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

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circumstances where the defense attorney has the easy ability to create an unfair advantage against the criminal defendant. See Rules of Professional Conduct 1.3, 1.6 and 1.7; see also Holloway v. Arkansas, 435 U.S. 475 (1978); Dowell v. Commonwealth, 3 Va. App. 555 (1987). Powell v. Commonwealth, 3 Va. App. 555, 556 (Va. Ct. App. 1987) ("*When a trial court fails to initiate an inquiry when it knows or reasonably should know that a particular conflict may exist it is presumed that the conflict resulted in ineffective assistance of counsel*."). Powell v. Commonwealth, 3 Va. App. 555, 556 (Va. Ct. App. 1987) ("*Where a probable risk of conflict of interest is brought to a trial court's attention, the trial judge must take adequate steps to ascertain the extent of a conflict of interest in joint representation*."). The reason for Appellant's concerns was documented in his declaration/affidavit (pg. 4236-4246). Appellant said under penalty of perjury the following statement (pg. 4244): "…*If this is the same Scott Albrecht, then I have no choice but to inform the Circuit Court that my Trial in the General District Court, I feel it was rigged against me. When my own court appointed lawyer who did a terrible job defending me, I am found guilty, no enforcement of court orders not complied with by Glen Andrew Hall that he pushed for as my defense attorney, no asking for sanctions for noncompliance with those court orders, and then a "Scott Albrecht" works for the very same prosecuting attorney who prosecuted me at the Trial in the General District Court on December 21, 2018, with Scott Albrecht as my defense attorney*." The Trial Court should have conducted an inquiry into this before making a final decision on the Appellant's motion for reconsideration. This sounds like a conflict of interest for a defense attorney to do a terrible job for a defendant, not pursuing any contempt of court charges or any enforcement proceedings against the prosecutor of the criminal case of Appellant, and then years later joins that same prosecutor as an Assistant Commonwealth's Attorney. The concern for this assignment of error is this: Why this conflict-of-interest issue is extremely important and not merely some ineffective assistance of counsel issue. This issue is different. The error is that Scott Albrecht allowed the prosecutor to get away with unlawful deletion of evidence then works for the prosecutor at a later time and receiving a salary/money/$$$ and any financial or any other benefits working for the prosecutor attorney Glen Andrew Hall. Appellant had proven to the Trial Court that: (1) There were three court orders proposed by defense Attorney Scott Albrecht (pg. 3921-3929) "*ORDERED that the Commonwealth's Attorney permit counsel for the Defendant to inspect and copy or photograph, within a reasonable time, before the trial or sentencing, the following…Any relevant written or recorded statements or confessions made by the Defendant, or copies thereof, or the substance of any oral statements or confessions made by the Defendant to any law enforcement officer, the existence of which is known to the attorney for the Commonwealth*…". (2) The Public Information Officer ("PIO") Kendall Davis had responded to Appellant's request under Virginia's Freedom of Information Act ("FOIA") by providing information directly from Chief of Police Rob Fincher proving that the body-camera footage had

existed and was deleted on April 9, 2019, because it was not marked as evidence when it was the responsibility of the Commonwealth's Attorney Glen Andrew Hall to mark body-camera footage concerning Appellant as material evidence (pg. 4093-4095, 4212-4214). (3) Appellant kept begging for the body-camera footage (pg. 3881-3891, 4139-4144, 3916-3918), Attorney Scott Albrecht did absolutely nothing, and allowed evidence to be permanently destroyed by deletion (pg. 4093-4095, 4212-4214). This assignment of error isn't attempting to portray the conflict-of-interest issue to that of ineffective assistance of counsel per se but is bringing up the issue of "fraud on the court" where both the defense counsel and prosecution had allowed evidence to be illegally deleted, allowed multiple court orders to never be complied with and neither enforced. The evidence would not have been destroyed if it was favorable to the prosecution against Appellant for indecent exposure. In fact, the prosecution would have loved to show the Trial Court the body-camera footage if it had painted Appellant as a pervert or somebody who was charged with making an obscene display. However, that was not what happened. The prosecution did everything they could to prevent the body-camera footage from ever being acquired by the defendant and his attorney. In fact, the police chief through the PIO said in their FOIA response letter (pg. 4094, 4213) that: "…*If I had the videos, I would have no problem giving them to you but unfortunately, I do not*." The letter on the first page had said that it was up to the Commonwealth's Attorney to mark a video as evidence from Martinsville Police Department. They said from pg. 4093 and 4212, the following: "*If the Commonwealth's Attorney's Office designates a video as evidence it is retained indefinitely. All other videos are subject to the DVMS retention schedule…The DVMS begins cleanup when a video is within the minimum and maximum hold period for its event classification and when the disk usage is more than 80% and have not been accessed in 150 days. DVMS cleanup refers to changing the file allocation address of that data file to allow for other data to be stored in place of that file*.". So, the police department was not responsible for the unlawful destruction of the body-camera footage, it is clearly the responsibility of prosecutor Glen Andrew Hall. The public defender Scott Albrecht protected this prosecutor and now the evidence had shown that Scott Albrecht may actually be working for the prosecutor. There should have been inquiry on all of those issues presented before the judge of the Trial Court. The Trial Court had errored or abused discretion by conducting no inquiry and not asking Assistant Commonwealth Attorney Scott Albrecht on the record if he was the defense attorney for Appellant Brian David Hill, why he did nothing to preserve the evidence of the body-camera footage, on why he allowed Glen Andrew Hall to not comply with the court orders for discovery which is contempt of court, and why he had botched Appellant's defense which would be favorable to Glen Andrew Hall, the Commonwealth's Attorney, who had defrauded the court. Appellant asserted those arguments in his motion (pg. 3568-3581) to set aside or relief from judgment. Statement of the Facts are of evidence and facts from the record supporting relief for this Assignment of

Assignment of error 2. The Trial Court erred as a matter of law and/or abused discretion in its three orders (pg. 4120, 4255, and 4277) denying Appellant's motion for relief (pg. 3543-3649) and Appellant's motion for reconsideration of the Trial Court's denial of Appellant's "MOTION FOR SET ASIDE OR RELIEVE DEFENDANT OF JUDGMENT OF CONVICTION OF CRIMINAL CHARGE…" (pg. 4148-4206); when the Trial Court had overlooked evidence which was presented in support of Appellant's "fraud on the court" claims by Appellant which demonstrated that the Martinsville Police Officer named Robert Jones had lacked credibility as a witness who had initiated the indecent exposure charge against Appellant. The reason why he had lacked credibility was that he had changed his statements in a different courthouse while testifying under oath. In his initial charge, see pages 3651-3653 of the record, Officer Jones had said under oath in the Arrest Warrant that Defendant had: "*intentionally make an obscene display of the accused's person or private parts in a public place or in a place where others were present*." He then stated under oath in the facts of the Criminal Complaint that: "*He was medically and psychologically cleared. He was arrested for indecent Exposure*." He said that Appellant was "medically" cleared. Let us see if that is true or not true based on the record at a later time. See pages 3987-4008 of the record. Robert Jones had testified under oath in Federal Court in North Carolina over the same exact charge since Appellant was on federal supervised release. It is common sense that the same person who charged Appellant with making an obscene display would appear before the federal court under penalty of perjury to testify as a witness. He was questioned by Attorney Renorda Pryor and she was directed by Appellant and his family to ask Robert Jones if Appellant had been obscene. He responded by saying under oath that Appellant had not been obscene. That right there is a contradiction of what he had signed and typed up under oath or affirmation in the Warrant for Appellant's arrest (pg. 3651). Not only that but was sure enough to say under oath that Appellant was medically and psychologically cleared. Appellant had argued the fraud of the witness Robert Jones where his statements do not match the Criminal Complaint and Arrest Warrant, meaning that the witness had lacked credibility after the original assumption that witness did not deliberately make an untruthful or false statement. Either the witness had lacked credibility or made multiple non-factual or untruthful statements. The truth is not the truth under oath when contradictions are made when stating the facts in contradiction with each other. Like for theoretical example for the argument: I first say I saw an apple on the way to the dentist office on January 1, whatever year it was, and I say so under oath in a court of law. Then let's say 10 months later I am in another court giving the same testimony but then I claimed under oath that I did not see an apple but an orange on the way to the dentist office on January 1, whatever year it was. It is quite clear that a witness contradicting himself/herself under oath as a witness creates a credibility issue where something wasn't truthful or something wasn't factual as previously presented before a judge and before a

clerk of the court. He claimed Appellant was medically cleared but yet Appellant presents evidence in support of his motion which demonstrates that Officer Jones did not know for an absolute fact at all if Appellant was medically cleared (See pg. 3558-3568, 3581-3590, 3592-3627). The record from the very motion itself demonstrated that Officer Jones didn't know that Appellant was even a type one diabetic, didn't know he had obsessive compulsive disorder (OCD), didn't know that lab tests were ordered but were deleted from the chart, and never drug tested Appellant but yet said under oath that Appellant was "medically and psychologically cleared". I don't know how he would know whether Appellant was "medically and psychologically cleared" but yet he knows nothing of Appellant having insulin dependent diabetes, and didn't have the lab tests or drug tests saying if Appellant was A-Okay. There was none of that. A lot of assumptions from Robert Jones, but those are not facts, they are assumptions. It is clear that the very officer who had charged Appellant had lacked credibility. His claims were not truthful and not factual when other evidence comes to light in the Trial Court. Statement of the Facts are of evidence and facts from the record supporting relief for this Assignment of Error (See Statement of the Facts in Appeal Brief Pg. 37-47)..... 7

Assignment of error 3. The Trial Court erred as a matter of law and/or abused discretion in its three orders (pg. 4120, 4255, and 4277) denying Appellant's motion for relief (pg. 3543-3649) and Appellant's motion for reconsideration of the Trial Court's denial of Appellant's "MOTION FOR SET ASIDE OR RELIEVE DEFENDANT OF JUDGMENT OF CONVICTION OF CRIMINAL CHARGE…" (pg. 4148-4206); when the Trial Court judge had failed to follow his ministerial duties of charging Commonwealth's Attorney Glen Andrew Hall with contempt of court under Virginia Code § 18.2-456. Appellant had argued in his motion for relief that Glen Andrew Hall of the Commonwealth of Virginia had committed contempt of court (pg. 3568-3581) by not following or ignoring multiple court orders (pg. 3921-3929) which had ordered him to turn over the discovery materials to the defendant's counsel for defendant to review over with his attorney. Instead, the Commonwealth Attorney had not marked the body-camera footage as evidence (pg. 4093-4095, 4212-4214) which had been an act to not follow an order of the court. In fact, Appellant had filed a copy of his FOIA request (pg. 3851-3858) in support of the motion and later received a response (pg. 4093-4095, 4212-4214) from the Public Information Officer proving that Glen Andrew Hall was solely responsible for marking the body-camera footage as evidence. The very same body-camera footage which the court orders (pg. 3921-3929) had specified in its orders for discovery. Appellant had proven beyond doubt that a contempt of court was committed at least one time if not two or three times. The Trial Court judge has a ministerial duty under law to charge a contemnor with contempt of court when evidence is presented to the judge and the clerk in support of the claims of contempt of court. Those claims had been proven after the FOIA response letter from Kendall Davis (pg. 4093-4095, 4212-4214). Some form of relief should have been afforded

