

EMERGENCY LETTER TO CLERK OF COURT OF APPEALS OF VIRGINIA

Re: 0313-23-3, 0314-23-3 and 0317-23-3, Brian David Hill v. Commonwealth

Thursday, November 30, 2023 06:39 AM
WILL BE FILED ON: Friday, December 1, 2023

ATTN: Clerk of the Court Court of Appeals of Virginia CC: Panel of Judges	109 North Eighth Street Richmond, VA 23219-2321 Phone: (804) 371-8428
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CC: Counsel for Appellees, Note: received a copy by rbhill67@comcast.net.

Clerk,

I write this EMERGENCY LETTER which I wish to file with you at the exact same time I am filing my Appeal Brief and Designation of the Record which is at issue in my Motion for Leave of Court to file my Appellant's Designation of the Record and Appeal Brief.

I ask the Clerk that this letter be distributed to the very panel of judges making a decision on granting or denying my filed Motion for Leave of Court. I had filed that motion with the Clerk on October 27, 2023. I know the Clerk has acknowledged receipt by confirmation through the VACES system.

This is for CAV cases nos. 0313-23-3, 0314-23-3 and 0317-23-3.

I keep waiting for weeks to see if my motion was granted, and no decision had been made yet. I may have had a misunderstanding about something or I am assuming something here. So I am trying to get the Appeal Brief and Designation ready to file as soon as I can.

I assumed that I would be given 40 days to file my appeal brief and time for filing the Designation after my/Appellant's motion was granted. After weeks going by without a decision on that filed motion (filed: October 27, 2023), I had finally realized that there

may be a chance that the panel of judges or the Clerk is waiting for me to file my Appeal Brief and Designation of the Record before the 40 days after my motion was filed. At least I am assuming. I could be wrong. Whatever the case may be, I had decided a week ago to start working on the Assignments of Error in my Appeal Brief and Designation of the Record.

I actually have to finish my Appeal Brief before I can even finish my Designation of the Record because the Designation of the Record template which I had used to produce the Designation filings in the past, had a section where it said “Assignment of Errors”. So I assume that I have to copy and paste my Assignment of Errors in my Designation filing. The problem is, because of the word limit for appeal briefs, I am limited to how many assignments of error I can bring up along with the other things in the Appeal Brief. So I cannot file the designation before the appeal brief due to the issues where my assignments of error may exceed the word limit. I have to file the Designation of the Record and Appeal Brief together at the same time because after I finish the Appeal Brief work and make sure that it does not exceed the word limit, then I have to copy and paste the Assignments of Error to the Designation of the Record.

The Designation of the Record is too important because the record of the Trial Court is already approximately 4,327 pages, with a lot of evidence exhibits and some Declarations, as well as the letter from the Public Information Officer, and the letter to the judge. The evidence is in different sections of the record in 2023. Things got derailed by my contempt of court criminal charge earlier this year which was dismissed without me being convicted. During the six months period as explained in my already-filed Motion for Leave of Court, I wasn't even permitted to file a response to the Appellees motion for consolidation and that caused a lot of headaches and issues. He wanted consolidation to the extent where I was forced to ask for leave of court just to finish my three appeals where no brief was ever filed in those cases.

There is a lot of evidence of fraud on the court. I have evidence on record which is prima facie. One such piece of evidence from Police Chief Rob Fincher of City of Martinsville Police Department through the Public Information Officer Kendall Davis. Evidence proving that the Commonwealth of Virginia and City of Martinsville illegally destroyed evidence by not ever marking the body-camera footage as evidence once in the custody of Martinsville Police Department. After they had charged me with indecent exposure, the body-camera footage recorded during the alleged incident should have been marked as evidence and should have been produced at my first Trial in the General District Court. I was never informed in writing of the proven existence of this evidence until February 10, 2023. Years after my criminal case had come to a close. So it is extrinsic fraud. My court appointed lawyer told me in 2019 that the body-camera

footage had been destroyed, but me telling that to the Court may be considered hearsay without any tangible evidence. I didn't have proof of it in writing until this year.

Justin Hill, counsel for the Appellees had filed an opposition brief last year and said that I did not have prima facie evidence of extrinsic fraud on the court. This year I was given prima facie evidence of extrinsic fraud on the court, in response to my Freedom of Information Act (FOIA) request filed this year after the former police chief stepped down from office. I will explain in my assignments of error how I have this prima facie evidence of extrinsic fraud on the court right from the record of the Trial Court. Justin will now have to address this prima facie evidence of extrinsic fraud. By his own definition in his opposition brief, Extrinsic fraud is a type of fraud which prevents a fair submission of the controversy to the court. The body-camera footage is evidence which would have proven my innocence to my charge of indecent exposure by showing that I was intoxicated or at least it would have shown the appearance of intoxication which goes along with the hospital deleting my laboratory tests from my chart after they were ordered at the Emergency Room which is yet another unexplained cover up. It was destroyed because it would not help the prosecution but would have harmed the prosecution's case. Doesn't matter, it violated three court orders and prevented the Defendant/Appellant from a fair submission of the controversy to the court. So the fraud could only be found out this year. All of that is explained in the Assignments of Error and yet the evidence itself can explain itself which backs up the Assignments of Error concerning extrinsic fraud on the court.

