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 OF MARTINSVILLE

PETITION FOR APPEAL OF APPELLANT

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RULE

Brian David Hill, (the "Appellant" or "Petitioner") files this Petition for Appeal pursuant to Rule 5A:12 of the Rules of this Court, and this is the Second Direct Appeal case due to the first Appeal case (cases no. 0128-20-3, 0129-20-3) being dismissed due to lawyer John Ira Jones, IV ("Jones"), not filing any pleading or motion. Motions for delayed Appeal were filed by that lawyer for his mistake and were granted, and the Appeals were allowed to be filed again.

Since the Counsel Jones, has failed or refused to communicate with Appellant with the deadline fast approaching, Appellant had decided to file the Petition for Appeal on a pro se basis to prevent the Appeals from being dismissed again due to no filing by the deadline set by the Court.

There is no transcript as the Clerk of the Circuit Court had filed a record transmittal to the Court of Appeals of Virginia:

Citing from record: "Your record was submitted to be processed on: 01/29/2020 11:00:15" The record stated that "No transcript or statement of facts will be filed and therefore the record is being sent as is. THIS APPEAL WAS TRANSMITTED ELECTRONICALLY"". Petitioner had attempted to file a letter with this Court and the Lower Tribunal known as the Circuit Court of Martinsville (the "Trial Court"), asking the Trial Court to produce Transcripts of all criminal case hearings, but the Trial

Court does not seem to have any Transcripts for any of the hearings. Therefore, Appellant has done his part and will rely mainly on the Record on Appeal and the paper filings in Record for this Petition for Appeal.

The statement of the facts "statement of facts" that is in this "Petition for Appeal" to the Court of Appeals of Virginia as "II. STATEMENT OF THE FACTS" will cite the exact pages of the record in regards to the statement of the facts. Appellant is aware from the past filings of the Respondent that the Commonwealth of Virginia will disagree with the Appellant's statement of facts and produce their own. Well Appellant will produce his truthful and factual statement of the facts that will outweigh even the Commonwealth's statement of facts and will be proven by citing the exact areas of the record prior to the final judgment of the Trial Court. The Petitioner will show exactly from the record where the "Assignment of Errors" refers to.

I. STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

Brian David Hill, (the "Appellant" or "Petitioner") petitions for being allowed to perfect the appeal from a final judgment in a criminal case that had entered a final criminal conviction which had adjudicated Petitioner as guilty of violating Virginia Code § 18.2-387 Indecent Exposure, which such final judgment was filed on November 18, 2019, in the Circuit Court of Martinsville by the Honorable Judge Giles Carter Greer. The notice of appeal was timely filed on November 16, 2020,

after the Court of Appeals had granted the motion for delayed appeal after dismissing case no. 0128-20-3 for counsel not filing any pleading by the deadline that was set by Rule 5A:12(a). Appeal is authorized as timely pursuant to Virginia Code § 8.01-675.3, if the Petition for Appeal is granted by this court. Appellant will demonstrate the matters of judicial error (assignments of error) and abuses of discretion by the Trial Court that have resulted in Unconstitutional errors, defects, and evidence that was overlooked at the time of the Final Judgment by the Trial Court, constitutional issues and matters of law in the appealed case including a substantial issue for appeal concerning the denial of a constitutional right affecting the wrongful criminal case conviction or a debatable procedural ruling. Appointed Counsel Jones is failing again to properly file any pleading with the Court by the set due date and this could end up like the last dismissed Appeals, therefore Appellant proceeds pro se and had filed his initial "AFFIDAVIT OF INDIGENCE", so Appellant requests that the Appeals Court review the Record pages cited from the case in this Petition and Appellant confirms that he has reviewed over the Record in this Appeal thanks to the Deputy Clerk.

II. STATEMENT OF THE FACTS

The Commonwealth will have their "Statement of the Facts" as is their right, but the Appellant will present its Statement of the Facts based upon evidence on the record that was not impeached and was not suppressed as evidence prior to the Final Judgment. The pages cited in the Record are with three (3) pages included which is the "TABLE OF CONTENTS" produced by the Clerk: "CAV: 02-26-2021 07:00:37 EST". A three-page difference. So, if the page cited for example is 203, then the

Trial Court record should be 200 without the Table of Contents, but the PDF File of the Trial Court record will say 203 when it includes the Table of Contents which is 3 pages. Appellant is following the page of the entire PDF file record with the TABLE OF CONTENTS included, so the page count will be 3 pages more than the page number of the record, 3 pages off.

