motion as a Writ Petition.

> CITATION from pages 1029 and 1030 of record:
>
> "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 Writ of Actual Innocence based upon new admissible evidence which could not have been legally considered admissible in 2019 until a new law had passed in 2021; and new evidence that the Commonwealth of Virginia by and through Martinsville Police Department had violated one or multiple Court Orders on omission and destruction of discovery materials aka Brady materials pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and pursuant to the Court Orders."

It does mention asking for "judgment of acquittal or a Writ of Actual Innocence" but it did not exclusively say it was only asking for the Writ. It can be considered merely hyperbole or just legal argument as it did not invoke the statutes pertaining to a "Petition for the Writ of Actual Innocence" under the Virginia Codes of Chapter 19.2 or Chapter 19.3. However, the motion did properly invoke a statute which the Circuit Court would have jurisdiction to consider that motion on its merits.

> CITATION from page 1030 of record:
>
> "This Motion is pursuant to Virginia Rules of the Sup. Ct. 3A:15; Virginia Code § 19.2-271.6; and 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 request for judgment of acquittal 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."

The Virginia Code Chapter 19.2 or Chapter 19.3 was not invoked in that motion. However, the request to the Circuit Court for "Judgment of Acquittal" did properly invoke Virginia Rules of the Sup. Ct. 3A:15; as well as Virginia Code § 19.2-271.6.

The Circuit Court did error as a matter of law because the motion did not title itself as a Petition for the Writ of Actual Innocence. It did merely request "judgment of acquittal or a Writ of Actual Innocence" but did not even say it was a petition. The Court could have just disregarded the "Writ of Actual Innocence" part since the proper statutes were not invoked but focus on that motion's request for a "judgment of acquittal" since 3A:15 was properly invoked as a matter of law in that motion before it got to the STATEMENT OF THE FACTS, the legal arguments, and the evidence exhibits. As well as the additional memorandums of evidence in support thereof. Assignment of Error 1 has correctly argued that Chapter 19.2 or Chapter 19.3 was not invoked anywhere in that motion but Rule 3A:15 was properly invoked. Therefore, the Circuit Court had erred as a matter of law and abused discretion by not applying 3A:15 or 3A:15(C) in asking for judgment of acquittal. The motion said in the first page: requesting for a "judgment of acquittal or a Writ of Actual Innocence". It does not say "and" but only said "or" meaning in its grammar that the Circuit Court could make a ruling in regard to a judgment of acquittal or a writ of actual innocence. The rule concerning judgment of

acquittals was properly invoked but no statute for a writ of actual innocence was invoked. It was erroneous for the Circuit Court to construe a Motion for Judgment of Acquittal under 3A:15 as a Petition for the Writ of Actual Innocence. The Court was wrong and should have treated it as a Motion instead of a petition. That was far of a stretch for a Circuit Court to construe a motion asking for simply acquittal and converting the motion into a petition over a mere few words being used to misconstrue such interpretation of a motion under the law, by any stretch.

For the sake of brevity, Appellant will not reproduce the entire "STATEMENT OF THE FACTS" in this Assignment of Error in the Opening Appeal Brief. Therefore, Appellant hereby incorporates by reference, as if fully set forth herein, all paragraphs 1-24 in Statement of the Facts in this brief.

iii. Assignment of Error 2. Brief pages 11-14.

The assignment of error is using the case law precedent that all Courts of the Commonwealth of Virginia must acquit a criminal-defendant of a criminal conviction if the evidence is insufficient as a matter of law to sustain a criminal conviction. If the new evidence further disproves the charge of the Commonwealth of Virginia and the City of Martinsville, then the evidence is not sustainable to the extent where a criminal conviction can be entered, the conviction (RECORD 454-455) must be set aside and the Appellant should be acquitted of his charge in record-pages 1-3.