Assignment of error 4. The Trial Court erred as a matter of law and/or abused discretion in its three orders (pg. 4120, 4255, and 4277) denying Appellant's motion for relief (pg. 3543-3649) and Appellant's motion for reconsideration of the Trial Court's denial of Appellant's "MOTION FOR SET ASIDE OR RELIEVE DEFENDANT OF JUDGMENT OF CONVICTION OF CRIMINAL CHARGE…" (pg. 4148-4206); when the Trial Court had overlooked valid legal arguments and evidence of proving extrinsic fraud which was presented in support of Appellant's "fraud on the court" claims by Appellant which demonstrated that a new Police Chief Rob Fincher admitted in writing by Public Information Officer ("PIO") Kendall Davis (pg. 4089-4095), admitted that the body-camera footage which the Circuit Court/Trial Court had ordered the Commonwealth's Attorney aka Appellees multiple times (pg. 4081-4088), was deleted without ever being marked as evidence in complete violation of court orders for discovery and prevented the Appellant from presenting a fair submission of the controversy to the court. It is extrinsic fraud because of multiple common-sense reasons why in the evidence submitted in support of Appellant's motion for setting aside judgment/order or relieving Defendant of the judgment/order upon evidence of fraud on the court. The prima facie evidence is what was in the three-page letter from PIO Kendall Davis (pg. 4093-4095) mirroring what Police Chief Rob Fincher admitted in that letter. **Common Sense reason #1**: The body-camera footage had been illegally destroyed as admitted by new Police Chief Rob Fincher (pg. 4093-4095) on the date of February 10, 2023. The final judgment/order of the Trial Court closing the criminal case litigation without the timely filed appeal was on the date of November 18, 2019 (pg. 3920-3920). The timely filed criminal case appeal where its final decision was made by the Court of Appeals of Virginia was rendered on the date of September 6, 2021, on the opinion by the Court of Appeals of Virginia rendered on that date (See Hill v. Commonwealth, Record No. 1294-20-3 (Va. Ct. App. Sep. 2, 2021); Hill v. Commonwealth, Record No. 1295-20-3 (Va. Ct. App. Sep. 2, 2021). Almost two years later, Appellant had learned from a new police chief in Martinsville Police Department where the record supports this notion (*name of new police chief is named in three-page FOIA response letter*), named Rob Fincher. Appellant files a Motion (pg. 3543-3649) asking for relief from judgment/order or setting aside judgment on the basis of fraud on the court. As part of that initiative, Appellant had filed a Freedom of Information Act Request (pg. 3851-3858) asking about the existence of the body-camera footage, and the Police Department policies regarding the body-camera footage retention. Addendum filing was entered when Kendall Davis had given an invalid response to Appellant's FOIA request which is at issue for his Motion for relief due to fraud on the court. See pg. 4064-4088. The letter was addressed to both the judge of the Trial Court and the Clerk of the Trial Court, so this is part of the record necessary for this assignment of error. Kendall Davis the PIO had acknowledged his mistake of submitting the wrong response and submitted the correct response (pg. 4089-4099) to Appellant's FOIA request which concluded his **Exhibit**

12 evidence (pg. 3851-3858) in support of his motion requesting relief due to fraud on/upon the court. The Trial Court did not appropriately enter a decision denying or granting the motion until that evidence was entered or reviewed. The order denying his motion (pg. 4120-4120) was made around the same time or same day on record of a status letter which was filed with the very judge and clerk of the Trial Court (pg. 4131-4147) regarding the prima facie proof of extrinsic fraud. It is extrinsic fraud because it is the Police Department of the City of Martinsville and Commonwealth of Virginia which admitted on February 10, 2023 that the body-camera footage had once existed and was deleted in contradiction/defiance to the court orders for discovery. **Common Sense reason #2**: The evidence was extrinsic fraud because no prima facie evidence (*something in writing from a credible source or credible witness, THE POLICE CHIEF!!!*) had existed on the record of the Trial Court prior to February 10, 2023 proving beyond a reasonable doubt as to the unlawful destruction of the body-camera footage. No written proof or statements from somebody working in Martinsville Police Department represented by Appellees until the letter from PIO Kendall Davis (pg. 4089-4099) which had responded to Appellant's FOIA request (pg. 3851-3858) for evidence at-one-time in the possession of Martinsville Police Department before that piece of evidence was unlawfully deleted and destroyed which did not comply with multiple court orders (**EXHIBIT #22**, pg. 3921-3929) asking for the discovery evidence. All of that was appropriately submitted to the Court in support of Appellant's request for relief from the judgment/order convicting Appellant of indecent exposure on November 18, 2019 (**EXHIBIT #21**, pg. 3919-3920). Appellant had finally proven that the body-camera footage was deleted after the multiple court orders asking for the very thing which was deleted. That itself is evidence of CONTEMPT OF COURT. Appellees should have been separately charged with contempt of court in the Trial Court and the charge should have been initiated by the Trial Court; whether fraud was proven or not on a separate issue. Anyways back to the next common-sense reason. **Common Sense reason #3**: Violating any law and violating any court order whether state or federal has consequences. Violating any federal, state, or local law has consequences. That includes willful failure or refusal/disobedience to follow court orders and that includes destroying evidence during a FEDERAL INVESTIGATION by the United States Probation Office. All of that is on the record of the Trial Court. First of all, Police Chief G. E Cassady (pg. 3889-3895, **EXHIBIT #13**: 3859-3864) and Commonwealth Attorney Glen Andrew Hall are both potentially liable for not just violating court orders but the police chief would possibly be liable for destruction of evidence during a pending investigation or case by the United States Probation Office who supervises Appellant for a federal conviction, and that sentencing is on the record of the Trial Court (pg. 217-223 and **EXHIBIT #2**: pg. 3654-3735). The transcript of the supervised release violation hearing mentions nothing about the introduction of the body-camera footage because the Martinsville Police Department never turned over that evidence from the state case to the federal investigation by the U.S.

Probation Office. That itself proves evidence was willfully kept from the United States Probation Office after investigating the supervised release violation charge of Brian David Hill, the Appellant, in 2018. That means either the Commonwealth's Attorney Glen Andrew Hall, Esq. aka Appellees at the Trial Court level (*Note: Attorney General did not violate federal law and did not violate the court orders themselves since they including Justin Hill just represents Appellees at the Appellate level, Appellant is not blaming the Attorney General but refers to Glen Andrew Hall, Esq. as to Appellees*) or Martinsville Police Chief G. E. Cassady had violated 18 U.S.C. § 1519. The motion to reconsider (pg. 4189-4191) also brought up the issues of federal law being violated here. Not just violating the court orders and committing contempt of court two or three separate times (pg. 4186-4188). Family provided link for citation of lawyer page https://www.criminaldefenselawyer.com/crime-penalties/federal/Tampering-with-evidence.htm ("**A person commits the federal crime of tampering with evidence** when **he or she knowingly** alters, **conceals**, falsifies, or **destroys any record, document, or tangible object** with **the intent** to **interfere with an investigation, possible investigation, or other proceedings by the federal government**. (18 U.S.C. § 1519.)"). United States Probation Officers are federal officers and lying to a federal probation officer is a federal crime. Hiding evidence then destroying or deleting evidence which exists at one time with the purpose of interfering with a proper investigation or any possible investigation conducted by a federal agent or federal officer. The destroyed and deleted evidence was the BODY-CAMERA footage on record (pg. 4093-4095) which isn't just fraud on the court, it is violation of both court orders and federal law of a U.S. Probation Office investigation into Appellant's state charge, supervised release revocation or charge, and conviction by the General District Court and later with the Trial Court. This proves with the prima facie evidence that former Police Chief G. E. Cassady and/or Glen Andrew Hall, Esq. of Appellees would be potentially held liable criminally and/or civilly for the act/acts of evidence destruction and deletion after court orders (**EXHIBIT #22**, pg. 3921-3929) asking to provide the evidence to the Defendant and/or his attorney. The final argument for this third common sense reason is this. The Police Department will not admit they illegally destroyed the body-camera footage themselves if it would or could create both criminal and/or civil liability issues for the Police Chief if responsible for the wrongdoing at the top. Police Chief G. E. Cassady never would have admitted that they concealed from the Trial Court the body-camera footage evidence which Attorney Scott Albrecht had caused/filed a proposed court order asking for that very thing and was signed by the judge, then they secretly deleted the body-camera footage (pg. 4093-4095) on APRIL 9, 2019, while Appellant was sitting in a Federal Prison (pg. 81-98) and was released on federal bond on May 14, 2019, a month after the body-camera footage was illegally deleted. Appellant had mailed letters (**EXHIBIT #15**: pg. 3871-3895; pg. 4139-4144) to the Police Chief asking for that very piece of evidence without

realizing that multiple court orders (**EXHIBIT #22**, pg. 3921-3929) were already on file with the Trial Court record ordering the body-camera footage and any other material evidence under Brady v. Maryland of the U.S. Supreme Court. The deletion of the very evidence was not a mistake with the paper trail, the letters to the Police Chief including one by certified mail and was typed up by Brian Hill's family members (pg. 4139-4144). It is clear that the former police chief G. E. Cassady could very well be held liable. If the letters to the police chief were mailed from a Federal Prison, there may very well be mailing logs by the Federal Bureau of Prisons which Appellant can introduce as evidence if the conviction/judgment is set aside. Appellant would potentially have even more prima facie evidence in the future if prevailing on the three appeals (CAV No. 0313-23-3, 0314-23-3 and 0317-23-3) this brief is filed for. It is clear that the police chief had plenty of chances to follow the court orders when the Appellant had mailed letters to the police chief about the body-camera footage. The letter from the PIO Kendall Davis through Police Chief Rob Fincher (pg. 4093-4095) proves that the body-camera footage did IN FACT exist and was deleted while not complying with the Court Orders and not ever providing a copy to the United States Probation Office during its initial investigation and supervised release violation charge against Appellant. **The argument is this. LIABILITY**, that is the final argument for this common-sense reason. The former police chief would never have admitted to the destruction of the body-camera footage regardless of Appellant filing a FOIA request. It is common sense to wait until a new police chief is appointed or is designated (by retirement of former police chief) to be the top chief position of Martinsville Police Department. A new police chief comes in, admits the evidence was deleted in violation of court orders. That makes this piece of evidence destruction, the prima facie evidence is EXTRINSIC FRAUD. Not intrinsic fraud. It is extrinsic because of the liability issues with the former police chief. The FOIA request was filed in 2023 (pg. 3851-3858), when Rob Fincher (pg. 4093-4095) was the police chief of Martinsville Police Department. The criminal appeal had concluded in September, 2021. The final verdict of guilty/criminal conviction was on November 18, 2019 (pg. 3920-3920). The discovery of the extrinsic fraud proof was on February 10, 2023, the date of receipt of the FOIA response letter and that same day it was filed with the Trial Court as evidence (pg. 4089-4099) in support of the Motion asking for relief before the Trial Court rendered its order/judgment (pg. 4120-4120) denying that motion. Rob Fincher the new Police Chief would not be held criminally and/or civilly liable for the destruction of evidence pursuant to the court orders for discovery and potential evidence for the United States Probation Office who charged Appellant with a supervised release violation for the very state criminal charge and conviction at issue with this entire appeal and with past appeals with the Court of Appeals of Virginia, this court. So, for him, he had no issue with his written/typed information proving that the body-camera footage was illegally destroyed thus proving prima facie evidence of fraud on the court. Former Police Chief G. E. Cassady (pg. 4139-4143) would have

had an issue with the body-camera footage ever being admitted in writing as to being deleted. **Common Sense reason #4**: Appellant's past claims of the body-camera footage at issue in any older appeals was only based on what he heard from his court appointed lawyer Matthew Scott Thomas Clark (pg. 4072-4088) in the Trial Court from 2019. The only evidence Appellant had until February 10, 2023, was in an affidavit about what he heard from his own lawyer, and that may be considered "hearsay". May be considered 'hearsay' when the only evidence Appellant had of the unlawful destruction of the body-camera footage was of what he heard from his court appointed lawyer. That lawyer provided no written statements, had produced no written statements, and had no affidavits of himself/herself about what was told to Appellant. Appellant had filed a FOIA request with no guarantee that any good response could come of it. The Virginia's Freedom of Information Act (FOIA) law doesn't matter when it comes to the human brain, and only legally pertains to existing records not under a justified exemption under law. The police chief could have denied Appellant's FOIA request and claim that Appellant was delusional or just simply plead the Fifth Amendment out of fear of facing criminal and/or civil liability. Appellant would not be able to easily prevail if the police chief could instead doubled down or tripled down or claim there was no body-camera footage and then the FOIA request would have been deemed satisfied by simply claiming no record exists, even by a judge of the highest Court in the United States. The FOIA is not a guarantee to find evidence favorable to a criminal defendant once a criminal case is either dismissed or receives a verdict of guilty then becomes a final verdict of the defendant in the case. The FOIA is not a guarantee while a criminal case is pending before the General District Court and/or the Circuit Court of any district. A law cannot guarantee the FOIA request prevails if the police chief could just claim that no possible record exists including the body-camera footage. However, the police chief did admit the existence of the body-camera footage evidence during a past Police Chief and his administration in 2018-2019. A new police chief was not worried about any potential criminal and/or civil liability. So, the police chief admits it was destroyed under the previous boss. **FINAL ARGUMENT AS TO Common Sense reasons**: Therefore, it is EXTRINSIC FRAUD. All Common-sense reasons are given as to the argument that the fraud proof is not intrinsic fraud but is extrinsic fraud, prima facie evidence, and is therefore subject to relief under Virginia Code § 8.01-428(d), Virginia Code § 8.01-428(a) and Virginia Code § 8.01-428(b) on the basis of fraud upon the court, clerical factual errors. Extrinsic fraud is "conduct which prevents a fair submission of the controversy to the court." Id. (quoting Jones v. Willard, 224 Va. 602, 607, 299 S.E.2d 504, 508 (1983). Extrinsic fraud includes: "[k]eeping the unsuccessful party away from the court by a false promise of a compromise, or purposely keeping him in ignorance of the suit; or where an attorney fraudulently pretends to represent a party[] and connives at his defeat." McClung v. Folks, 126 Va. 259, 279, 101 S.E. 345, 348 (1919); accord F.E. v. G.F.M., 35 Va. App. 648, 660, 547 S.E.2d 531, 537 (2001). In such circumstances, the fraud perpetrated

