

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**

REPLY BRIEF OF APPELLANT



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SUMMARY

Brian David Hill, (“Appellant”) files this Reply Brief pursuant to Rule 5A:19(a) of this Court, and this is in response to the Appellee’s “BRIEF OF THE COMMONWEALTH”, which was filed on January 2, 2024.

Appellant feels that the “BRIEF OF THE COMMONWEALTH” contains gaslighting, false statements or statements inconsistent with the record of the Trial Court, statements which do not address the Assignments of Error demonstrated in the foregoing appeals by Appellant. Appellant feels that the Appellees had engaged in distortions, falsehoods, gaslighting, and trickery.

False statement made on page 18 of Appellee brief:

“Here, Hill alleges that the Commonwealth committed fraud during his trial by purportedly destroying body camera footage of his arrest. (footnote 9) ... Notably, the body camera footage was only deleted at the end of its retention period and only because neither party identified those videos as being needed in Hill's case. If either party had, the videos would have been retained indefinitely. (R. 4093-95). Contrary to Hill's assertions, that did not violate the discovery orders in his case that required the Commonwealth to "permit counsel for [Hill] to inspect and copy" pertinent evidence. (R. 3922, 3924, 3927).”

Response to false statement made on page 18 of Appellee brief:

The statements highlighted in yellow above are not true statements as there is nothing on the record which proves it, and thus are not credible. The credibility of

counsel for Appellees needs to be determined here as to any truthfulness or falsity of the Appellee's statements. The body-camera footage was at issue in the court orders for discovery. At least the court orders described the exact same thing as what would amount to the body-camera footage recording of defendant made at the time of his arrest and detention.

Yes, that did violate the discovery orders in Appellant's case when those court orders were being ignored by the Commonwealth in that context. Ignored because of silently allowing the body-camera footage to be deleted. Ignoring court orders does violate them. It is disobedience, it is a form of resistance by not following the court orders. What's the point of court orders if they can be ignored? A Court becomes a joke if anyone can disobey court orders without repercussions.

Page 76 and 78 of the Trial Court record:

“(1) 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...”

The court orders themselves did describe the exact same thing as the body-camera footage. It was never turned over to the defendant, and it was deleted because it was never marked as evidence “BY THE COMMONWEALTH” (pg. 4093-4095). The FOIA response letter from Public Information Officer and Police Chief had insinuated that it was the responsibility of the “Commonwealth's Attorney” to mark the body-camera footage as evidence, and the Police Department as a matter of

policy did not say that it was the defense attorney's responsibility to locate and obtain the body-camera footage. Justin Hill is wrong to make the argument that it was both counsels responsibility to even make it appear that both decided off of the Trial Court record behind the scenes that the body-camera footage was not considered evidence for the criminal case of Appellant. The court orders were directed at both parties, and it was the duty of the Commonwealth's Attorney to disclose the body-camera footage as evidence. Justin Hill, counsel for Appellees is trying to negate the responsibility and duties of the Commonwealth Attorney, by acting as though the responsibility lies with both counsel in the case. Ineffective counsel or not, Martinsville Police Department in that very three-page letter cited by Justin Hill (pg. 18 of Brief of the Commonwealth), said that "The DVMS follows a retention system for those videos that have not been marked as evidence by the Commonwealth's Attorney's Office. If the Commonwealth's Attorney's Office designates a video as evidence it is retained indefinitely." It is not the duty of the defense attorney, ineffective counsel or not, to be marking body-camera footage as evidence according to the policy of Martinsville Police Department. IT IS THE DUTY OF Appellees at the trial court level. Justin Hill is attempting to falsely paint the Commonwealth Attorney as not violating the court orders by simply rearranging the deck chairs to make it appear that both parties have a duty to consider body-camera footage as evidence. It is up to the prosecutor, according to Martinsville Police Department. Justin Hill made another false statement.

Why was it never marked as evidence?

“only because neither party identified those videos as being needed in Hill's case.” That is a false statement. It is the duty of the prosecutor according to Police Department policy as argued in the three-page letter. There is nothing on the Trial Court record proving any such determination that the video was not needed as evidence was ever made. Appellees didn't cite any portion of the record proving that both parties have a responsibility at Martinsville Police Department to mark the body-camera footage as evidence or just decide that it not be needed. They never said both parties are responsible to mark a body-camera footage as evidence. How would they know that those videos were not needed as evidence? How would they determine any of this? Which area of the Trial Court record proves that both parties were responsible according to policy and had decided not to mark the body-camera footage as evidence without any notification to the judge or clerk, and considered it neither as being needed as evidence in Appellant's criminal case?