The facts that were presented to the Trial Court are as follows:

1. On September 21, 2018, Officer Robert Jones of Martinsville Police Department had charged Appellant Brian David Hill with the crime of Indecent Exposure under Virginia Code § 18.2-387. See pg. 4 of 961, ARREST WARRANT. Under Page 6 the CRIMINAL COMPLAINT was filed as an Affidavit supporting the criminal charge against Appellant. It said in part of the COMPLAINT: "He was medically and psychologically cleared. He was arrested for indecent Exposure." That was the basis for why his charge had stuck was that the Trial Court was given the impression that Brian was medically and psychologically cleared. That actually is not the facts here. Appellant had filed various pro se filings that were overlooked by the Trial Court and was never known to the General District Court on December 21, 2018, the TRIAL that was held in the General District Court where Appellant was found guilty and Appellant had timely appealed the case to the Circuit Court of Martinsville ("Trial Court"), the State Court of Record. Appellant had produced evidence to the Court and the Commonwealth Attorney proving that Appellant was not actually medically cleared but was

prematurely released by the Hospital while giving the impression that he was medically cleared. Simply releasing him from the Hospital is not enough to prove for a fact that Appellant Brian Hill was indeed medically cleared enough to have ever been put in a situation to be held culpable for the incident on September 21, 2018.

2. It is a fact on the record that Brian Hill was released from the Hospital on September 21, 2018 from 4:04AM to 5:11AM under pages 199 through 205 of 961. Appellant was not at the Hospital for a lengthy time to make a decent determination on whether Brian was in fact medically cleared or not. The Commonwealth who prosecuted the case did not know that for a fact that they filed a Motion for Reciprocal Discovery (Pages 243 through 244 of 961) after Brian's pro se filings. Commonwealth said in their responsive Discovery request pleading that they wanted any documentation of "…the existence of which is known to the Attorney for the Commonwealth, and <u>any relevant written reports of autopsies, ballistic tests, fingerprint analysis, blood, urine and breath tests, other scientific reports</u>, and <u>written reports of a physical or mental examination</u> <u>of the Defendant</u> or the alleged victim made in connection with this particular case." So, the Commonwealth of Virginia didn't even know for a fact themselves whether Brian was medically cleared that they asked for reciprocal discovery. If they did get the evidence, the very same Medical Record that was filed by Appellant pro se in CORRESPONDENCE, pages 199 through 205,

then they know that the Hospital had decided to refuse to conduct the Laboratory testing including alcohol levels and had just decided to release Brian to “Jail/ Police” on Page 204. The Hospital had clearly skirted their responsibility, had committed medical neglect knowing that Brian was going directly to Jail and could not contact his private physician, it was incompetence. The Medical Record also shows that they never tested his Type 1 Diabetic blood sugar when they knew he was diabetic (pg. 200). That also does not make him medically cleared when they never even tested his blood sugar level knowingly sending him out to face a Magistrate Judge for his charge of Indecent Exposure without ever checking his blood sugar. A big medical NO!-NO! on record. Also, on Page 146 of the record in the PDF file, zoom in closely at the words, “Sinus Tachycardia”, and “105bpm” which is beats per minute. A resting blood pulse should not be over 100 or is considered Tachycardia, an abnormally high heart rate. Then see Page 152, “TRANSIENT CARDIAC DYSFUNCTION IN ACUTE CARBON MONOXIDE POISONING”. That document mentions of the same term “bpm” and explains what it means. Then it also said that “First responders arrived within 30 minutes and found her to have sinus tachycardia with a heart rate of 100 beats per minute”. From the Medical Record in Page 146 of the record, it is clear that Brian had a history of Tachycardia and had similar abnormal readings multiple times at the Hospital on the day of his arrest for Indecent Exposure

after being at the Hospital for an estimated 1 hour or less there, not enough time to fully check his health to make sure that he was truly medically cleared, they did not. Around 4:09AM the "Pulse 119", around 5:01AM "Pulse 106". Those readings were actually worse than the "Sinus Tachycardia" reading on Page 146 of the record. So, wouldn't Brian's health be worse than when he was in the Hospital on "Sunday, November 18, 2017", according to Page 144 of the record. Brian actually was Hospitalized with "Sinus Tachycardia" for having a resting blood pulse of "105" but yet on September 21, 2018, his blood pulse was actually worse than the last time he was admitted in the Hospital but they never actually did any laboratory tests when they clearly should have when considering his behavior described by police and didn't even understood that Brian was suffering under Tachycardia and they "Discharged to Jail/Police" on 4:52AM according to their report. None of it makes any sense, they released a patient knowing that Jail has the worst Medical Care, they released him while he suffered under Tachycardia and they never checked his blood sugar knowing that was he was diabetic before they discharged him and not even giving him an hour at the Hospital. Hardly gave any time to actually give any thorough medical clearing. Then on Page 203, it said: "Differential diagnosis: fracture, sprain, penetrating trauma, et al. bdh ED course: Cleared from a psychiatric standpoint by Behavioral Health. patient will be discharged to jail." That actually does not say