"prevents the court or non-defrauding party from discovering the fraud through the regular adversarial process." F.E., 35 Va. App. at 660, 547 S.E.2d at 537 (quoting Peet, 16 Va. App. at 327, 429 S.E.2d at 490). "Extrinsic fraud, therefore, is 'fraud that . . . deprives a person of the opportunity to be heard.'" Id. (quoting Hagy v. Pruitt, 339 S.C. 425, 431, 529 S.E.2d 714, 717 (S.C. 2000). See preservation of argument in pg. 3556-3556. Deleting evidence and preventing it from ever going to the Defense after multiple court orders is a type of fraud which "deprives a person of the opportunity to be heard." Under the **Wigmore standard**, evidence destruction/spoliation is fraud and indicates that the case is a weak or unfounded one. The **Wigmore standard of evidence** is used by courts all across the United States of America regarding evidence and fraud. See Evidence in Trials at Common Law § 278, at 133 (James H. Chadbourn ed., rev. ed. 1979): ("It has always been understood – the inference, indeed, is one of the simplest in human experience – that a party's falsehood or other fraud in the preparation and presentation of his cause, his fabrication or suppression of evidence by bribery or spoliation, and all similar conduct is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and from that consciousness may be inferred the fact itself of the cause's lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the cause, but operates, indefinitely though strongly, against the whole mass of alleged facts constituting his cause."; Quote from John H. Wigmore) *Note: Family obtained for Appellant from https://www.lawasitis.com/judgment-obtained-by-fraud-american-jurisprudence-quote/ - Judgment obtained by Fraud - American Jurisprudence Quote*. The Wigmore argument was also argued on the record of the Trial Court in Appellant's motions, see pg. 3558 (*16th page of the first denied Motion based on fraud on the court at issue in this appeal*); pg. 4161-4163 (*page 14 through 16 of denied Motion to Reconsider denying the first motion. Motion to reconsider starts at pg. 4148 of the Trial Court record*.)). **Black's Law Dictionary (11th Edition) defines spoliation as the intentional destruction, mutilation, alteration, or concealment of evidence. Spoliation interferes with a party's ability to investigate the facts to determine potential causes of action (or defend against claims and lawsuits).** Appellant has proven based on the record of the Trial Court that Wigmore standard was argued in the very motion which was denied and thus preserves that issue for appeal, and that extrinsic fraud was found and proven by the statements from the new police chief Rob Fincher of the City of Martinsville in Kendall Davis's response to Appellant's FOIA request. All of that has been proven and is on the record. The Court of Appeals of Virginia can make independent findings of the arguments laid before the Trial Court in the Motions in pages 3543-4008 of the record for the first motion and pages 4148-4254 and 4257-4276 of the record for the second motion. This Assignment of Error has established from the record of the Trial Court that the Trial Court had overlooked valid legal arguments and evidence of proving extrinsic fraud which was presented in support of Appellant's "fraud

City Journal, ("Under two Supreme Court cases, Brady v. Maryland and Giglio v. United States, prosecutors are constitutionally required to disclose to defense lawyers the credibility problems of potential prosecution witnesses, such as a history of lying or drug use. Police officers are justifiably warned that lying in any capacity can not only endanger their ability to testify but also result in termination."). Termination meaning termination from their employment, their career is gone. See the argument from Appellant's motion to reconsider (pg. 4185-4186) arguing the potential issues of allowing the prosecutor Glen Andrew Hall, Esquire of Appellees to totally get away with a fraudulent prosecution and disobeying court orders without any repercussions or consequences creates a lawless Government (pg. 4188-4189). See what was argued in the record of the Trial Court in Olmstead v. United States, 277 U.S. 438, 485 (1928) ("Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means — to declare that the Government may commit crimes in order to secure the conviction of a private criminal — would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face."). It is not just the law for a judge or Clerk to charge a person or lawyer for disobeying a court order, it prevents anarchy. It prevents vigilantism. It prevents the average American people from trying to become a law onto himself. Usually, the average citizen respects the law and that only lawbreakers are punished when each suspect is proven to have broken the law in a court of law under the exercise of due process of law. When a Commonwealth Attorney or District Attorney decides to disobey the law or disobey even a court order, then it is the duty of the court to sanction or have penalties against the Commonwealth Attorney or District Attorney to at least give the appearance of the rule of law, equal protection of law. The rule of law requires that everyone obey the law including the Government, including the law enforcers, otherwise the law is set up for only a certain class or tier of people. This would turn America into the caste system which is a class-based system (pg. 4192). Where government lawyers can break the law and even rob innocent people of their money, while the average person is held accountable to the law even when no law was broken. A system of slavery where the 13th Amendment can be abused to bring slavery back to the average citizen of the United States of America, where no crime has to be proven to imprison and enslave a prisoner. No crime even has to exist to enslave somebody. What kind of world? What kind of society do we want? Do we want a society based on merits or based on who is in a position of power? Are we the rule of law or law of man (pg. 4193)? Anyways, the motion for reconsideration at issue for

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SUMMARY

Brian David Hill, ("Appellant") files this Opening Brief pursuant to Rule 5A:16(a) and of this Court, and this is directly appealing the Circuit Court's final judgment/orders (pg. 4120, 4255, 4277) denying Appellant's Motion for relief (Motion #1 pg. 3543-4008; 4064-4114), and Motion to Reconsider (Motion #2 pg. 4148-4254). Those decisions were made on February 14, February 17, and February 21, 2023. This is a criminal appeal of right.

This case concerns the extrinsic and intrinsic frauds upon the court committed by Appellees (not at the Appellate level) at the Trial Court level against a criminal defendant's due process right to present a fair and just controversy/defense at a fair trial due to the prosecution's "conduct which prevents a fair submission of the controversy to the court." Id. (quoting Jones v. Willard, 224 Va. 602, 607, 299 S.E.2d 504, 508 (1983)). Appellant had filed a motion to have the Court set aside or vacate the fraudulent begotten judgment which is a criminal conviction/judgment of guilty (pg. 264-264) regarding the charged offense (pg. 1-3). The Trial Court denied Appellant's motions but did not assert lack of jurisdiction.

Specifically, it involves the credibility of the prosecution's witness or witnesses, the elements of prosecution being fraudulent, and the proven unlawful destruction of evidence by admission of a new police chief of the City of Martinsville. For many reasons below, the orders/judgments should be reversed,

ordered and remanded with instructions in regard to the assignments of error, abuses of discretion, and/or amending to or modify existing law in this criminal case appeals. Three appeals cases no. 0313-23-3, 0314-23-3 and 0317-23-3 are what this appeal brief is regarding.

See Wilson v. Commonwealth, 108 Va. Cir. 97, 101–02 (Fairfax Cir. Ct. Apr. 20, 2021) (Ortiz, J.) (holding that Code § 8.01-428(D) applies in criminal proceedings); see also Lamb v. Commonwealth, 222 Va. 161, 165, 279 S.E.2d 389, 392 (1981) (holding that Code § 8.01-428(B) applies in criminal cases and noting that the text of Code § 8.01-428 does not limit its applicability to civil cases as its statutory predecessors did).

The Trial Court said in its reasoning for denying the motion for relief that: "UPON CONSIDERATION of the defendant's Motion for Set Aside or Relieve Defendant of Judgment of Conviction of Criminal Charge, it is ORDERED that said motion is hereby DENIED," See the Order on page 4120-4120.

The Trial Court said in its reasoning for denying the motion to Reconsider that: "UPON CONSIDERATION of the defendant's Motion to Reconsider, it is ORDERED that said motion is hereby DENIED." See the Orders on pages 4255 and 4277.

All assignments of error concern the final orders/judgments (pg. 4120, 4255, and 4277) denying Appellant's motion for relief, and motion to Reconsider the order denying the same.

Because the record of the Trial Court was filed electronically, a joint appendix is unnecessary. Citation is entirely based on the record filed by the Clerk.

Assignments of Error

Assignment of error 1. The Trial Court erred as a matter of law and/or abused discretion in its three orders (pg. 4120, 4255, and 4277) denying Appellant's motion (pg. 3516) for reconsideration of the Trial Court's denial of Appellant's "*MOTION FOR SET ASIDE OR RELIEVE DEFENDANT OF JUDGMENT OF CONVICTION OF CRIMINAL CHARGE…*" (pg. 4148-4206); when the Trial Court overlooked evidence which was presented in support of Appellant's "fraud on the court" claims by Appellant which demonstrated an issue that the court appointed defense attorney Scott Albrecht had switched sides to the prosecution (pg. 4260-4276, 4236-4248) which would be the Commonwealth's Attorney Glen Andrew Hall without ever filing anything with the Trial Court recusing himself with any involvement with Mr. Hall concerning Appellant's cases since his court appointed attorney Scott Albrecht had represented Appellant prior to directly switching to the prosecution team of Appellees. It is a conflict of interest for the former defense attorney of a criminal defendant which would be Appellant to switch sides to the Commonwealth's Attorney who had prosecuted a case against the criminal defendant aka Appellant in the circumstances where the defense attorney has the easy ability to create an unfair advantage against the criminal defendant. See Rules of Professional Conduct 1.3, 1.6 and 1.7; see also Holloway v. Arkansas, 435 U.S. 475 (1978); Dowell v.

Commonwealth, 3 Va. App. 555 (1987). Powell v. Commonwealth, 3 Va. App. 555, 556 (Va. Ct. App. 1987) ("*When a trial court fails to initiate an inquiry when it knows or reasonably should know that a particular conflict may exist it is presumed that the conflict resulted in ineffective assistance of counsel*."). Powell v. Commonwealth, 3 Va. App. 555, 556 (Va. Ct. App. 1987) ("*Where a probable risk of conflict of interest is brought to a trial court's attention, the trial judge must take adequate steps to ascertain the extent of a conflict of interest in joint representation*."). The reason for Appellant's concerns was documented in his declaration/affidavit (pg. 4236-4246). Appellant said under penalty of perjury the following statement (pg. 4244): "…*If this is the same Scott Albrecht, then I have no choice but to inform the Circuit Court that my Trial in the General District Court, I feel it was rigged against me. When my own court appointed lawyer who did a terrible job defending me, I am found guilty, no enforcement of court orders not complied with by Glen Andrew Hall that he pushed for as my defense attorney, no asking for sanctions for noncompliance with those court orders, and then a "Scott Albrecht" works for the very same prosecuting attorney who prosecuted me at the Trial in the General District Court on December 21, 2018, with Scott Albrecht as my defense attorney*." The Trial Court should have conducted an inquiry into this before making a final decision on the Appellant's motion for reconsideration. This sounds like a conflict of interest for a defense attorney to do a terrible job for a defendant, not pursuing any contempt of court charges or any enforcement

proceedings against the prosecutor of the criminal case of Appellant, and then years later joins that same prosecutor as an Assistant Commonwealth's Attorney. The concern for this assignment of error is this: Why this conflict-of-interest issue is extremely important and not merely some ineffective assistance of counsel issue. This issue is different. The error is that Scott Albrecht allowed the prosecutor to get away with unlawful deletion of evidence then works for the prosecutor at a later time and receiving a salary/money/$$$ and any financial or any other benefits working for the prosecutor attorney Glen Andrew Hall. Appellant had proven to the Trial Court that: (1) There were three court orders proposed by defense Attorney Scott Albrecht (pg. 3921-3929) "*ORDERED that the Commonwealth's Attorney permit counsel for the Defendant to inspect and copy or photograph, within a reasonable time, before the trial or sentencing, the following…Any relevant written or recorded statements or confessions made by the Defendant, or copies thereof, or the substance of any oral statements or confessions made by the Defendant to any law enforcement officer, the existence of which is known to the attorney for the Commonwealth*…". (2) The Public Information Officer ("PIO") Kendall Davis had responded to Appellant's request under Virginia's Freedom of Information Act ("FOIA") by providing information directly from Chief of Police Rob Fincher proving that the body-camera footage had existed and was deleted on April 9, 2019, because it was not marked as evidence when it was the responsibility of the Commonwealth's Attorney Glen Andrew Hall to mark body-camera footage concerning Appellant as