Gorham v. Commonwealth, 15 Va. App. 673, 679 (Va. Ct. App. 1993) ("(6) This

practice is consistent with case law from other jurisdictions that holds that a post-trial finding of insufficient evidence to support a conviction requires an acquittal only as to the greater charge for which the evidence was insufficient, but does not require acquittal of a lesser-included offense adequately supported by the evidence. See e.g., Ex Parte Beverly, supra; Dickenson v. Israel, 482 F. Supp. 1223, 1225 (E.D. Wis. 1980), aff'd, 644 F.2d 308 (7th Cir. 1981); Edwards v. State, 452 So.2d 506, 507-08 (Ala. Crim. App. 1983), aff'd, 457 So.2d 508 (1984); State v. Edwards, 201 Conn. 125, 134 n.6, 513 A.2d 669, 675 n.6 (1986); Brooks v. State, 314 Md. 585, 601, 552 A.2d 872, 880-81 (1989). But see Garrett v. State, 749 S.W.2d 784, 791 (Tex.Crim. App. 1986).").

Gorham v. Commonwealth, 15 Va. App. 673, 679-80 (Va. Ct. App. 1993) (" When a trial court has an alternative basis for striking the evidence or setting aside a verdict, the only reasonable reading of the relevant section of Rule 3A:15 is that a trial judge should enter a judgment of acquittal as to the charge for which it finds the evidence insufficient.").

Thompson v. Commonwealth, 27 Va. App. 720, 725 (Va. Ct. App. 1998) (". Hence, we also find the evidence insufficient to support a finding of felonious habitual offender endangerment and reverse the conviction.").

These case laws should be sufficient authorities to support the legal arguments made in Assignment of Error 2, that the Motion asking for Judgment of Acquittal is warranted when new evidence disproves the case of the Commonwealth of Virginia and City of Martinsville. Disproving the prosecutions cases builds a strong basis that the

evidence is not sufficient to sustain a criminal conviction for the charge. Appellant was not charged of being indecent but was charged with "intentionally making an obscene display". The new evidence helped demonstrated why Appellant was naked at night in the first place. Appellant had not done anything to appeal to the prurient interest in sex. Appellant was not obscene and/or did not have any intent of being obscene. Appellant was charged for a crime he did not do, referring to the crime of "obscenity" and "intent" to being obscene. Appellant deserves acquittal for his new evidence and deserves acquittal as a matter of law.

For the sake of brevity, Appellant will not reproduce the entire "STATEMENT OF THE FACTS" in this Assignment of Error in the Opening Appeal Brief. Therefore, Appellant hereby incorporates by reference, as if fully set forth herein, all paragraphs 1-24 in Statement of the Facts in this brief.

The Circuit Court erred as a matter of law by holding that it lacked jurisdiction to have granted or considered the motion for a new trial without any evidentiary hearing or order a response from the Commonwealth's Attorney based on newly admissible evidence which was not made admissible at the verdict of guilty on November 18, 2019 in the Circuit Court. The evidence was new on April 7, 2021, or on the date that the law became effective which was July 1, 2021, because it had become admissible as matter of law by new law of Virginia Code § 19.2-271.6 which nullifies the Supreme Court of Virginia's precedential ruling barring the admissibility of the evidence of Autism Spectrum Disorder and mental illnesses prior to the passage of this new law. Again, see

the General Assembly's nullification of Stamper v. Commonwealth, 228 Va. 707 (1985).

For the sake of brevity, Appellant will not reproduce the entire "STATEMENT OF THE FACTS" in this Assignment of Error in the Opening Appeal Brief. Therefore, Appellant hereby incorporates by reference, as if fully set forth herein, all paragraphs 1-24 in Statement of the Facts in this brief.

iv. Assignment of Error 3. Brief pages 14-18.