Are there transcripts or written statements in the Trial Court record from pages 1-264 which would prove that such determination was made that *“neither party identified those videos as being needed in Hill's case”*? Justin Hill doesn't have any evidence or record from the Trial court. He is gaslighting this court.

Also, the defendant filed evidence or writings with the Trial Court proving that he wanted the body-camera footage as evidence. It contradicts what the brief of the Commonwealth had claimed in page 18 of Appellees brief. There was nothing

on the record showing that any pre-determination was made by either side of attorneys on whether it is evidence subject to the court orders for discovery. Nothing on the record shown that they decided to make some determination of it not being considered evidence. In fact, it was the Appellant's court appointed attorney who asked for the court orders (pg. 30-31, 78, 114) involving discovery materials including recorded statements of what defendant made to a law enforcement officer which is what a body-camera footage is supposed to contain. This proves that the body-camera footage was wanted as evidence, and the Appellees at the trial court level had failed to deliver what the court had requested. Justin Hill is part of advocating a cover up and is okay with destroying evidence, wanting the permanent cover up of body-camera footage evidence. **This is a cover up**, and Appellees through Justin Hill want to bring their frauds to the Appeals Court to persuade them to believe in their frauds, and accept their gaslighting. Appellees are defrauding the court of appeals to try to strongarm Appellant into giving up his appeals. Telling lies and using a letter from the police chief to make the determination that the body-camera footage was not considered evidence by both counsel, despite defense counsel saying "I ASK FOR THIS" (pg. 31-31, pg. 78-78, pg. 114), Trial Court record).

Appellees cannot act as though they don't know what the laws are or they cannot assume things in their response brief without proof to back every claim. Many criminal cases in case law by this Commonwealth are of criminal cases where the body-camera footage is considered evidence. The Appellees act as though both

counsel of Appellant’s criminal case had just decided without informing Appellant or the court that they did not consider the body-camera footage as evidence when many criminal cases in Virginia consider body-camera footage as evidence in a criminal case subject to court orders if it exists, which the letter from the Public Information Officer and Police Chief had proven this (pg. 4093-4095). See *Carter v. Commonwealth*, 300 Va. 371, 373 (Va. 2021) (“On January 24, 2018, after 10:00 p.m., Officer S.C. Reed of the Lynchburg Police Department was dispatched to Carter's home. As the footage from Officer Reed's body camera attests, when he...”). That case mentions about the body-camera as evidence. Another case law of Virginia mentions about body-camera footage and demonstrates its importance in criminal cases. See *Green v. Commonwealth*, No. 0861-22-4, 15 (Va. Ct. App. Sep. 5, 2023) (“Detective Seibert's testimony was largely consistent with what was depicted on his body worn camera footage. As the trial court observed, having heard and seen the witnesses and the body worn camera footage, Green "sped at such a high rate of speed”).

The body-camera footage was deleted on April 9, 2019, according to the record (pg. 4212-4214). It was proven that what was requested was information as to the body-camera footage as per Appellant’s request to the City of Martinsville under the Freedom of Information Act (FOIA) in record pg. 3851-3858.

Appellant did ask the Trial Court for the body-camera footage on his legal filing (pg. 135-157) entitled the “Motion for Discovery” with the Trial Court which

was filed on July 26, 2019 (pg. 157), by pro se filing, during the pendency of the Trial Court proceedings for his criminal case. Not knowing that the footage had already been destroyed on April 9, 2019 (pg. 4212-4214), Appellant had been misled into thinking that the body-camera footage could still be obtained by discovery after it was secretly deleted without any notice to the judges of the General District Court and Circuit Court. The Public Defender asked again for discovery evidence on July 15, several months after it was secretly destroyed. Why would the Public Defender and judge (signatures are everything) file that if he knew it was deleted on April 9, 2019 (pg. 112-114) and agreed that it wasn't needed as evidence? Was the Public Defender deceived as well? Is that not extrinsic fraud?

Page 135 of the Trial Court record:

“Hill and/or his family have attempted to contact Martinsville Police Department ("CC: Commonwealth Attorney") through written multiple correspondences asking for the body camera footage of Officer Sgt. R. D. Jones, by Hill writing the Martinsville Chief of Police G. E. Cassady asking for the body-camera footage to be turned over to...”

This motion was filed months after the body-camera footage was deleted, and the Court had not known about this. Appellant was deceived. The Court was deceived. That was because the evidence was silently and secretly deleted.

“Contrary to Hill's assertions, *that did not violate the discovery orders in his case* that required the Commonwealth to "permit counsel for [Hill] to inspect and copy" pertinent evidence. (R. 3922, 3924, 3927).”