material evidence (pg. 4093-4095, 4212-4214). (3) Appellant kept begging for the body-camera footage (pg. 3881-3891, 4139-4144, 3916-3918), Attorney Scott Albrecht did absolutely nothing, and allowed evidence to be permanently destroyed by deletion (pg. 4093-4095, 4212-4214). This assignment of error isn't attempting to portray the conflict-of-interest issue to that of ineffective assistance of counsel per se but is bringing up the issue of "fraud on the court" where both the defense counsel and prosecution had allowed evidence to be illegally deleted, allowed multiple court orders to never be complied with and neither enforced. The evidence would not have been destroyed if it was favorable to the prosecution against Appellant for indecent exposure. In fact, the prosecution would have loved to show the Trial Court the body-camera footage if it had painted Appellant as a pervert or somebody who was charged with making an obscene display. However, that was not what happened. The prosecution did everything they could to prevent the body-camera footage from ever being acquired by the defendant and his attorney. In fact, the police chief through the PIO said in their FOIA response letter (pg. 4094, 4213) that: "…*If I had the videos, I would have no problem giving them to you but unfortunately, I do not*." The letter on the first page had said that it was up to the Commonwealth's Attorney to mark a video as evidence from Martinsville Police Department. They said from pg. 4093 and 4212, the following: "*If the Commonwealth's Attorney's Office designates a video as evidence it is retained indefinitely. All other videos are subject to the DVMS retention schedule…The DVMS begins cleanup when a video is within the*

minimum and maximum hold period for its event classification and when the disk usage is more than 80% and have not been accessed in 150 days. DVMS cleanup refers to changing the file allocation address of that data file to allow for other data to be stored in place of that file.". So, the police department was not responsible for the unlawful destruction of the body-camera footage, it is clearly the responsibility of prosecutor Glen Andrew Hall. The public defender Scott Albrecht protected this prosecutor and now the evidence had shown that Scott Albrecht may actually be working for the prosecutor. There should have been inquiry on all of those issues presented before the judge of the Trial Court. The Trial Court had errored or abused discretion by conducting no inquiry and not asking Assistant Commonwealth Attorney Scott Albrecht on the record if he was the defense attorney for Appellant Brian David Hill, why he did nothing to preserve the evidence of the body-camera footage, on why he allowed Glen Andrew Hall to not comply with the court orders for discovery which is contempt of court, and why he had botched Appellant's defense which would be favorable to Glen Andrew Hall, the Commonwealth's Attorney, who had defrauded the court. Appellant asserted those arguments in his motion (pg. 3568-3581) to set aside or relief from judgment. Statement of the Facts are of evidence and facts from the record supporting relief for this Assignment of Error (See Statement of the Facts in Appeal Brief Pg. 37-47).

Assignment of error 2. The Trial Court erred as a matter of law and/or abused discretion in its three orders (pg. 4120, 4255, and 4277) denying Appellant's motion

for relief (pg. 3543-3649) and Appellant's motion for reconsideration of the Trial Court's denial of Appellant's "MOTION FOR SET ASIDE OR RELIEVE DEFENDANT OF JUDGMENT OF CONVICTION OF CRIMINAL CHARGE…" (pg. 4148-4206); when the Trial Court had overlooked evidence which was presented in support of Appellant's "fraud on the court" claims by Appellant which demonstrated that the Martinsville Police Officer named Robert Jones had lacked credibility as a witness who had initiated the indecent exposure charge against Appellant. The reason why he had lacked credibility was that he had changed his statements in a different courthouse while testifying under oath. In his initial charge, see pages 3651-3653 of the record, Officer Jones had said under oath in the Arrest Warrant that Defendant had: "*intentionally make an obscene display of the accused's person or private parts in a public place or in a place where others were present*." He then stated under oath in the facts of the Criminal Complaint that: "*He was medically and psychologically cleared. He was arrested for indecent Exposure*." He said that Appellant was "medically" cleared. Let us see if that is true or not true based on the record at a later time. See pages 3987-4008 of the record. Robert Jones had testified under oath in Federal Court in North Carolina over the same exact charge since Appellant was on federal supervised release. It is common sense that the same person who charged Appellant with making an obscene display would appear before the federal court under penalty of perjury to testify as a witness. He was questioned by Attorney Renorda Pryor and she was directed by Appellant and

his family to ask Robert Jones if Appellant had been obscene. He responded by saying under oath that Appellant had not been obscene. That right there is a contradiction of what he had signed and typed up under oath or affirmation in the Warrant for Appellant's arrest (pg. 3651). Not only that but was sure enough to say under oath that Appellant was medically and psychologically cleared. Appellant had argued the fraud of the witness Robert Jones where his statements do not match the Criminal Complaint and Arrest Warrant, meaning that the witness had lacked credibility after the original assumption that witness did not deliberately make an untruthful or false statement. Either the witness had lacked credibility or made multiple non-factual or untruthful statements. The truth is not the truth under oath when contradictions are made when stating the facts in contradiction with each other. Like for theoretical example for the argument: I first say I saw an apple on the way to the dentist office on January 1, whatever year it was, and I say so under oath in a court of law. Then let's say 10 months later I am in another court giving the same testimony but then I claimed under oath that I did not see an apple but an orange on the way to the dentist office on January 1, whatever year it was. It is quite clear that a witness contradicting himself/herself under oath as a witness creates a credibility issue where something wasn't truthful or something wasn't factual as previously presented before a judge and before a clerk of the court. He claimed Appellant was medically cleared but yet Appellant presents evidence in support of his motion which demonstrates that Officer Jones did not know for an absolute fact at all if Appellant

was medically cleared (See pg. 3558-3568, 3581-3590, 3592-3627). The record from the very motion itself demonstrated that Officer Jones didn't know that Appellant was even a type one diabetic, didn't know he had obsessive compulsive disorder (OCD), didn't know that lab tests were ordered but were deleted from the chart, and never drug tested Appellant but yet said under oath that Appellant was "medically and psychologically cleared". I don't know how he would know whether Appellant was "medically and psychologically cleared" but yet he knows nothing of Appellant having insulin dependent diabetes, and didn't have the lab tests or drug tests saying if Appellant was A-Okay. There was none of that. A lot of assumptions from Robert Jones, but those are not facts, they are assumptions. It is clear that the very officer who had charged Appellant had lacked credibility. His claims were not truthful and not factual when other evidence comes to light in the Trial Court. Statement of the Facts are of evidence and facts from the record supporting relief for this Assignment of Error (See Statement of the Facts in Appeal Brief Pg. 37-47).

Assignment of error 3. The Trial Court erred as a matter of law and/or abused discretion in its three orders (pg. 4120, 4255, and 4277) denying Appellant's motion for relief (pg. 3543-3649) and Appellant's motion for reconsideration of the Trial Court's denial of Appellant's "MOTION FOR SET ASIDE OR RELIEVE DEFENDANT OF JUDGMENT OF CONVICTION OF CRIMINAL CHARGE…" (pg. 4148-4206); when the Trial Court judge had failed to follow his ministerial duties of charging Commonwealth's Attorney Glen Andrew Hall with contempt of

court under Virginia Code § 18.2-456. Appellant had argued in his motion for relief that Glen Andrew Hall of the Commonwealth of Virginia had committed contempt of court (pg. 3568-3581) by not following or ignoring multiple court orders (pg. 3921-3929) which had ordered him to turn over the discovery materials to the defendant's counsel for defendant to review over with his attorney. Instead, the Commonwealth Attorney had not marked the body-camera footage as evidence (pg. 4093-4095, 4212-4214) which had been an act to not follow an order of the court. In fact, Appellant had filed a copy of his FOIA request (pg. 3851-3858) in support of the motion and later received a response (pg. 4093-4095, 4212-4214) from the Public Information Officer proving that Glen Andrew Hall was solely responsible for marking the body-camera footage as evidence. The very same body-camera footage which the court orders (pg. 3921-3929) had specified in its orders for discovery. Appellant had proven beyond doubt that a contempt of court was committed at least one time if not two or three times. The Trial Court judge has a ministerial duty under law to charge a contemnor with contempt of court when evidence is presented to the judge and the clerk in support of the claims of contempt of court. Those claims had been proven after the FOIA response letter from Kendall Davis (pg. 4093-4095, 4212-4214). Some form of relief should have been afforded to Appellant or the Trial Court should have at least charged Glen Andrew Hall with contempt of court under Virginia Code § 18.2-456(A)(4) and (A)(5). Even if arguably the Commonwealth's Attorney could be legally immune from all criminal charges, the Trial Court has the

authority of law and the exercise of law to hold an attorney accountable for contempt of court. The Trial Court could have even recommended investigation by the Virginia State Bar of the Supreme Court of Virginia. The Trial Court failed and neglected to do their duty to safeguard the administration of justice from fraud, abuse, and acts of non-compliance with an order of the court. If Appellant had decided not to follow a court order and got caught, he would surely be charged with contempt of court with hardly any way out of it, he would be convicted of contempt if Appellant had done the same thing as Glen Andrew Hall had done. A government must not be a lawbreaker even under the guise/facade of prosecuting a ”private criminal”, and that includes the Commonwealth Attorney. See the wise words of the U.S. Supreme Court in the case law authority of Olmstead v. United States, 277 U.S. 438, 485 (1928) (“Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means — to declare that the Government may commit crimes in order to secure the conviction of a private criminal — would bring terrible retribution. Against that pernicious doctrine

this Court should resolutely set its face."). What if the private criminal wasn't a private criminal? What if evidence being illegally covered up was to cover up evidence of innocence? Does it matter that court orders have been violated here? What does it mean when a court order is disregarded/disobeyed by a party to a criminal case? Theoretically could Appellant get away with the same type of misconduct as Glen Andrew Hall of Appellees of not following any court order at will? Is Appellees above the law? Can the Commonwealth of Virginia be given free rein to just decide not to follow any order of the judge if such court order may hurt the prosecution? Is this not fraud or contempt or what not? It is clear that Glen Andrew Hall needs to be charged and prosecuted for contempt of court. The Trial Court has the discretion but also has a duty to ensure that penalties are enacted against anybody who disobeys/defies a court order or decree or directive from a judge. That is the law, and is the matter of law. The Trial Court is supposed to be a court of law. It is an error or abuse of discretion, a failure of duty, a dereliction of duty, to not charge Glen Andrew Hall with contempt of court in response to the motion and evidence filed by Appellant as demonstrated in this assignment of error. Statement of the Facts are of evidence and facts from the record supporting relief for this Assignment of Error (See Statement of the Facts in Appeal Brief Pg. 37-47).

Assignment of error 4. The Trial Court erred as a matter of law and/or abused discretion in its three orders (pg. 4120, 4255, and 4277) denying Appellant's motion for relief (pg. 3543-3649) and Appellant's motion for reconsideration of the Trial

Court's denial of Appellant's "MOTION FOR SET ASIDE OR RELIEVE DEFENDANT OF JUDGMENT OF CONVICTION OF CRIMINAL CHARGE…" (pg. 4148-4206); when the Trial Court had overlooked valid legal arguments and evidence of proving extrinsic fraud which was presented in support of Appellant's "fraud on the court" claims by Appellant which demonstrated that a new Police Chief Rob Fincher admitted in writing by Public Information Officer ("PIO") Kendall Davis (pg. 4089-4095), admitted that the body-camera footage which the Circuit Court/Trial Court had ordered the Commonwealth's Attorney aka Appellees multiple times (pg. 4081-4088), was deleted without ever being marked as evidence in complete violation of court orders for discovery and prevented the Appellant from presenting a fair submission of the controversy to the court. It is extrinsic fraud because of multiple common-sense reasons why in the evidence submitted in support of Appellant's motion for setting aside judgment/order or relieving Defendant of the judgment/order upon evidence of fraud on the court. The prima facie evidence is what was in the three-page letter from PIO Kendall Davis (pg. 4093-4095) mirroring what Police Chief Rob Fincher admitted in that letter. **Common Sense reason #1**: The body-camera footage had been illegally destroyed as admitted by new Police Chief Rob Fincher (pg. 4093-4095) on the date of February 10, 2023. The final judgment/order of the Trial Court closing the criminal case litigation without the timely filed appeal was on the date of November 18, 2019 (pg. 3920-3920). The timely filed criminal case appeal where its final decision was made by the Court of