the words “cleared” from a regular medical standpoint and they could not legally say so when evidence showed that Brian had Tachycardia readings that were actually higher than Brian’s last Hospital stay in 2017. That is all in the Record prior to the final conviction of Brian David Hill for Indecent Exposure. So, it is a FACT that Brian was not medically cleared and that the Arresting Officer and his affidavit under Criminal COMPLAINT on Page 6 was wrong when the evidence had shown that Brian was not medically cleared at all. There were Laboratory tests being ordered on Page 205 of the Record. See from the Record it said that “The following items were deleted from the chart, and then 04:52 09/21/2018 04:52 Discharged to Jail/Police.” So, **they used his arrest as an excuse to cancel the Laboratory Tests and then the blood vials reportedly destroyed and evidence spoliated**, which is evidence destruction, OBSTRUCTION OF JUSTICE under 18 U.S. Code § 1519 since Appellant was on Federal Supervised Probation. The Commonwealth knew that evidence was being destroyed, evidence that would have proven that Brian was suffering under some kind of chemical or substance which would explain his psychiatric episode he had suffered while he was taking photographs of himself in the nude. Anybody in the Court who saw the photographs submitted as Exhibits from the Commonwealth can tell that he was acting as though he were on drugs or some narcotic or substance. It all makes sense. The Commonwealth can disagree with this medical

FACT all he wants to but the evidence is evidence and the FACTS are the FACTS and were never refuted. Page 286 also brought up the "Sinus Tachycardia" arguments. Then on Page 287, said "So Brian's heart beats were at extremely high or even possibly dangerous levels (high risk of a heart attack or a stroke) showing signs that something was wrong with Brian's body which can also attribute to his confusing mental state." That was cited in Appellant's "Motion to Request an Insanity Defense — Sanity at the time of the Offense", Page 285. However, this fact of not being medically cleared by irrefutable Medical Records and was argued pro se by Appellant were overlooked by the Trial court and overlooked by the Defense counsel aka Appellant's court appointed lawyers.

3. There is clearly a conflict in the Hospital psychologically clearing Brian on September 21, 2018, Page 203 of 961. Then there was another mental evaluation on Page 193, "10/24/2018 9:61 AM to 10:23", dated October 24, 2018, prior to the Court ordered Mental Evaluator meeting with Appellant for determining Sanity in the General District Court. Said in Page 195 "Thought Content: Delusional", medication was prescribed by Psychiatrist Dr. Conrad Daum of Piedmont Community services in Martinsville on October 24, 2018, prior to the Mental Evaluator meeting with Appellant in the SEALED report, but not by the Hospital who quickly claimed that Brian was mentally/psychologically cleared on September 21, 2018.

Said on Record Page 195: “Obsessive-compulsive disorder, unspecified”, “Autistic disorder”, “Unspecified psychosis not due to a substance or known physiological condition”, Page 196: “Generalized anxiety disorder”, and prescribed medications were for “olanzapine 2.5 mg tablet and sertraline 50 mg tablet”. So, the psychiatrist Dr. Conrad Daum thought that Brian exhibited an “unspecified psychosis” or delusional thought content at the time of mentioning of a “guy in hodie threatened to kill my mother if I didn't do what he said" "meltdown" He was arrested for walking down the street naked and charged with a probation violation.”, Page 193 of the Record. It is clear that this diagnosis conflicts with the Hospital’s claims that Brian was mentally or psychologically cleared. Commonwealth knew this when Brian filed this information pro se. However, this fact of not being medically cleared by irrefutable Medical Records were overlooked by the Trial court and overlooked by the Defense counsel aka Appellant’s court appointed lawyer.