Assignment of error 3. The Circuit Court erred as a matter of law by misconstruing a Motion under Virginia Rules of the Sup. Ct. 3A:15 which Appellant's motion had invoked newly available evidence not admissible at the time the conviction was entered (See RECORD 454-455) when that motion properly invoked Virginia Code § 19.2-271.6. That motion (See RECORD 1029-1237) even invoked the actual innocence exception to any procedural bar by invoking the U.S. Supreme Court's case law of 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). Actual Innocence exception by demonstrating a fundamental miscarriage of justice proves that the criminal conviction cannot be sustained and thus acquittal is warranted in that case. When actual innocence is proven in any way, shape, or form, then the evidence cannot sustain a conviction even upon withdrawing appeal as no guilty plea was ever entered. The new evidence changes the outlook of whether Appellant is guilty or innocent when new evidence was made available on July 1, 2021, with the passage of Virginia Code § 19.2-271.6. New evidence

proving lack of intent because of autism spectrum disorder. The Court should have conducted further inquiry instead of outright denying the motion as a Petition for the Writ of Actual Innocence then invoking the ground of lack of jurisdiction. Actual innocence was also proven in that Motion for Judgment of Acquittal by proving that the Court's orders for discovery were violated by destruction of evidence material to the innocence of Appellant.

For the sake of brevity, Appellant will not reproduce the entire "STATEMENT OF THE FACTS" in this Assignment of Error in the Opening Appeal Brief. Therefore, Appellant hereby incorporates by reference, as if fully set forth herein, all paragraphs 1-24 in Statement of the Facts in this brief.

v. Assignment of Error 4. Brief pages 18-29.

The Circuit Court erred as a matter of law by arguing that they do not have jurisdiction to have considered and even granted a Motion for Judgment of Acquittal because the Rule 1:1 finality of criminal convictions and over judgments does not apply to a clearly erroneous judgment and to new evidence not legally admissible at the time of Appellant's conviction of guilt (See RECORD 454-455).

Read the entire Assignment of Error 4 for the facts and very evidence (Appellant's "STATEMENT OF THE FACTS") demonstrating that Appellant may be entitled to a Judgment of Acquittal, or the Circuit Court should have ordered a response from the Commonwealth of Virginia. They should have held sanction hearings or contempt

proceedings in whether Glen Andrew Hall, Esq. really did willfully violate three Court Orders (record 1185-1195) for discovery which isn't just mere Brady violations of a criminal defendant's due process rights under both the U.S. Const. amend. XIV and the Virginia Constitution's Article I., Section 11. It ISN'T just Brady violations but is also a "CONTEMPT OF COURT" or multiple contempt of Court actions. Attorney Glen Andrew Hall should have been charged with contempt of court by destroying police body-camera footage after ignoring repeated letters to Martinsville Police asking for the body-camera footage and after at least three Court Orders for such Brady material.

Nicholas v. Commonwealth, 186 Va. 315, (Va. 1947) ("3. CONTEMPT — Refusal to Obey Erroneous Order. — Where the court has jurisdiction of the parties and of the subject matter of the suit and the legal authority to make the order, a party refusing to obey it, however erroneously made, is liable for contempt. Such order, though erroneous, is lawful within the meaning of contempt statutes until it is reversed by an appellate court. 4. CONTEMPT — Inherent Power of Court. — The power of courts to punish for contempt is inherent and an important and necessary arm in the proper discharge of the functions committed to them by fundamental law. 5. CONTEMPT — Regulation by Legislature. — The power of courts to punish for contempt is a power that may be regulated by the legislature, but only in a way and to an extent not inconsistent with the exercise by the courts, with vigor and efficiency, of those functions which are essential to the discharge of their duties.")

Also, the Court consider all of the arguments brought up in the Assignment of

Error 4. The Assignment of Error 4 in regard to the CONTEMPT issue was preserved in the Trial Court. See Record-pages 1044-1048, 1050, 1058, 1060-1065.

Va. Code § 19.2-271.6. (“B. In any criminal case, evidence offered by the defendant concerning the defendant's mental condition at the time of the alleged offense, including expert testimony, is relevant, is not evidence concerning an ultimate issue of fact, and shall be admitted if such evidence (i) tends to show the defendant did not have the intent required for the offense charged and (ii) is otherwise admissible pursuant to the general rules of evidence. For purposes of this section, to establish the underlying mental condition the defendant must show that his condition existed at the time of the offense and that the condition satisfies the diagnostic criteria for (i) a mental illness, (ii) a developmental disability or intellectual disability, or (iii) autism spectrum disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.”)