He was wrong to request broad consolidation of all of my appeals without at least giving me the right to file a brief for my three remaining appeals on record where no brief was ever filed. Those appeal cases are no. 0313-23-3, 0314-23-3 and 0317-23-3.

Anyways, I have briefly explained the situation. I assumed that I wait for the Court to grant my motion before working on my appeal brief. Weeks go by without a decision, then I now feel that I may be having to file my appeal brief and designation before 40 days after I filed that motion.

Look, I am not a lawyer, and I don't know why the motion hasn't been granted or denied yet. I have a right to file an appeal brief for my three remaining appeals where no brief was ever filed. Justin Hill, counsel for Appellees filed that motion for consolidation with the Court of Appeals of Virginia prior to even reviewing over the record which I felt was reckless and wasn't a good idea. He didn't know that this year I did have a certain piece of irrefutable evidence that I did not have last year in the record of the trial court, evidence of the deletion of the body-camera footage which proves extrinsic fraud since the Police Department had voluntarily admitted to this in response to my FOIA

Request when the body-camera footage was deleted, why it was not preserved as evidence after I was charged with indecent exposure, and the policy regarding retention of the body-camera footage. The Police Chief admitted that it was at the discretion of the Commonwealth's Attorney to mark body-camera footage as evidence. This places Glen Andrew Hall as solely responsible for the unlawful destruction of the body-camera footage on April 9, 2019, after two court orders were issued for discovery materials. Then a third court order came in months later asking for discovery material. The Commonwealth neglected to tell Hon. Giles Carter Greer that the evidence requested by the court was deleted before the third court order (first court order was in General District Court). He kept his mouth shut which makes him complicit or responsible in disobedience of following court orders, and neglected to do his duty as an officer of the court for the Commonwealth of Virginia or as an officer of the court for any party. Not only that but this also may mean that Glen Andrew Hall, Esq. on record, destroyed evidence which may also have been subject to an investigation by the United States Probation Office investigating my state charge of indecent exposure in 2018 to determine if I had violated any condition of supervision. The evidence the U.S. Probation Office had collected went to the United States Attorney for prosecuting me in 2018-2019 as proven in a federal court transcript in the record of the Trial Court. The proof that I am on supervised release was submitted by both me and by the Commonwealth's Attorney Glen Andrew Hall to the Circuit Court on record. He knew I was under supervision and withheld evidence from the U.S. Probation Office, who are federal law enforcement officers who conduct supervision and investigate any potential violations of the supervision. So Glen Andrew Hall may have violated 18 U.S. Code § 1519 - Destruction, alteration, or falsification of records in Federal investigations and bankruptcy. This issue about Glen Andrew Hall violating federal law and court orders is also planned on being brought up as an Assignment of Error at issue since it is within the record of the Trial Court. It is also on record that I had informed Hon.; Giles Carter Greer of the Trial Court that Glen Andrew Hall had violated 18 U.S. Code § 1519, by disobeying the Circuit Court orders. He also violated federal law by covering up the very evidence subject to the federal investigation over my potential alleged supervised release violation. The body-camera footage could have exonerated me in both federal court and in the Circuit Court. The fraud is extrinsic fraud, which will be explained in the Assignments of Error. I will do the best I can to bring this up where I can from the record.

There is evidence and issues brought up this year where it warranted at least one more appeal brief if not three briefs. I wish Appellees would have asked for the record of the Trial Court before asking for consolidation of all appeals. It was his duty under Due Process Clause to notify the Court of Appeals that I wasn't allowed to file there for six months when I was barred from filing at all in my state appeals or any state court for six

months during the pendency of my contempt of court criminal charge against me to protect my due process of law. Because he didn't notify this Court, it screwed up my last three appeals and thus I had to take the time and gather the evidence to file my Motion for Leave of Court.

I have to explain that my Appellant's Designation of the Record and the Appeal Brief must be filed together since both talk about Assignments of Error. I hate to neglect to bring up my planned Assignments of Error in my Designation without typing them up in my brief to make sure that I comply with the word limit and then copy and paste the Assignments of Error to the Designation of the Record to make sure that the Designation is following any usual procedures.

Again, I am not a lawyer and I am making assumptions here or I may be correct. I do wish to go ahead and file my Brief and Designation and hope that both are granted leave to file. Too much is at stake here. Too much evidence is at stake here.

I appreciate you taking the time and effort to address this matter and hope that I you understand the situation. Thank You!


Signed

Brian D. Hill

God bless you,
Brian D. Hill
Appellant

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