4. The General District Court erred on December 21, 2018, in finding Appellant guilty and that was one of the reasons why Appellant had appealed to the Circuit Court (the “Trial Court”). That is because the evidence submitted by the Commonwealth failed to show that Appellant acted intentionally to make an obscene display or exposure of his person. The counsel that was court appointed should have moved to use this exact argument or any similar arguments to request dismissal

of Brian's charges including the facts that Brian was not medically cleared. Brian thought his counsel was so ineffective that he had filed a pro se "motion to dismiss" which is Page 403 through 421 but was ignored/overlooked by the Trial Court because Appellant had counsel appointed at the time and was his last pro se motion prior to his "MOTION TO WITHDRAW APPEAL", Page 422 through 433. It is clear that Appellant could have had his charge dismissed with the evidence alleged in Appellant's truthful statement of the facts from Appellant's side of the story, his filings and evidence that was never objected to by the Commonwealth. It is clear that Appellant was never factually medically cleared. It brings forth the argument that Brian never would have possibly faced a criminal charge from the Commonwealth if his health was fully medically examined. They would have found evidence of Carbon Monoxide poisoning levels (Pages 127 through 136) which would have been reported directly to Martinsville Police and the Fire Marshals of Henry County, and the Martinsville Police highly likely would never have escalated this to a charge in the General District Court. Even if it had been escalated to a criminal COMPLAINT, Brian would have had the levels of Carbon Monoxide Poisoning had the Laboratory tests been conducted and not destroyed by the Hospital (pg. 205) and blood evidence not retained by Police during a criminal case matter. It is clear that the Virginia Health Boards need to investigate and possibly sanction that Medical Doctor

for Medical Neglect by not conducting a full Medical Clearing as necessary for Appellant to have been validly charged with Indecent Exposure.

5. When Appellant had filed his Motion to Withdraw the Appeal in the Trial Court which is Pages 422 of 961 of the Record, Page 434 the Trial Court Judge only considered his "Motion to Withdraw Appeal" as exactly that, a technical withdraw **but did not consider it as a "guilty plea" in fact the Trial Court** never entered in that Brian actually plead guilty, **he did not plead guilty, it was marked out by the Judge at the time the conviction was entered**. There was no guilty plea by Appellant. Page 434 written this: "Other: DEF ~~CHANGED HIS PLEA TO GUILTY AND~~ AFFIRMED JUDG GDC, PAY COURT COSTS." Yes, Appellant is showing the true strikethrough, the Judge had stricken the words "~~CHANGED HIS PLEA TO GUILTY AND~~" with what appeared to be a black marker pen. So, the **Judge of the Trial Court did not consider that Appellant honestly decided that he was guilty because** in his Motion with Withdraw Appeal **he said that he did not waive his actual innocence or legal innocence, he did not plead guilty by any stretch of technicality**. He felt that his counsel was giving him bad advice or was ineffective. He may not have uttered the actual words "Ineffective" but did mention those words in his Page 436 "MOTION TO VACATE FRAUDULENT BEGOTTEN JUDGMENT". So shortly after the final judgment, he did object to his

ineffective counsel with those technical words uttered in writing prior to the Notices of Appeal. In fact, Brian said there were some meddling or unethical interference or issues being raised by the Public Defender Office after they were relieved as counsel of record by the Trial Court. See 383 through 386 of 961. In Brian's motion to withdraw appeal he made some very concerning claims that were overlooked by the Trial Court in regards to ineffective counsel by possibly meddling over interference by former appointed counsel by claiming: Page 430: "He has other routes to prove his legal innocence and overturn his conviction in the General District Court. Brian doesn't to have to deal with any drama coming from the Martinsville Public Defender office over what one of Brian's friends had posted at JusticeForUSWGO.wordpress.com back in June or July 2019". The Trial Court overlooked the facts that the **Public Defender Office may have interfered with any potential future counsel whether appointed or persuading a private attorney to represent him pro bono** in **some form of unspecified retaliation campaign alleged by Appellant.** Even said in his claim that "but then removed those from the blog posting out of concerns from Brian's family that it would put a target on all of our backs." So, there was fear that Brian or his family would be targeted if "one of Brian's friends" didn't remove the blog post. So, **there was clearly some unethical behavior going on and connected with the Public Defender Office of Martinsville even**

after they had filed a motion to withdraw as counsel (Page 381), they still had some form of unethical influence which is a conflict of interest and may violate ethics. There was clear unethical behavior sounding activity going on but was also overlooked by the Trial Court. Then Brian made statements which was likely why Attorney Jones was appointed to this appeal by making statements such as "Brian is having to consider asking for a non-local Virginia attorney away from the Bible belt and away from the Public Defender office". Again, that sentence was in Page 430 of the Record file. However, this fact of dealing with unspecified unethical influence by former counsel were overlooked by the Trial Court and no evidentiary hearing was conducted over those claims.