Appeals of Virginia was rendered on the date of September 6, 2021, on the opinion by the Court of Appeals of Virginia rendered on that date (See Hill v. Commonwealth, Record No. 1294-20-3 (Va. Ct. App. Sep. 2, 2021); Hill v. Commonwealth, Record No. 1295-20-3 (Va. Ct. App. Sep. 2, 2021). Almost two years later, Appellant had learned from a new police chief in Martinsville Police Department where the record supports this notion (*name of new police chief is named in three-page FOIA response letter*), named Rob Fincher. Appellant files a Motion (pg. 3543-3649) asking for relief from judgment/order or setting aside judgment on the basis of fraud on the court. As part of that initiative, Appellant had filed a Freedom of Information Act Request (pg. 3851-3858) asking about the existence of the body-camera footage, and the Police Department policies regarding the body-camera footage retention. Addendum filing was entered when Kendall Davis had given an invalid response to Appellant's FOIA request which is at issue for his Motion for relief due to fraud on the court. See pg. 4064-4088. The letter was addressed to both the judge of the Trial Court and the Clerk of the Trial Court, so this is part of the record necessary for this assignment of error. Kendall Davis the PIO had acknowledged his mistake of submitting the wrong response and submitted the correct response (pg. 4089-4099) to Appellant's FOIA request which concluded his **Exhibit 12 evidence** (pg. 3851-3858) in support of his motion requesting relief due to fraud on/upon the court. The Trial Court did not appropriately enter a decision denying or granting the motion until that evidence was entered or reviewed. The

order denying his motion (pg. 4120-4120) was made around the same time or same day on record of a status letter which was filed with the very judge and clerk of the Trial Court (pg. 4131-4147) regarding the prima facie proof of extrinsic fraud. It is extrinsic fraud because it is the Police Department of the City of Martinsville and Commonwealth of Virginia which admitted on February 10, 2023 that the body-camera footage had once existed and was deleted in contradiction/defiance to the court orders for discovery. **Common Sense reason #2**: The evidence was extrinsic fraud because no prima facie evidence (*something in writing from a credible source or credible witness, THE POLICE CHIEF!!!*) had existed on the record of the Trial Court prior to February 10, 2023 proving beyond a reasonable doubt as to the unlawful destruction of the body-camera footage. No written proof or statements from somebody working in Martinsville Police Department represented by Appellees until the letter from PIO Kendall Davis (pg. 4089-4099) which had responded to Appellant's FOIA request (pg. 3851-3858) for evidence at-one-time in the possession of Martinsville Police Department before that piece of evidence was unlawfully deleted and destroyed which did not comply with multiple court orders (**EXHIBIT #22**, pg. 3921-3929) asking for the discovery evidence. All of that was appropriately submitted to the Court in support of Appellant's request for relief from the judgment/order convicting Appellant of indecent exposure on November 18, 2019 (**EXHIBIT #21**, pg. 3919-3920). Appellant had finally proven that the body-camera footage was deleted after the multiple court orders asking for the very thing

which was deleted. That itself is evidence of CONTEMPT OF COURT. Appellees should have been separately charged with contempt of court in the Trial Court and the charge should have been initiated by the Trial Court; whether fraud was proven or not on a separate issue. Anyways back to the next common-sense reason. **Common Sense reason #3**: Violating any law and violating any court order whether state or federal has consequences. Violating any federal, state, or local law has consequences. That includes willful failure or refusal/disobedience to follow court orders and that includes destroying evidence during a FEDERAL INVESTIGATION by the United States Probation Office. All of that is on the record of the Trial Court. First of all, Police Chief G. E Cassady (pg. 3889-3895, **EXHIBIT #13**: 3859-3864) and Commonwealth Attorney Glen Andrew Hall are both potentially liable for not just violating court orders but the police chief would possibly be liable for destruction of evidence during a pending investigation or case by the United States Probation Office who supervises Appellant for a federal conviction, and that sentencing is on the record of the Trial Court (pg. 217-223 and **EXHIBIT #2**: pg. 3654-3735). The transcript of the supervised release violation hearing mentions nothing about the introduction of the body-camera footage because the Martinsville Police Department never turned over that evidence from the state case to the federal investigation by the U.S. Probation Office. That itself proves evidence was willfully kept from the United States Probation Office after investigating the supervised release violation charge of Brian David Hill, the

Appellant, in 2018. That means either the Commonwealth's Attorney Glen Andrew Hall, Esq. aka Appellees at the Trial Court level (*Note: Attorney General did not violate federal law and did not violate the court orders themselves since they including Justin Hill just represents Appellees at the Appellate level, Appellant is not blaming the Attorney General but refers to Glen Andrew Hall, Esq. as to Appellees*) or Martinsville Police Chief G. E. Cassady had violated 18 U.S.C. § 1519. The motion to reconsider (pg. 4189-4191) also brought up the issues of federal law being violated here. Not just violating the court orders and committing contempt of court two or three separate times (pg. 4186-4188). Family provided link for citation of lawyer page https://www.criminaldefenselawyer.com/crime-penalties/federal/Tampering-with-evidence.htm ("**A person commits the federal crime of tampering with evidence** when **he or she knowingly** alters, **conceals**, falsifies, or **destroys any record, document, or tangible object** with **the intent** to **interfere with an investigation, possible investigation, or other proceedings by the federal government**. (18 U.S.C. § 1519.)"). United States Probation Officers are federal officers and lying to a federal probation officer is a federal crime. Hiding evidence then destroying or deleting evidence which exists at one time with the purpose of interfering with a proper investigation or any possible investigation conducted by a federal agent or federal officer. The destroyed and deleted evidence was the BODY-CAMERA footage on record (pg. 4093-4095) which isn't just fraud on the court, it is violation of both court orders and federal law of a U.S. Probation

Office investigation into Appellant's state charge, supervised release revocation or charge, and conviction by the General District Court and later with the Trial Court. This proves with the prima facie evidence that former Police Chief G. E. Cassady and/or Glen Andrew Hall, Esq. of Appellees would be potentially held liable criminally and/or civilly for the act/acts of evidence destruction and deletion after court orders (**EXHIBIT #22**, pg. 3921-3929) asking to provide the evidence to the Defendant and/or his attorney. The final argument for this third common sense reason is this. The Police Department will not admit they illegally destroyed the body-camera footage themselves if it would or could create both criminal and/or civil liability issues for the Police Chief if responsible for the wrongdoing at the top. Police Chief G. E. Cassady never would have admitted that they concealed from the Trial Court the body-camera footage evidence which Attorney Scott Albrecht had caused/filed a proposed court order asking for that very thing and was signed by the judge, then they secretly deleted the body-camera footage (pg. 4093-4095) on APRIL 9, 2019, while Appellant was sitting in a Federal Prison (pg. 81-98) and was released on federal bond on May 14, 2019, a month after the body-camera footage was illegally deleted. Appellant had mailed letters (**EXHIBIT #15**: pg. 3871-3895; pg. 4139-4144) to the Police Chief asking for that very piece of evidence without realizing that multiple court orders (**EXHIBIT #22**, pg. 3921-3929) were already on file with the Trial Court record ordering the body-camera footage and any other material evidence under Brady v. Maryland of the U.S. Supreme Court. The deletion

of the very evidence was not a mistake with the paper trail, the letters to the Police Chief including one by certified mail and was typed up by Brian Hill's family members (pg. 4139-4144). It is clear that the former police chief G. E. Cassady could very well be held liable. If the letters to the police chief were mailed from a Federal Prison, there may very well be mailing logs by the Federal Bureau of Prisons which Appellant can introduce as evidence if the conviction/judgment is set aside. Appellant would potentially have even more prima facie evidence in the future if prevailing on the three appeals (CAV No. 0313-23-3, 0314-23-3 and 0317-23-3) this brief is filed for. It is clear that the police chief had plenty of chances to follow the court orders when the Appellant had mailed letters to the police chief about the body-camera footage. The letter from the PIO Kendall Davis through Police Chief Rob Fincher (pg. 4093-4095) proves that the body-camera footage did IN FACT exist and was deleted while not complying with the Court Orders and not ever providing a copy to the United States Probation Office during its initial investigation and supervised release violation charge against Appellant. **The argument is this. LIABILITY**, that is the final argument for this common-sense reason. The former police chief would never have admitted to the destruction of the body-camera footage regardless of Appellant filing a FOIA request. It is common sense to wait until a new police chief is appointed or is designated (by retirement of former police chief) to be the top chief position of Martinsville Police Department. A new police chief comes in, admits the evidence was deleted in violation of court orders. That

makes this piece of evidence destruction, the prima facie evidence is EXTRINSIC FRAUD. Not intrinsic fraud. It is extrinsic because of the liability issues with the former police chief. The FOIA request was filed in 2023 (pg. 3851-3858), when Rob Fincher (pg. 4093-4095) was the police chief of Martinsville Police Department. The criminal appeal had concluded in September, 2021. The final verdict of guilty/criminal conviction was on November 18, 2019 (pg. 3920-3920). The discovery of the extrinsic fraud proof was on February 10, 2023, the date of receipt of the FOIA response letter and that same day it was filed with the Trial Court as evidence (pg. 4089-4099) in support of the Motion asking for relief before the Trial Court rendered its order/judgment (pg. 4120-4120) denying that motion. Rob Fincher the new Police Chief would not be held criminally and/or civilly liable for the destruction of evidence pursuant to the court orders for discovery and potential evidence for the United States Probation Office who charged Appellant with a supervised release violation for the very state criminal charge and conviction at issue with this entire appeal and with past appeals with the Court of Appeals of Virginia, this court. So, for him, he had no issue with his written/typed information proving that the body-camera footage was illegally destroyed thus proving prima facie evidence of fraud on the court. Former Police Chief G. E. Cassady (pg. 4139-4143) would have had an issue with the body-camera footage ever being admitted in writing as to being deleted. **Common Sense reason #4**: Appellant's past claims of the body-camera footage at issue in any older appeals was only based on what he

heard from his court appointed lawyer Matthew Scott Thomas Clark (pg. 4072-4088) in the Trial Court from 2019. The only evidence Appellant had until February 10, 2023, was in an affidavit about what he heard from his own lawyer, and that may be considered "hearsay". May be considered 'hearsay' when the only evidence Appellant had of the unlawful destruction of the body-camera footage was of what he heard from his court appointed lawyer. That lawyer provided no written statements, had produced no written statements, and had no affidavits of himself/herself about what was told to Appellant. Appellant had filed a FOIA request with no guarantee that any good response could come of it. The Virginia's Freedom of Information Act (FOIA) law doesn't matter when it comes to the human brain, and only legally pertains to existing records not under a justified exemption under law. The police chief could have denied Appellant's FOIA request and claim that Appellant was delusional or just simply plead the Fifth Amendment out of fear of facing criminal and/or civil liability. Appellant would not be able to easily prevail if the police chief could instead doubled down or tripled down or claim there was no body-camera footage and then the FOIA request would have been deemed satisfied by simply claiming no record exists, even by a judge of the highest Court in the United States. The FOIA is not a guarantee to find evidence favorable to a criminal defendant once a criminal case is either dismissed or receives a verdict of guilty then becomes a final verdict of the defendant in the case. The FOIA is not a guarantee while a criminal case is pending before the General District Court and/or the Circuit

Court of any district. A law cannot guarantee the FOIA request prevails if the police chief could just claim that no possible record exists including the body-camera footage. However, the police chief did admit the existence of the body-camera footage evidence during a past Police Chief and his administration in 2018-2019. A new police chief was not worried about any potential criminal and/or civil liability. So, the police chief admits it was destroyed under the previous boss. **FINAL ARGUMENT AS TO Common Sense reasons**: Therefore, it is EXTRINSIC FRAUD. All Common-sense reasons are given as to the argument that the fraud proof is not intrinsic fraud but is extrinsic fraud, prima facie evidence, and is therefore subject to relief under Virginia Code § 8.01-428(d), Virginia Code § 8.01-428(a) and Virginia Code § 8.01-428(b) on the basis of fraud upon the court, clerical factual errors. Extrinsic fraud is "conduct which prevents a fair submission of the controversy to the court." Id. (quoting Jones v. Willard, 224 Va. 602, 607, 299 S.E.2d 504, 508 (1983). Extrinsic fraud includes: "[k]eeping the unsuccessful party away from the court by a false promise of a compromise, or purposely keeping him in ignorance of the suit; or where an attorney fraudulently pretends to represent a party[] and connives at his defeat." McClung v. Folks, 126 Va. 259, 279, 101 S.E. 345, 348 (1919); accord F.E. v. G.F.M., 35 Va. App. 648, 660, 547 S.E.2d 531, 537 (2001). In such circumstances, the fraud perpetrated "prevents the court or non-defrauding party from discovering the fraud through the regular adversarial process." F.E., 35 Va. App. at 660, 547 S.E.2d at 537 (quoting Peet, 16 Va. App. at