Appellees neglected to understand that the court orders for what can reasonably be described as evidence of the body-camera footage were wanted by the defense attorney saying (pg. 31-31, Trial Court record) “I ASK FOR THIS:” with Public Defender Scott Albrecht’s signature and name, as well as the signature of the Commonwealth’s Attorney. This itself disproves this false statement by Justin Hill of Appellees. He acts as though both parties just decided outside of court record secretly behind the scenes that the body-camera footage was not evidence (pg. 4093-4095), thus Justin Hill’s erroneous claim that no court orders were violated, but the statements made in the court orders for discovery all say “I ASK FOR THIS:” (pg. 31-31, pg. 78-78, pg. 114). This does not sound like even the defense attorney just decided out of the blue that the body-camera footage didn’t matter as evidence. What would be the point of a defense attorney and Commonwealth’s Attorney wasting a judge’s time with possibly a frivolous discovery request of asking for, my god, “body-camera footage?” and signing court orders which included what can be reasonably described as a body-camera footage and yet then decide out of the blue outside of the court records that the body-camera footage is not evidence without ever any reason why?

The Appellees are wrong on this one. The Appellees are not the judge and did not enter the court orders as the judge in the case. The judge specifically said in the court order that: “(1) *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...” The Chief of Police Rob Fincher in the City of Martinsville made it appear that it was the responsibility of the Commonwealth’s Attorney (pg. 4093) to mark the body-camera footage as evidence. The Attorney General is wrong with their insinuation that the body-camera footage was somehow not any material evidence subject to the court order and thus contended that “...Contrary to Hill's assertions, that did not violate the discovery orders in his case that required the Commonwealth to "permit counsel for [Hill] to inspect and copy" pertinent evidence. (R. 3922, 3924, 3927).” Yeah, it did violate the discovery orders in the Trial Court case.

Justin Hill is trying to protect the lawbreaking Glen Andrew Hall, who did violate those court orders. He did cover up the evidence as it was HIS RESPONSIBILITY according to what was said in the letter from Rob Fincher of Martinsville Police (pg. 4093).

This is what is called gaslighting, when a party is caught doing something wrong, they double down, triple down, and quadruple down in denying everything or making excuses. This is gaslighting. Police record on their body-camera footage every arrest they made because of the law. See Virginia Code § 15.2-1723.1. Body-worn camera system.

Because of the word limit, Appellant cannot expose all falsehoods of Justin Hill, counsel for Appellees in reply brief, but will expose one more falsehood.

False statement made on page 2 of Appellee brief:

“The trial court properly denied Hill's motions. Hill fails to allege a prima facie case of extrinsic fraud.” Page 16 of Appellee brief: “2. Hill failed to plead a prima facie case of extrinsic fraud.”

No that is not true, gas lighting from Justin Hill. Appellant explains why even with the strict 3,500 word limit, not enough words to be allowed to disprove every one of Appellees counsel Justin’s Hill’s false statements in his brief of the Commonwealth.

Appellant already covered a great extent about explaining why Appellant had proven extrinsic fraud on the court in Assignment of error 4 in pages 14 through 26. Appellant asks the Court to consider all Assignments of Error when determining whether Appellant had proven extrinsic fraud.

Since Appellees are gaslighting this Court, Appellant will prove further from the record of the Trial Court that Appellant did prove extrinsic fraud.

Appellees had brought up about case law regarding this issue. Extrinsic fraud "consists of 'conduct which prevents a fair submission of the controversy to the court' and, therefore, renders the results of the proceeding null and void." Peet v. Peet, 16 Va. App. 323, 326-27, 429 S.E.2d 487, 490 (1993) (citing Jones v. Willard, 224 Va. 602, 607, 299 S.E.2d 504, 508 (1983)). When extrinsic fraud exists, "the unsuccessful party is really prevented, by the fraudulent contrivance of his adversary, from having a trial [of the issue]" McClung v. Folks, 126 Va. 259,

270, 101 S.E. 345, 348 (1919). "A collateral challenge to a judgment obtained by extrinsic fraud is allowed because such fraud perverts the judicial processes and prevents the court or non-defrauding party from discovering the fraud through the regular adversarial process." Peet, 16 Va. App. at 327, 429 S.E.2d at 490. Examples of extrinsic fraud include: "[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; or being regularly employed, corruptly sells out his client's interest." McClung v. Folks, 126 Va. at 270, 101 S.E. at 348.