6. It is quite clear that a lot of the Record on Appeal is of pro se pleadings in Appellant's criminal case. In fact, a very large majority of filings were of pro se material, pro se pleadings and pro se evidence. A lot of evidence demonstrating ineffective assistance of counsel on the record.
7. Any other STATEMENT OF FACTS, the Appellant will allow the Commonwealth Attorney for Appellees to retain and stipulate their FACTS of the Criminal Case. Appellant will let them stipulate their facts and side of the story but Appellant's FACTS under paragraphs 1-6 are of Appellant's side of the story that was never brought up by Defense Counsel but was brought up Pro Se by the Defense prior to the Final conviction. However, if Appellant disagrees with any of the

claims by the Commonwealth Attorney then he will file his respectful reply or bring up his disagreements in any Oral Argument pursuant to Rule 5A:12(g).

Anyways, there is U.S. Supreme Court case law and Constitutional issues that explains why Appellant believes that the Trial Court made errors in the state case, the assignments of error are stated below:

III. ARGUMENT

i. Standard of Review

A Trial Court's decision to accept Appellant's "Motion to Withdraw Appeal" and then entered a final conviction (Page 434) is reviewed for abuse of discretion and for the Errors specified in the Assignments of Error by Petitioner in asking the Court of Appeals to grant such Petition and allow Petitioner/Appellant to perfect the Appeal in asking this Court to order a reversal of the Final Order (Page 434) and dismiss the charge (Page 6) as defective due to lack of medical clearing.

When reviewing the final order of conviction (Page 434) of Appellant, such order that was imposed by the Trial Court and its reasonableness, Appellant asks for granting of this Petition for Appeal so that this Court can review over the Final Conviction for abuses of discretion and/or by Appellant showing the Assignments of Errors.

The final order (Page 434) had stated from the record that **Appellant had not entered a plea of guilty** but **had simply technically withdrawn his appeal**. That order was entered on the 18th day of November, 2019."

IV. Assignments of Error

ii. Argument

i. The Trial Court erred by entering the Final Conviction (Page 434) as a matter of law or abused discretion in ignoring all of Appellant's pro se motions while entertaining the Pro Se filed "Motion to Withdraw Appeal" (Page 422 through 433) but ignoring/overlooking the other Pro Se Motions such as the Page 403 Motion to dismiss, Page 285 Motion to Request an Insanity Defense, and Page 305 Motion for Discovery. Either the Trial Court must ignore all Pro Se motions as Appellant had appointed counsel or it must entertain all Pro Se motions. To pick and choose which Pro Se motions to ignore and allow one Pro Se Motion is discriminatory and deprives Appellant of Due Process of Law and Equal Protection under the Law under the Fourteenth Amendment of the U.S. Constitution and deprives Appellant of Effective Assistance of counsel under the Sixth Amendment of the U.S. Constitution.

The assignment of error was that the Trial Court had errored and/or abused its discretion in accepting the Appellant's "Motion to Withdraw Appeal" (Page 422 through 433) which was filed Pro Se then entering the final conviction under page 434-435 and not through his counsel appointed by the Court, yet the Trial Court had overlooked the other Pro Se filed motions with the Trial Court that clearly should been acted upon or none of them at all. It is a deprivation of the 14th Amendment of the United States Constitution to ignore one Pro se Motion because the filer was represented by Counsel but then act upon the other Pro Se Motion simply because it benefits the Government or the Commonwealth. That is selective enforcement and is not applicable to the "**Equal Protection under the Laws**" clause that all State Courts must abide by in accordance with the Constitution of the United States of America. If the Trial Court acts on only one Pro Se motion (Page 422 through 433) then the Trial Court must act on them all and dispose each motion as being acted upon or all of them must be ignored, including the

motion to withdraw appeal and thus the Final Conviction is erroneous in one way or another. Even if the Trial Court has the right to ignore a Pro Se Motion for a criminal defendant who is represented by counsel, there is clearly something wrong when the criminal defendant must file his own Pro Se motions instead of having his lawyer file the different requests for some form of relief. It is a deprivation of Due Process to only accept one motion while ignoring/overlooking the rest, and that the only motion acted upon happens to be favorable to the Government aka the Commonwealth of Virginia, it is discriminatory. It is unequal.

What about the Motion to Dismiss the case (Page 403 through 421)?

What about the Motion to Suppress Evidence (Page 328 through 380)?

What about the Motion for Discovery (Page 305 through 327)?

What about the Motion to Request an Insanity Defense — Sanity at the time of the Offense (Page 285 through 295)?

What about the Motion to Request Substitute Counsel (Page 296 through 304)?

What about Motion to file Evidence/Photos before Trial (Page 249 through 263)?

The pro se filings that were all ignored/overlooked, even the motion requesting substitute counsel was ignored when that was simply asking for a new attorney/counsel, but not the Motion to Withdraw Appeal.