327, 429 S.E.2d at 490). "Extrinsic fraud, therefore, is 'fraud that . . . deprives a person of the opportunity to be heard.'" Id. (quoting Hagy v. Pruitt, 339 S.C. 425, 431, 529 S.E.2d 714, 717 (S.C. 2000). See preservation of argument in pg. 3556-3556. Deleting evidence and preventing it from ever going to the Defense after multiple court orders is a type of fraud which "deprives a person of the opportunity to be heard." Under the **Wigmore standard**, evidence destruction/spoliation is fraud and indicates that the case is a weak or unfounded one. The **Wigmore standard of evidence** is used by courts all across the United States of America regarding evidence and fraud. See Evidence in Trials at Common Law § 278, at 133 (James H. Chadbourn ed., rev. ed. 1979): ("It has always been understood – the inference, indeed, is one of the simplest in human experience – that a party's falsehood or other fraud in the preparation and presentation of his cause, his fabrication or suppression of evidence by bribery or spoliation, and all similar conduct is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and from that consciousness may be inferred the fact itself of the cause's lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the cause, but operates, indefinitely though strongly, against the whole mass of alleged facts constituting his cause."; Quote from John H. Wigmore) *Note: Family obtained for Appellant from https://www.lawasitis.com/judgment-obtained-by-fraud-american-jurisprudence-quote/ - Judgment obtained by Fraud - American Jurisprudence Quote*. The Wigmore argument was also argued on the record of the

Trial Court in Appellant's motions, see pg. 3558 (*16th page of the first denied Motion based on fraud on the court at issue in this appeal*); pg. 4161-4163 (*page 14 through 16 of denied Motion to Reconsider denying the first motion. Motion to reconsider starts at pg. 4148 of the Trial Court record*.)). **Black's Law Dictionary (11th Edition) defines spoliation as the intentional destruction, mutilation, alteration, or concealment of evidence. Spoliation interferes with a party's ability to investigate the facts to determine potential causes of action (or defend against claims and lawsuits).** Appellant has proven based on the record of the Trial Court that Wigmore standard was argued in the very motion which was denied and thus preserves that issue for appeal, and that extrinsic fraud was found and proven by the statements from the new police chief Rob Fincher of the City of Martinsville in Kendall Davis's response to Appellant's FOIA request. All of that has been proven and is on the record. The Court of Appeals of Virginia can make independent findings of the arguments laid before the Trial Court in the Motions in pages 3543-4008 of the record for the first motion and pages 4148-4254 and 4257-4276 of the record for the second motion. This Assignment of Error has established from the record of the Trial Court that the Trial Court had overlooked valid legal arguments and evidence of proving extrinsic fraud which was presented in support of Appellant's "fraud on the court" claims. Extrinsic fraud had been proven and thus Appellant had been entitled to relief and the Trial Court had erred. For arguments sake, if the body-camera footage had been favorable to the Commonwealth of

Virginia and City of Martinsville, the Appellees, then that never would have been deleted. In fact, the Commonwealth Attorney would have presented the body-camera footage in General District Court and it would have been used against the Appellant as tangible evidence, irrefutable evidence on video. The fact that the video was deleted and not marked as evidence meant that (theoretically) if the video had been viewed by the Officer or prosecution, saw things in the body-camera footage which would have caused the judge or jury to have second thoughts or consider a not-guilty verdict on both the obscenity element and the intent element. The body-camera footage must have been fatal to the Appellees in their fraudulent prosecution, and would have caused a non-favorable verdict. Adverse inference is also warranted here since the prima facie proof is given to the Trial Court and the adverse inference was preserved in the record of the Trial Court (see pg. 3553, 3580-3581, 4089-4099). Statement of the Facts are of evidence and facts from the record supporting relief for this Assignment of Error (See Statement of the Facts in Appeal Brief Pg. 37-47).

Assignment of error 5. The Trial Court erred as a matter of law and/or abused discretion in its three orders (pg. 4120, 4255, and 4277) denying Appellant's motion for relief (pg. 3543-3649) and Appellant's motion for reconsideration of the Trial Court's denial of Appellant's "MOTION FOR SET ASIDE OR RELIEVE DEFENDANT OF JUDGMENT OF CONVICTION OF CRIMINAL CHARGE…" (pg. 4148-4206); when the Trial Court had overlooked that there was enough evidence of fraud that no criminal conviction should have ever been sustained in the

first place. The evidence cited and arguments made in **Assignment of Error 4** have demonstrated that evidence was unlawfully destroyed by the Appellees (*Note: Not Justin Hill and not the Attorney General, as he and the Attorney General's office only represents Appellees at the Appellate level which the lower Trial Court case was prosecuted under Glen Andrew Hall, Esquire*). Appellant had provided enough prima facie evidence that the entire basis for the criminal charge (pg. 3650-3653) and the entire basis for the conviction (pg. 3920-3920) should have never had any guilty verdict in the first place. There never should have been a conviction. First of all, Appellant had argued in his first motion (pg. 3581-3622) that Appellant was never medically cleared because the laboratory tests were never completed after being ordered (pg. 3688-3689, 3909). The police never drug tested Appellant, and even if there is no law in Virginia requiring them to do any laboratory work on a suspect whom they arrested for indecent exposure, it does completely disprove the element of (pg. 3653) "He was medically and psychologically cleared." When an element has been completely disproven, it is a fraud on the court. Even Officer Robert Jones admitted under penalty of perjury that he never knew Appellant was diabetic (pg. 3614-3616, 3688, 3836-3841) considering how important it is for the arresting police officer Robert Jones to know that Brian the Appellant was diabetic which required INSULIN SHOTS and glucose upon hypoglycemia. Appellant was arrested by an officer who said under oath that Appellant was medically cleared but the hospital didn't even check his blood sugar and the officer never checked

Appellant's medical records (pg. 3688-3689) and knew nothing of the permanent health issue of type one diabetes. Appellant could have DIED IN CUSTODY since the arresting officer Robert Jones didn't even know that Appellant was diabetic. He was not medically and psychologically cleared. The only witness who charged Appellant with making an obscene display had lacked credibility (See pg. 3581-3590; DECLARATIONS/AFFIDAVITS pg. 3987-4008). The witness Robert Jones lacked credibility by claiming Appellant had made an obscene display which was why he was charged with indecent exposure (pg. 3650-3653). The sole basis of obscenity when Appellant was charged then arrested was based on a fraud since the information was not credible and not factual, the medically and psychologically cleared element of his criminal charge and arrest was based on a fraud and was not credible and neither was it factual. All of that was argued (pg. 3543-3649) with supporting evidence (pg. 3650-3986, 3987-4008) included within the Appellant's motion and subsequent supportive filings (pg. 4064-4088, 4089-4114). There is evidence of body-camera footage deletion in violation of court orders as already documented in **Assignment of Error 4** and the U.S. Probation Officer being ignorant about the body-camera footage and the U.S. Attorney who prosecuted the Appellant was ignorant of the body-camera footage. Nobody knew in the Federal Court that such evidence was proven to have existed. Statement of the Facts are of evidence and facts from the record supporting relief for this Assignment of Error (See Statement of the Facts in Appeal Brief Pg. 37-47).

Assignment of error 6. The Trial Court erred as a matter of law and/or abused discretion in its three orders (pg. 4120, 4255, and 4277) denying Appellant's motion for relief (pg. 3543-3649) and Appellant's motion for reconsideration of the Trial Court's denial of Appellant's "MOTION FOR SET ASIDE OR RELIEVE DEFENDANT OF JUDGMENT OF CONVICTION OF CRIMINAL CHARGE…" (pg. 4148-4206); when the Trial Court had not held any evidentiary hearing or inquiry hearing before its three court orders denying Appellant's motions when there was enough evidence of fraud of both extrinsic and intrinsic. See the motion (pg. 3543-3649) with supporting evidence (pg. 3650-3986 and 3987-4008) included within the Appellant's motion and subsequent supportive filings (pg. 4064-4088, 4089-4114). The **Assignment of Error 4** had already argued factually and legally that the body-camera footage destruction had been proven with the FOIA response letter, and it had proven that three court orders (**EXHIBIT #22**, pg. 3921-3929) regarding discovery were not complied with by Glen Andrew Hall, Esquire. It is clear that some sort of hearing or contempt of court charge was warranted here. Appellant had provided the "judge" of the Trial Court with clear and convincing evidence. A Police Chief, is credible evidence/witness, the top police officer of Martinsville Police Department, a higher position of legal authority than the lower position of charging police officer Robert Jones who arrested Appellant for the charge of indecent exposure. The Police Chief is a credible witness, and a judge of the Trial Court is supposed to take the word of a credible witness, especially a top

law enforcement officer who admitted what date the body-camera footage was deleted from the DVMS system (pg. 4094-4094) which was on April 9, 2019. Based on **every other assignment of error**, the evidence is enough to warrant at least an inquiry hearing or evidentiary hearing to determine the extrinsic fraud and if there is enough to legally require that the Trial Court consider vacating the criminal conviction (pg. 3920-3920) or setting it aside. The whole point of deterring fraud upon the court or fraud on the court is to keep the criminal records truthful, credible, legal, and factual. Same with the civil records, keeping them truthful, credible, legal, and factual. When a charge is potentially false or is based on false pretenses or has one or more fraudulent elements, there should be no criminal conviction to be sustained. If a conviction is sustained on fraud or frauds, then nobody will see the credibility of any record of the Trial Court that allows fraud to be considered the valid verdict of a case or cases. Statement of the Facts are of evidence and facts from the record supporting relief for this Assignment of Error (See Statement of the Facts in Appeal Brief Pg. 37-47).

Assignment of error 7. This Court should extend and/or modify existing law to hold that the Trial Court erred as a matter of law and/or abused discretion in its three orders (pg. 4120, 4255, and 4277) denying Appellant's motion for relief (pg. 3543-3649) and Appellant's motion for reconsideration of the Trial Court's denial of Appellant's "MOTION FOR SET ASIDE OR RELIEVE DEFENDANT OF JUDGMENT OF CONVICTION OF CRIMINAL CHARGE…" instead of

initiating one, two, or three contempt of court charges or inquiries to determine whether the Appellees at the Trial Court level (Not Appellate level) such as Glen Andrew Hall, Esquire, and Assistant Commonwealth's Attorney Scott Albrecht have intentionally disobeyed one, two or three court orders in such an egregious way as to the inability to recover evidence which has been permanently destroyed/deleted and spoliated(spoliation). That under the law and the rule of law, any officer of a court who had deceived the judge of the court by concealing the existence of evidence then it was reported as deleted at a certain date years later by not being marked as evidence, then that officer had defrauded the court. Not just defrauded the court but has refused to follow one or more court orders. See Va. Code § 18.2-456 ("4. Misbehavior of an officer of the court in his official character; 5. Disobedience or resistance of an officer of the court, juror, witness, or other person to any lawful process, judgment, decree, or order of the court"). See what was argued in the Motion for Reconsideration (Pg. 4148-4206) and it's supporting exhibits (pg. 4207-4254). It is clear that when a court order is not followed and the Commonwealth's Attorney can get away with it without any penalty or sanction, no punishment, then it creates issues of an untrustworthy prosecutor. See article citation (given to Appellant by family and Appellant did not use internet) https://www.city-journal.org/article/untrustworthy-prosecutors - Untrustworthy Prosecutors | City Journal, ("Under two Supreme Court cases, Brady v. Maryland and Giglio v. United States, prosecutors are constitutionally required to disclose to defense lawyers the

credibility problems of potential prosecution witnesses, such as a history of lying or drug use. Police officers are justifiably warned that lying in any capacity can not only endanger their ability to testify but also result in termination."). Termination meaning termination from their employment, their career is gone. See the argument from Appellant's motion to reconsider (pg. 4185-4186) arguing the potential issues of allowing the prosecutor Glen Andrew Hall, Esquire of Appellees to totally get away with a fraudulent prosecution and disobeying court orders without any repercussions or consequences creates a lawless Government (pg. 4188-4189). See what was argued in the record of the Trial Court in Olmstead v. United States, 277 U.S. 438, 485 (1928) ("Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means — to declare that the Government may commit crimes in order to secure the conviction of a private criminal — would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face."). It is not just the law for a judge or Clerk to charge a person or lawyer for disobeying a court order, it prevents anarchy. It

prevents vigilantism. It prevents the average American people from trying to become a law onto himself. Usually, the average citizen respects the law and that only lawbreakers are punished when each suspect is proven to have broken the law in a court of law under the exercise of due process of law. When a Commonwealth Attorney or District Attorney decides to disobey the law or disobey even a court order, then it is the duty of the court to sanction or have penalties against the Commonwealth Attorney or District Attorney to at least give the appearance of the rule of law, equal protection of law. The rule of law requires that everyone obey the law including the Government, including the law enforcers, otherwise the law is set up for only a certain class or tier of people. This would turn America into the caste system which is a class-based system (pg. 4192). Where government lawyers can break the law and even rob innocent people of their money, while the average person is held accountable to the law even when no law was broken. A system of slavery where the 13th Amendment can be abused to bring slavery back to the average citizen of the United States of America, where no crime has to be proven to imprison and enslave a prisoner. No crime even has to exist to enslave somebody. What kind of world? What kind of society do we want? Do we want a society based on merits or based on who is in a position of power? Are we the rule of law or law of man (pg. 4193)? Anyways, the motion for reconsideration at issue for this assignment of error brings up the horrible consequences of allowing Glen Andrew Hall to break the law and never face any justice. See pg. 4185-4187, 4190-4191. Statement of the Facts

are of evidence and facts from the record supporting relief for this Assignment of Error (See Statement of the Facts in Appeal Brief Pg. 37-47). Relief is warranted, motions should have been granted.