So, Justin Hill was basically admitting to this but yet not admitting to this. That is how tricky lawyers can be. I am here to clear the deception.

Here is what the record proves.

Page 28 of the record, shown that Public Defender Scott Albrecht had filed a motion for the discovery evidence which encompasses the police body-camera footage. Pages 30-31 of the record is where the first court order came in, and Albrecht had asked for this and was also signed by the Commonwealth's attorney who had the sole duty to mark the body-camera footage as evidence (R. 4093-95). The Commonwealth had failed to do so because it was deleted due to not being marked as evidence by the Commonwealth Attorney. The Commonwealth's Attorney had clearly ignored the court orders pushed forth by Appellant's court appointed legal counsel. Ignoring court orders are illegal, it is disobedience of the

court. The reason the body-camera footage was deleted was because the court orders were ignored by Glen Andrew Hall, Esq. That can be proven with the three-page letter.

Appellant and the Trial Court were deceived during the pendency of the trial court proceedings in 2019 which is the earmark of extrinsic fraud, which did in fact “prevents the court or non-defrauding party from discovering the fraud through the regular adversarial process”. Spoliation of evidence after it was subject to a court order is fraud. It is extrinsic when it was secretly deleted because of ignoring the court orders by the very officer of the court which had a sole duty to mark the footage as evidence.

Here is the proof from the record. See pg. 135-157 of the Trial Court record. Appellant had filed a motion on July 26, 2019 asking for the body-camera footage separately from his lawyer who also had done the same thing earlier (pg. 28-31) and even a few months after it was silently deleted (pg. 112-114) with a motion asking for the same. Why would Appellant file such a motion pro se??? Because he had never been able to review over such evidence. He filed this with the Trial Court, with Judge Greer, with both not knowing that it had already been destroyed/deleted/spoliated on April 9, 2019 (pg. 4093-4095). The judge was deceived because Appellant’s pro se motion for discovery would give him the impression that the body-camera footage was not deleted by the Police Department’s automatic DATA retention schedule, and it would give the impression that Appellant

did not know that it was already deleted and impossible to recover at the time this was filed.

That is where the extrinsic fraud can really be proven and has been proven all along. When Appellant had filed his motion to vacate the fraudulent begotten judgment as argued in Appellant's assignment of errors, he did prove extrinsic fraud as the record itself from the very beginning of the entire criminal case had proven extrinsic fraud. The judge knew when he first saw the three-page letter regarding the body-camera footage (pg. 4093-4095) that it was deleted months before Appellant had filed a motion asking for the body-camera footage in 2019 with both the judge and defendant/Appellant not knowing at the time that Appellant was asking for evidence which was secretly deleted and destroyed as the Commonwealth Attorney had ignored the court orders which he agreed to or seen (without objection) with his signatures (pg. 31, 78, 114). The Commonwealth knew the court orders match the body-camera footage within the very scope of those court orders. The only way Appellees would not have to comply with those court orders would be to have to explain to the judge in writing or in hearing that the body-camera footage is not needed as evidence. There was no such hearing, no such something in writing proving any of this on the record of the Court.

Justin Hill had made false statements here. Appellant recommends that the brief of the Commonwealth be either disregarded in part or entirely or is to be taken as lack of credibility. There may be arguments which may be valid, but Appellant

has caught false statements in that Appellees opposition brief filed on January 2, 2024.

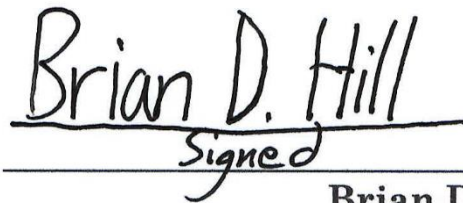
CONCLUSION

Appellant has proven enough falsehoods and issues from “Brief of the Commonwealth” by Appellees. Appellant recommends to this honorable Court that the brief of the Commonwealth be disregarded in full or in part or consider that it lacks credibility due to the false statements by the Appellees.

Respectfully Filed/Submitted on January 15, 2024,

BRIAN DAVID HILL

Pro Se

A handwritten signature in black ink that reads "Brian D. Hill". The signature is written in a cursive style and is positioned above a horizontal line.

Brian D. Hill

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CERTIFICATE OF COMPLIANCE

1. This brief complies with Rule 5A:19(a) regarding the type-volume limits (word limit 3,500 or page limit at 20 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 [3,485] words.

This brief is [14] 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].



Signed

Brian D. Hill

Dated: January 15, 2024



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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 15th day of January 15, 2024, I caused this “REPLY 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):

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

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


Signed

Brian D. Hill

U.S.W.G.O.



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