The Trial Court clearly made an error and/or abused its discretion in granting Appellant's motion (Pages 422 through 433) to withdraw appeal (Page 434) but not acting on any other motion including the request for substitute counsel. The Trial Court

must entertain all motions or ignore them all including the pro se motion to withdraw appeal and only accept one from his attorney, it cannot act on one pro se motion and ignore the rest of the pro se motions as it is unequal treatment and not equal protection under the law.

"The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss,' . . . and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication." Goldberg v. Kelly, 397 U.S. 254, 262–63 (1970), (quoting Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 168 (1951) (Justice Frankfurter concurring)). "The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." Cafeteria & Restaurant Workers v. McElroy, 367 U.S. 886, 894–95 (1961). Mitchell v. W.T. Grant Co., 416 U.S. 600 (1974); North Georgia Finishing v. Di-Chem, 419 U.S. 601 (1975).

Those pro se motions all raise fact and legal questions of whether Appellant should have even faced a fixed jury trial with ineffective assistance of counsel, would have no chance at any success when there are clearly defenses that Appellant would have for the jury trial. However, the Rules of the Supreme Court of Virginia had certain deadline time procedures.

None of Appellant's court appointed counsel submitted any witness lists, evidence lists, and not even asking for admission of expert witnesses. Appellant would lose the jury trial without ever presenting any defense, witness, expert witness, or any evidence. See

Rule 3. Uniform Pretrial Scheduling Order (Rule 1:18B). “RULES APPLICABLE TO ALL PROCEEDINGS”, “III. Designation of Experts: If requested in discovery, plaintiff's, counter-claimant's, third party plaintiff's, and cross-claimant's experts shall be identified on or before 90 days before trial. If requested in discovery, defendant's and all other opposing experts shall be identified on or before 60 days before trial.” (citation partially omitted), and “V. Exhibit and Witness List: Counsel of record shall exchange 15 days before trial a list specifically identifying each exhibit to be introduced at trial, copies of any exhibits not previously supplied in discovery, and a list of witnesses proposed to be introduced at trial.” Counsel of record did none of that, not even attempted to file a dispositive motion such as a motion to dismiss where proving that Appellant was not medically cleared would have prevented the fixed jury trial from ever occurring or had the lawyer been effective then the jury trial would have been an acquittal, more likely than not. The outcome would have been different.

The “MOTION TO DISMISS” under Page 403, the Appellant had argued that “Indecent exposure; be summarily dismissed for lack of evidence of obscenity as required by statute, according to persuasive authorities as stated herein.” Actually, even though it may be slightly defective by not arguing about the “intent” element, still proving that the Commonwealth has no evidence of intent, and while Virginia does not appear to have established a clean definition of criminal intent, Black’s Law Dictionary defines it as “[a]n intent to commit an actus reus without any justification, excuse, or other defense.”

“The ‘obscenity’ element of Code § 18.2–387 may be satisfied when: (1) the accused admits to possessing such intent, Moses v. Commonwealth, 611 S.E.2d 607,

608 (Va. App. 2005)(en banc); (2) the defendant is visibly aroused, Morales v. Commonwealth, 525 S.E.2d 23, 24 (Va. App. 2000); (3) the defendant engages in masturbatory behavior, Copeland v. Commonwealth, 525 S.E.2d 9, 10 (Va. App. 2000); or (4) in other circumstances when the totality of the circumstances supports an inference that the accused had as his dominant purpose a prurient interest in sex, Hart, 441 S.E.2d at 707–08. The mere exposure of a naked body is not obscene. See Price v. Commonwealth, 201 S.E.2d 798, 800 (Va. 1974) (finding that `[a] portrayal of nudity is not, as a matter of law, a sufficient basis for finding that [it] is obscene')." Romick v. Commonwealth, No. 1580-12-4, 2013 WL 6094240, at *2 (Va. Ct. App. Nov. 19, 2013)(unpublished)(internal citations reformatted).

The motion to dismiss would stand a good chance at prevailing due to the lack of intent evidence by the Commonwealth. There was nothing showing that Appellant was masturbating and no evidence that Appellant had the intent to display or expose himself in a way which has, as its dominant theme or purpose, appeal to the prurient interest in sex, as further defined above, without any justification, excuse, or other defense. For the reasons stated above, the Commonwealth's burden was to prove every element of the offense, including the mens rea and the element that Appellant was medically cleared, beyond a reasonable doubt. However, even if, arguendo, this Court were to find that the Commonwealth's burden was only a preponderance of the evidence, the Commonwealth has still failed to carry its burden.