Assignment of error 8. The Trial Court should have granted either the Motion for relief (pages 3543-3649) or the Motion to Reconsider (pg. 4148-4206) on the basis of the Statement of the Facts (See Statement of the Facts in Appeal Brief Pg. 37-47), all material evidence and relevant evidence within the Statement of the Facts of both motions, and based on the law.

The Assignments of Error are the most necessary issue in this brief since this Court will only take notice of the assignments of error.

STATEMENT OF THE NATURE OF THE CASE AND MATERIAL PROCEEDINGS BELOW

Brian David Hill, the Appellant, filed a motion on or about January 26, 2023 entitled: "MOTION FOR SET ASIDE OR RELIEVE DEFENDANT OF JUDGMENT OF CONVICTION OF CRIMINAL CHARGE PURSUANT TO VIRGINIA CODE § 8.01-428(D), VIRGINIA CODE § 8.01-428(A) AND VIRGINIA CODE § 8.01-428(B) ON THE BASIS OF FRAUD UPON THE COURT, CLERICAL FACTUAL ERRORS" (pages 3543-3649). This motion itself has twenty-five (25) Exhibits of evidence, four (4) evidence Declarations under oath/penalty of perjury, ADDENDUM TO FOIA REQUEST TO MARTINSVILLE

POLICE DEPARTMENT AND CITY OF MARTINSVILLE – FOIA REQUEST (ORIGINALLY JANUARY 20, 2023) (Pg. 4064-4071), response to Appellant's FOIA request (pg. 4089-4119).

The Circuit Court had entered a judgment/order (pg. 4120-4120) denying Appellant's motion (pg. 3543-3649) for setting aside or relieving defendant of judgment pursuant to Virginia Code § 8.01-428(d), Virginia Code § 8.01-428(a) and Virginia Code § 8.01-428(b) on the basis of fraud upon the court, clerical factual errors. That was in the Circuit Court for the City of Martinsville. Case number is CR19000009-00. That decision was made on February 14, 2023.

In summary, after the quick and expedient denial of the first motion, Brian David Hill, the Appellant, had filed a second motion (pg. 4148-4206) to reconsider the order (pg. 4120-4120) denying Appellant's motion (pg. 3543-3649) for setting aside or relieving defendant of judgment pursuant to Virginia Code § 8.01-428(d), Virginia Code § 8.01-428(a) and Virginia Code § 8.01-428(b) on the basis of fraud upon the court, clerical factual errors. That motion was filed on February 17, 2023.

The Circuit Court had entered a second judgment/order (pg. 4255-4255) denying Appellant's second motion (pg. 4148-4206) to reconsider the order (pg. 4120-4120) denying Appellant's motion (pg. 3543-3649) for setting aside or relieving defendant of judgment pursuant to Virginia Code § 8.01-428(d), Virginia Code § 8.01-428(a) and Virginia Code § 8.01-428(b) on the basis of fraud upon the

court, clerical factual errors. That was in the Circuit Court for the City of Martinsville. Case number is CR19000009-00. That decision was made on February 17, 2023. Same day that motion was filed, it was denied.

Appellant's mother Roberta Hill who files online (internet, filing by email) on Appellant's behalf due to his federal supervised probation conditions where he cannot use the internet, Roberta had filed concerns that Appellant made a clerical mistake in not including all evidence (missing evidence) and notification was given to both the Clerk and the judge of the Trial Court (pg. 4257-4276). The judge of the Trial Court had considered this clerical mistake of certain evidence not being attached to a previous filing/pleading by entering the final third judgment/order (pg. 4277-4277) denying Appellant's second motion (pg. 4148-4206) with consideration of the clerical mistake (pg. 4257-4276) but had still denied Appellant's second motion to reconsider the order (pg. 4120-4120) denying Appellant's motion (pg. 3543-3649) for setting aside or relieving defendant of judgment pursuant to Virginia Code § 8.01-428(d), Virginia Code § 8.01-428(a) and Virginia Code § 8.01-428(b) on the basis of fraud upon the court, clerical factual errors. That was in the Circuit Court for the City of Martinsville. Case number is CR19000009-00.

The Appellant had filed a Notice of Appeal (1) on February 21, 2023 (pg. 4278-4291) appealing the judgment/order (pg. 4255-4255) on February 17, 2023 denying Appellant's motion (pg. 4148-4206).

The Appellant had filed a Notice of Appeal (2) on February 21, 2023 (pg.

4292-4306) appealing the judgment/order (pg. 4120-4120) on February 14, 2023 denying Appellant's motion (pg. 3543-3649).

The Appellant had filed a Notice of Appeal (3) on February 21, 2023 (pg. 4313-4325) appealing the judgment/order (pg. 4277-4277) on February 21, 2023 denying Appellant's motion (pg. 3543-3649) when this decision was made after clarification of missing evidence.

There are no transcripts as there were no hearings by the Circuit Court in regards to the Motions for relief due to fraud on the court. They were denied without any evidentiary hearing, denial without ordering or conducting any inquiries, and were denied without any concurring opinion or reason as to why they were denied. In the previous appeals which are all consolidated with the three appeals for this final appellant brief, the judge had stated that he had no jurisdiction to make a decision over Appellant's motions for new trial and/or judgment of acquittal. The judge did not assert lack of jurisdiction in the three orders of motions being denied at issue for the three most recent appeals cases no. 0313-23-3, 0314-23-3 and 0317-23-3.

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 relief and Motion for reconsideration of denying Appellant's motion for relief.

2. For the sake of brevity and the word limit, Appellant will not reproduce

the entire "STATEMENT OF THE FACTS" in the first "MOTION FOR SET ASIDE OR RELIEVE DEFENDANT OF JUDGMENT OF CONVICTION OF CRIMINAL CHARGE PURSUANT TO VIRGINIA CODE § 8.01-428(D), VIRGINIA CODE § 8.01-428(A) AND VIRGINIA CODE § 8.01-428(B) ON THE BASIS OF FRAUD UPON THE COURT, CLERICAL FACTUAL ERRORS" in this Opening Appeal Brief. Therefore, Appellant hereby incorporates by reference, as if fully set forth herein, all Statement of the Facts in pages 3563-3622 of the record from the Trial Court submitted by the Clerk.

3. For the sake of brevity and the word limit, Appellant will not reproduce the entire "STATEMENT OF THE FACTS" in the second "MOTION TO RECONSIDER THE ORDER DENYING "MOTION FOR SET ASIDE OR RELIEVE DEFENDANT OF JUDGMENT OF CONVICTION OF CRIMINAL CHARGE PURSUANT TO VIRGINIA CODE § 8.01-428(D), VIRGINIA CODE § 8.01-428(A) AND VIRGINIA CODE § 8.01-428(B) ON THE BASIS OF FRAUD UPON THE COURT, CLERICAL FACTUAL ERRORS"" in this Opening Appeal Brief. Therefore, Appellant hereby incorporates by reference, as if fully set forth herein, all Statement of the Facts in pages 4155-4194 of the record from the Trial Court submitted by the Clerk.

4. Appellant had filed a "MOTION FOR SET ASIDE OR RELIEVE DEFENDANT OF JUDGMENT OF CONVICTION OF CRIMINAL CHARGE PURSUANT TO VIRGINIA CODE § 8.01-428(D), VIRGINIA CODE § 8.01-

428(A) AND VIRGINIA CODE § 8.01-428(B) ON THE BASIS OF FRAUD UPON THE COURT, CLERICAL FACTUAL ERRORS" (3543-3649). This was pursuant to Virginia Code § 8.01-428(D), Virginia Code § 8.01-428(A) AND Virginia Code § 8.01-428(B). This motion itself has Exhibits of evidence:

EXHIBIT/EVIDENCE/PLEADING (Pg. 3641-3645)	PAGE RANGE
EXHIBIT 1: PHOTOCOPY OF ARREST WARRANT AND CRIMINAL COMPLAINT IN GENERAL DISTRICT COURT - 09-21-2018	3650-3563
EXHIBIT 2: TRANSCRIPT OF THE SUPERVISED RELEASE REVOCATION HEARING BEFORE THE HONORABLE THOMAS D. SCHROEDER UNITED STATES DISTRICT JUDGE; CASE NO. 1:13CR435-1; September 12, 2019 3:37 p.m.; Winston-Salem, North Carolina	3654-3735
EXHIBIT 3: Billing Record from Sovah Health Martinsville; ADMITTED 09/21/18, DISCHARGED 09/21/18	3736-3740
EXHIBIT 4: NIH NATIONAL CANCER INSTITUTE, peripheral venous catheter	3741-3742
EXHIBIT 5: NIH NATIONAL CANCER INSTITUTE, delirium	3743-3744
EXHIBIT 6: (1) 3% Sodium Chloride Injection, USP; (2) Sodium Chloride _ NaCl – PubChem; (3) Sodium_chloride	3745-3818
EXHIBIT 7: STATUS REPORT OF PETITIONER SEPTEMBER 27, 2018, RE-MAILED ON OCTOBER 10, 2018	3819-3830
EXHIBIT 8: EXHIBIT IN FEDERAL COURT RECORD, containing Doctor letter from Dr. Shyam E. Balakrishnan, MD	3831-3833

Brian David Hill on Friday, September 21, 2018, from Sovah Health Martinsville, scan in both color	
EXHIBIT 19: Email record: Brian D. Hill asked me to send this email to you about his appealed case	3910-3912
EXHIBIT 20: Email record: Fw: Brian D. Hill request	3913-3918
EXHIBIT 21: ORDER IN MISDEMEANOR OR TRAFFIC INFRACTION PROCEEDING	3919-3920
EXHIBIT 22: Three Court Orders. One from General District Court (Case no. C18-3138), two from Circuit Court (Case no. CR19000009-00)	3921-3929
EXHIBIT 23: Scan of incomplete medical records of patient Brian David Hill on Sunday, November 19, 2017, from Sovah Health Martinsville, scans in both color, and black and white	3930-3960
EXHIBIT 24: Carilion Clinic medical records of COMPREHENSIVE METABOLIC PANEL(COMP) [368602038] (Abnormal)	3961-3964
EXHIBIT 25: DECLARATION OF BRIAN DAVID HILL IN SUPPORT OF MOTION FOR SET ASIDE OR RELIEVE DEFENDANT OF JUDGMENT OF CONVICTION OF CRIMINAL CHARGE PURSUANT TO VIRGINIA CODE § 8.01-428(D), VIRGINIA CODE § 8.01-428(A) AND VIRGINIA CODE § 8.01-428(B) ON THE BASIS OF FRAUD UPON THE COURT, CLERICAL FACTUAL ERRORS	3965-3986
EVIDENCE DECLARATION ATTACHMENTS LIST (Pg. 3987-3990)	
ATTACHMENT 1: DECLARATION OF ROBERTA HILL IN SUPPORT OF "PETITIONER'S AND CRIMINAL DEFENDANT'S MOTION TO CORRECT OR MODIFY THE RECORD PURUANT TO APPELLATE RULE l0(e)"	3991-3993
ATTACHMENT 2: DECLARATION OF BRIAN DAVID HILL IN SUPPORT OF "PETITIONER'S AND CRIMINAL DEFENDANT'S MOTION TO CORRECT OR MODIFY THE RECORD PURUANT TO APPELLATE RULE lO(e)"	3994-3999
ATTACHMENT 3: DECLARATION OF STELLA FORINASH IN SUPPORT OF "PETITIONER'S AND CRIMINAL DEFENDANT'S MOTION TO CORRECT OR MODIFY THE RECORD PURUANT TO APPELLATE RULE l0(e)"	4000-4005