For the sake of brevity, Appellant will not reproduce the entire “STATEMENT OF THE FACTS” in this Assignment of Error in the Opening Appeal Brief. Therefore, Appellant hereby incorporates by reference, as if fully set forth herein, all paragraphs 1-24 in Statement of the Facts in this brief.

vi. Assignment of error 5. Brief pages 29-32.

Word limit prevents Appellant from making further arguments for this Assignment of Error.

For the sake of brevity, Appellant will not reproduce the entire "STATEMENT OF THE FACTS" in this Assignment of Error in the Opening Appeal Brief. Therefore, Appellant hereby incorporates by reference, as if fully set forth herein, all paragraphs 1-24 in Statement of the Facts in this brief.

CONCLUSION

The judgment/order (Record-pages 1550-1550) for the denial of Appellant's Motion for Judgment of Acquittal should be reversed and judgment entered for an evidentiary hearing or granting the Motion's request (Record-pages 1712-1713) for acquittal of the criminal conviction in the Circuit Court on November 18, 2019 (Record-pages 454-455) in the criminal case of Appellant , and the case should be remanded for further proceedings on the new evidence for Judgment of Acquittal if necessary, as well as the grounds raised for whether disproving the Commonwealth of Virginia's and City of Martinsville's prosecution charge warrants acquittal of lack of enough evidence to sustain a conviction as charged. Appellant requests relief accordingly and asks for any other relief which the CAV may deem proper and just.

REQUEST FOR ORAL ARGUMENT

As this appeal raises important constitutional, evidential, and legal issues which were believed overlooked or ignored, the Appellant requests oral argument.

Originally Filed/Submitted on May 16, 2022,

Respectfully Filed/Submitted Amended version on August 25, 2022,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with Rule 5A:19(a) if the filed "EMERGENCY MOTION ASKING FOR A COMPROMISE OR DEAL IN ASKING FOR LEAVE OF COURT TO FILE AMENDED OPENING BRIEF OF APPELLANT IN EXCESS OF 1,007 WORDS ABOVE WORD LIMIT SET ON JUNE 6 OR EXTEND WORD LIMIT TO 14,537 WORDS TO CURE DEFICIENCIES" is is denied, regarding the type-volume limits (Court agreed on June 6, 2022 to word limit of 13,530) pursuant to Rule 5A:19(a), excluding the parts of the document exempted by Rule 5A:19(a) (appendices, the cover page, table of contents, table of authorities, signature blocks, or certificate):

   This brief contains [13,482] words.

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

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

Brian D. Hill
Signed
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Dated: August 25, 2022

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 25th day of August, 2022, I caused this amended "OPENING BRIEF OF APPELLANT" to be delivered by email service by Assistant/Filing-Representative Roberta Hill using rbhill67@comcast.net or rbhill67@justiceforuswgo.nl to the Commonwealth of Virginia and City of Martinsville through the Commonwealth Attorney's Office of Martinsville City; as well as to the named counsel for the Office of the Attorney General; and the original was filed with the Clerk of the Supreme Court of Virginia by Virginia Court eFiling System (VACES) through Assistant/Filing-Representative Roberta Hill which shall satisfy proof of service as required by Rule 5:1B(c) stating that "*Service on Other Parties by Email. – An electronic version of any document filed in this Court pursuant to Rule 5:1B(b) must be served via email on all other parties on the date the document is filed with the Court or immediately thereafter, unless excused by this Court for good cause shown. An e-filed document must contain a certificate stating the date(s) of filing and of email service of the document.*" And the proof that such pleading was delivered will be filed together with this "Petition for Appeal" shall satisfy the proof of service was required by Rule 5:17(b):

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

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

Brian D. Hill
Signed
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