Appellant was naked out there for whatever reason and the intent had yet to be proven in the General District Court, the Trial Court should have entertained the Motion

to Dismiss and question Officer Jones about whether Appellant was truly medically cleared or if it was erroneous then can that major defect of truthfully not being medically cleared by clear and convincing evidence countering the CRIMINAL COMPLAINT element that Brian was medically cleared, that nothing was wrong with him at the time he was arrested for Indecent Exposure charge. They have to prove that there were no drugs in Brian's system for him to be truly medically cleared. They would have had to check his Diabetic blood glucose/sugar to truly be medically cleared. The Martinsville Police or any Police can easily obtain a drug test and that burden would be easy to carry for the Commonwealth. The Police see a man naked at night with documented mental and physical health problems, not making any sense. They could have court ordered a drug test on Appellant if he had refused. **They should have made sure that Appellant was not under any narcotic or substance that could have caused him to run around naked at night with Type 1 brittle diabetes and nobody in his family knew where Brian was at that time.** He could have died or fallen to a diabetic seizure. **There is clearly no intent for Appellant to be convicted for indecent exposure.** His legal counsel failed him in such a horrible way that the outcome of which Appellant had sought was blocked by his ineffective counsel Matthew Clark. That is proven on the Record in this case.

ii. The Trial Court erred by entering the Final Conviction (Page 434) as a matter of law or abused discretion in not considering Appellant's pro se remarks that he was legally innocent and filed evidence supportive of that but it was all ignored simply because his court appointed attorney did not bring any of this up at all thus deprived Appellant of Due Process of Law under the Fourteenth Amendment of the U.S. Constitution and deprived Appellant of Effective Assistance of counsel under the Sixth Amendment of the

U.S. Constitution.

The assignment of error was that the Trial Court had errored and/or abused its discretion in accepting the Appellant's motion to Withdrawal Appeal (Page 422 through 433) when statements were made in that pleading which had shown a conflict between accepting responsibility and asserting his legal innocence by denying guilt. It is noted that in the final disposition, Page 434 of the Trial Court's final Judgment, "Other: DEF ~~CHANGED HIS PLEA TO GUILTY AND~~ AFFIRMED JUDG GDC, PAY COURT COSTS." Yes, Appellant is showing the true strikethrough, the Judge had stricken the words "~~CHANGED HIS PLEA TO GUILTY AND~~" with what appeared to be a black marker pen. So, the Judge of the Trial Court did not consider that Appellant honestly decided that he was guilty because in his **Motion with Withdraw Appeal he said that he did not waive his actual innocence or legal innocence**, **he did not plead guilty by any stretch of technicality**. He said "*However Brian does NOT waive his right to collaterally attack/challenge his conviction in General District Court and also does NOT waive his right to file a Writ of Actual Innocence. The reason for withdrawing his appeal is because he is facing a fixed jury trial where the cards are stacked against him. It will not be a fair trial and his legal innocence will not matter as various private lawyers had explained to Brian when Brian's family asked for free consultation with multiple private lawyers, to see if any had opinions differing from the court appointed lawyers*." Wait a minute here, if he is legally innocent and he personally believes in his court filings that he is legally innocent then why is he even withdrawing his appeal? He did object to withdrawing his appeal and brought up the substance of ineffective counsel. The Court of

Appeals should take note that even though Appellant did not utter the actual term of "ineffective counsel", he argued the very spirit of ineffective assistance of counsel when he was complaining about his lawyer being ineffective and was receiving outside attorney advice under likely free short consultations which may not have reflected his true potential defenses like there being no intent of the charge, and not being medically cleared. Appellant was focused on "carbon monoxide" defense which is a high bar to achieve such as needing the "Levels" and showing how it affected his behavior that night he was found naked. That is impossible because the blood levels could have been obtained at the Hospital on September 21, 2018, at Sovah Hospital in Martinsville. As you saw in the Medical Records filed pro se by Appellant (pages 199 through 205), "(The following items were deleted from the chart)" on the last page. It also said "STAT OVERDOSE PANEL+LAB ordered", "ALCOHOL, ETHYL+LAB ordered," "COMPLETE BLD COUNT N/AUTO DIFF+LAB ordered." So, **they were considering checking him for narcotics and alcohol in his system** but then **they decided to delete the lab tests from the chart and his blood samples were thrown away**. **That is true MEDICAL NEGLECT, and does not ever prove him to be medically cleared**, it is the opposite. He could have been smoking marijuana or was even high on Bath Salts and the Police would never make a note as to what substance or anything could have caused him to run around naked, and there are cases of those who were even high on Bath Salts and running around butt naked in public at night. The Police had lied as well as the Commonwealth Attorney Glen Andrew Hall, they are all liars when they made the claim that Appellant was medically and psychologically cleared. **No drug tests, even though for example: if**