ATTACHMENT 4: DECLARATION OF KENNETH FORINASH IN SUPPORT OF "PETITIONER'S AND CRIMINAL DEFENDANT'S MOTION TO CORRECT OR MODIFY THE RECORD PURUANT TO APPELLATE RULE l0(e)"	4006-4008
ADDENDUM TO FOIA REQUEST TO MARTINSVILLE POLICE DEPARTMENT AND CITY OF MARTINSVILLE – FOIA REQUEST (ORIGINALLY JANUARY 20, 2023) (Pg. 4064-4071)	
DECLARATION OF BRIAN DAVID HILL IN SUPPORT OF FOIA REQUEST FILED ON JANUARY 20, 2023, AND IN SUPPORT OF "ADDENDUM TO FOIA REQUEST TO MARTINSVILLE POLICE DEPARTMENT AND CITY OF MARTINSVILLE – FOIA REQUEST"	4072-4088
(case no. CR19000009-00) Forward email of response to Brian David Hill's FOIA Request. – **APPELLANT NOTE:** Judge Greer received a copy of email and attachment noted below.	4089-4092
ANSWER - BRIAN HILL-FOIA REQUEST - Brian Hill FOIA Request.pdf - **APPELLANT NOTE:** Judge Greer received a copy of attachment of the email noted above.	4093-4095
OTHER - EMAI-RE: STATUS OF FOIA – **APPELLANT NOTE:** Judge Greer received a copy of email	4096-4099
DECLARATION OF BRIAN DAVID HILL OF NEW EVIDENCE CONCERNING PUBLIC DEFENDER ASSISTANT SCOTT ALBRECHT IN SUPPORT OF MOTION FOR SET ASIDE OR RELIEVE DEFENDANT OF JUDGMENT OF CONVICTION OF CRIMINAL CHARGE PURSUANT TO VIRGINIA CODE § 8.01-428(D), VIRGINIA CODE § 8.01-428(A) AND VIRGINIA CODE § 8.01-428(B) ON THE BASIS OF FRAUD UPON THE COURT, CLERICAL FACTUAL ERRORS (Pg. 4100-4114)	
AFTER ORDER - DENIED MOT SET ASIDE CONV (Pg. 4120-4120)	
OTHER - COPY EMAIL	4121-4122
OTHER - COPY EMAIL -HILL	4123-4130
OTHER - STATUSLETTER-JUDGE 2-14-23	4131-4144
OTHER - SHORTSUMMARY-2-14-2023	4145-4147

5. Appellant had filed a "MOTION TO RECONSIDER THE ORDER DENYING "MOTION FOR SET ASIDE OR RELIEVE DEFENDANT OF

JUDGMENT OF CONVICTION OF CRIMINAL CHARGE PURSUANT TO VIRGINIA CODE § 8.01-428(D), VIRGINIA CODE § 8.01-428(A) AND VIRGINIA CODE § 8.01-428(B) ON THE BASIS OF FRAUD UPON THE COURT, CLERICAL FACTUAL ERRORS”” (4148-4206). This motion was asking for reconsideration of the first motion being denied:

	EXHIBIT/EVIDENCE/PLEADING	PAGE RANGE
	EXHIBIT 1: Printout of email to Roberta Hill at rbhill67@comcast.net, From: Kendall Davis kdavis@ci.martinsville.va.us; Date: 2/13/2023, 3:01 PM; Subject: Re: Status of FOIA Request of Brian David Hill?	4207-4210
	EXHIBIT 2: Digital Copy of Letter from Kendall Davis, Public Information Officer, City of Martinsville, Dated: February 10, 2023	4211-4214
	EXHIBIT 3: Printout of email to Roberta Hill at rbhill67@comcast.net, From: ROBERTA HILL rbhill67@comcast.net; Date: 2/13/2023, 3:37 PM; Subject: Fwd: Status of FOIA Request of Brian David Hill?; To: "Hon. Jean P. Nunn, Clerk of the Court" <jnunn@ci.martinsville.va.us> CC: Martinsville City Commonwealth's Attorney <ahall@ci.martinsville.va.us>, "stanleybolten@justiceforuswgo.nl" <StanleyBolten@justiceforuswgo.nl>, "kenstella2005@comcast.net" <kenstella2005@comcast.net>, Ken & Stella Forinash <kenstella@comcast.net>, "Hon. Giles Carter Greer (Judge)" <cgreer@ci.martinsville.va.us>	4215-4219
	EXHIBIT 4: STATUS LETTER TO HONORABLE GILES CARTER GREER	4220-4234

	(JUDGE); CLERK OF MARTINSVILLE CIRCUIT COURT, Date: Tuesday, February 14, 2023	
	EXHIBIT 5: DECLARATION OF BRIAN DAVID HILL OF NEW EVIDENCE CONCERNING PUBLIC DEFENDER ASSISTANT SCOTT ALBRECHT IN SUPPORT OF MOTION FOR SET ASIDE OR RELIEVE DEFENDANT OF JUDGMENT OF CONVICTION OF CRIMINAL CHARGE PURSUANT TO VIRGINIA CODE § 8.01-428(D), VIRGINIA CODE § 8.01-428(A) AND VIRGINIA CODE § 8.01-428(B) ON THE BASIS OF FRAUD UPON THE COURT, CLERICAL FACTUAL ERRORS; "Respectfully filed/submitted with the Court, This the 13th day of February, 2023."	4235-4248
	EXHIBIT 6: SHORT SUMMARY OF WHAT WAS PROVEN AS TO FRAUD ON THE COURT Prepared by Stella Forinash, edited and modified by Brian David Hill Case no. CR19000009-00, For Martinsville Circuit Court; Date: February 14, 2023	4249-4252
	EXHIBIT 7: Printout of Email record originally held by Attorney Scott Albrecht, Email involving Jeanie Nunn, Nancy Sherman, Scott Albrecht, Andy Hall, and Judge Greer. Printout from case files given to Defendant from Attorney Matthew Scott Thomas Clark.	4253-4254

3. EMAIL EXPLANATION AND EXHIBIT WITH WHAT WAS MISSING EVIDENCE FOR "MOTION TO RECONSIDER THE ORDER DENYING "MOTION FOR SET ASIDE OR RELIEVE DEFENDANT OF JUDGMENT OF CONVICTION OF CRIMINAL CHARGE PURSUANT TO VIRGINIA CODE § 8.01-428(D), VIRGINIA CODE § 8.01-428(A) AND VIRGINIA CODE § 8.01-428(B) ON THE BASIS OF FRAUD UPON THE COURT, CLERICAL FACTUAL ERRORS"" REFILED DUE TO ERROR ON PART OF APPELLANT BEFORE LAST FINAL ORDER WAS ISSUED BY JUDGE OF TRIAL COURT. CLERICAL

CORRECTION WAS MADE THEN THE JUDGE MADE THE FINAL ORDER AFTER THE CORRECTION WAS MADE BY APPELLANT ON RECORD.

	EXHIBIT/EVIDENCE/PLEADING	PAGE RANGE
	OTHER - COPY EMAIL – **APPELLANT NOTE: JUDGE GREER WAS INCLUDED IN EMAIL**	4257-4259
	EXHIBIT 2: Digital Copy of Letter from Kendall Davis, Public Information Officer, City of Martinsville, Dated: February 10, 2023	4260-4274
	EXHIBIT 3: Printout of email to Roberta Hill at rbhill67@comcast.net, From: ROBERTA HILL rbhill67@comcast.net; Date: 2/13/2023, 3:37 PM; Subject: Fwd: Status of FOIA Request of Brian David Hill?; To: "Hon. Jean P. Nunn, Clerk of the Court" <jnunn@ci.martinsville.va.us> CC: Martinsville City Commonwealth's Attorney <ahall@ci.martinsville.va.us>, "stanleybolten@justiceforuswgo.nl" <StanleyBolten@justiceforuswgo.nl>, "kenstella2005@comcast.net" <kenstella2005@comcast.net>, Ken & Stella Forinash <kenstella@comcast.net>, "Hon. Giles Carter Greer (Judge)" <cgreer@ci.martinsville.va.us>	4275-4276

6. All of this proves Brian David Hill does have enough evidence for showing a fraud upon the court.

7. Appellant was pushing for relief from a wrongful conviction due to the prosecution’s fraud upon the court (See paragraphs 2-5 of this opening brief concerning the STATEMENT OF THE FACTS) disproving the elements of the

Appellant's charge.

8. 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." (pg. 3651-3653)

9. Appellant filed the new evidence for the purposes of demonstrating a severe case of fraud upon the court. Rule 1:1 does not bar a motion for a relief from a fraudulent begotten judgment based on evidence proving fraud, pursuant to the laws of Virginia Code § 8.01-428(D), Virginia Code § 8.01-428(A) and Virginia Code § 8.01-428(B).

10. 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/Appellees says is untruthful or not factual.

11. This is the first time on appeal in the three appeals cases no. 0313-23-3, 0314-23-3 and 0317-23-3 that Appellant had demonstrated prime facie evidence of extrinsic fraud on the Court committed by Appellees in the Trial Court, that is after Appellant obtained new evidence by Freedom of Information Act request, that is prima facie evidence of extrinsic fraud. That will be explained in Assignments of Error.

12. The motions at issue in the three noted appeals were denied without any

evidentiary hearing, denial without ordering or conducting any inquiries, and were denied without any concurring opinion or reason as to why they were denied. In the previous appeals which are all consolidated with the three appeals for this final appellant brief, the judge had stated that he had no jurisdiction to make a decision over Appellant's motions for new trial and/or judgment of acquittal. The judge did not assert lack of jurisdiction in his three orders of motions being denied at issue for the three most recent appeals cases no. 0313-23-3, 0314-23-3 and 0317-23-3.

ARGUMENT

i. Standard of Review

All errors assigned on appeal are errors of law, errors of fact. All Assignments of error involve mixed questions of law and fact. This Court's review therefore is de novo and based on the facts of the case. E.g., Palace Laundry, Inc. v. Chesterfield County, 276 Va. 494, 498, 666 S.E.2d 371, 374 (2008). 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, to ensure that the law is being followed. The Gazette, Inc. v. Harris, 229 Va. 1, 19, 325 S.E.2d 713, 727-28 (1985); see also, e.g., United States v. Friday, 525 F.3d 938, 949-50 (10th Cir. 2008), cert. denied, 129 S. Ct. 1312 (2009), and cases

cited therein (the independent review standard); New Life Baptist Church Academy v. Town of East Longmeadow, 885 F.2d 940, 941 (1st Cir. 1989) (Breyer, J.), cert. denied, 494 U.S. 1066 (1990) (“‘First Amendment questions of “constitutional fact” compel… de novo review’”) (citations omitted).

All legal arguments and factual arguments are already argued in each assignment of error. Do not need to reduplicate what is already argued, for the sake of brevity.

CONCLUSION

Appellant requests from this court for the following relief: The judgments/orders on February 14, 2023, February 17, 2023, and February 21, 2023 by the Circuit Court for the denial of Appellant's motions should be reversed/vacated, and the case should be remanded for further proceedings based on the Assignments of Error and the Statement of the Facts, as well as the grounds raised. Appellant requests relief accordingly and asks for any other relief that the Court of Appeals of Virginia may deem proper and just.

REQUEST FOR ORAL ARGUMENT

As this appeal raises important constitutional, evidential, and legal issues which were believed overlooked or were not taken into consideration, the Appellant requests oral argument.

Respectfully Filed/Submitted on December 1, 2023,

BRIAN DAVID HILL

Pro Se

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CERTIFICATE OF COMPLIANCE

1. This brief complies with Rule 5A:19(a) regarding the type-volume limits (word limit 12,300 or page limit at 50 pages) 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 [12,300] words.

   This brief is [49] pages excluding page exemptions.

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

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

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

Brian D. Hill
Signed
Brian D. Hill

Dated: December 1, 2023

Brian David Hill – Ally of Qanon
Founder of USWGO Alternative News
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Virginia 24112
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Pro Se Appellant

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 1st day of December, 2023, I caused this "OPENING BRIEF OF APPELLANT" to be delivered by email service by Assistant/Filing-Representative Roberta Hill using rbhill67@comcast.net or rbhill67@justiceforuswgo.nl on the Commonwealth of Virginia and City of Martinsville (Appellees) through the ~~Commonwealth Attorney's Office of Martinsville City; as well as to the~~ (recused himself from the Circuit Court case, special prosecutor appointed in contempt of court case, so Commonwealth Attorney may have recused himself from all of the case in the Trial Court) 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 PLEADING shall satisfy the proof of service was required by Rule 5A:2(a)(1) and Rule 5A:1(c)(4):

~~1. Glen Andrew Hall, Esq.~~
~~55 West Church Street, P.O. Box 1311~~

~~Martinsville, Virginia 24112 or 24114 (for P.O. Box)~~
~~Telephone: 276-403-5470~~
~~Fax: 276-403-5478~~
~~Email:~~ ~~ahall@ci.martinsville.va.us~~ (recused himself, special prosecutor appointed but only for the contempt of court case, but he may have recused himself from the entire case, not sure)

Counsel for Appellees'

1. Justin B. Hill, Esq.
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Telephone: (804) 786-2071
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oagcriminallitigation@oag.state.va.us

Counsel for Appellees'

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 or Stanley Bolten is filing the pleading on Brian's behalf for official court business. Brian has authorized Roberta Hill and Stanley Bolten to file the pleading.

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

Brian D. Hill
Signed
Brian D. Hill

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