Appellant was swerving around butt naked in a car, then likely they would have tested him for drugs and alcohol. However, because they found him simply butt naked outside of a car, they neglected to do any drug tests or any medical tests at all, and charged him as quick as they could process him into Jail. Appellant will never be able to prove the Levels of Carbon Monoxide Poisoning (Page 127 through 133). However, Appellant had made statements which prove that he was not medically cleared. He said on page 95, a written CORRESPONDENCE with the Clerk's office with a copy of a Federally filed pleading saying in not-neat hand writing that **"*At one point I felt like I might collapse so I may have been drugged*."** Document #153, officially filed on 10/17/18 said this and was filed with the Clerk of the Circuit Court of Martinsville which is the Trial Court in this case. That filing was also never reviewed by the Psychological Evaluator Dr. Rebecca Loehrer (Page 17). There should have been an evidentiary hearing on that alone. Another page of that pleading made extrajudicial statements that should have been brought up by the Commonwealth or defense Attorney saying *"(4.) On September 20, 2018, Thursday,* ***some of my memories may have been blacked out****. I was under an extreme amount of stress and anxiety already due to the pre-filing injunction Motion****. My whole family could tell. My mom had also noticed that my doors were not locked I was psychologically afraid to sleep in my bed. Sometimes sleeping on the couch and I had a bad feeling something bad would happen to me.***", citing Page 94 of the Record on Appeal, also a copy of Federal Court filing referenced Case #1:13-cr-00435-TDS, Document 153, Filed 10/17/18, Page 2 of 11. None of that was ever reviewed by the Mental Evaluator for sanity. It is clear that the entire mental evaluation was an

ERROR. Saying that he was competent or sane at the time of the offense was an ERROR. Those were relevant statements talking directly about the time of the Indecent Exposure incident, hand writing was severely sloppy as if he were on drugs, narcotics, or wasn't in his right state of mind. What can I say, they never drug tested him when they arrested him? If the Evaluator under order from the General District Court had seen any of his Federal Pleadings which were also filed with the Trial Court as CORRESPONDENCE, she would have clearly considered telling the Trial Court that he was insane at the time he was naked. He made paranoid statements, sounded delusional. Very sloppy hand writing as if high on a substance but it improved within weeks or a month after he was found naked. Something was clearly wrong or mentally impaired with Appellant on September 21, 2018, made no sense. None of that was ever brought up by his attorneys. The evaluator never saw any of his weird writings saying "*ON SEPTEMBER 18TH 2018, **Somebody was in the thicket at the end of my neighbor's property** and **branches moved whenever I looked in that direction**…**. Likely surveiling me.***". Citing Page 94, Case #1:13-cr-00435-TDS, Document #153, Filed 10/17/18, Page 2 of 11. Yes, so paranoia statements were made where Appellant said in writing that somebody was spying on him on his neighbor's property in the ticket and claimed that he saw the branches move and thought he was under surveillance. So, he was making all kinds of crazy off the wall statements. It is clear that something was mentally wrong with Appellant and yet he was declared sane and competent. See Page 64 through 70, (SEALED) EVALUATION REPORT - PSYCHOLOGICAL EVAL-GDC. It is clear that this Doctor did not review over any of Appellant's extra-judicial statements written in very sloppy handwriting and filed with

the Federal Court and later filed a copy of the exact Federal Court filing with the Trial Court in his criminal case. When you see good handwriting a few months later while Appellant was locked up, See Page 23, filed November 20, 2018, Letter dated Nov. 13, 2018. In his letter written in November, 2018, around the time he was interviewed by the Mental Evaluator on November 19, 2018, he didn't make the kind of paranoid statements that he had made after his initial arrest with the very sloppy handwriting, you can tell a difference. Very sloppy hand-writing, writing the wrong addresses (pages 186-190), making very paranoid statements and saying that he had blacked out memories and thought he was drugged and yet he kept his door unlocked. None of those statements were ever brought up with the evaluator Dr. Rebecca Loehrer (Page 17). Nothing on the Record on Appeal proves that those relevant written statements concerning his indecent exposure charge were ever reviewed for the evaluation report for the General District Court. **It is clear that Appellant had ineffective assistance of counsel as far back as his sanity evaluation in the GDC.** Piedmont Community Services thought he was delusional and exhibited a psychosis in October 24, 2018 (Pages 191 through 197, Exhibit 9). That was one month before he started acting better and was on psychotropic medications. The evaluation was done while Brian was behaving better, writing was not sloppy, and was on medication. That clearly was not his behavior in September to October 2018 on the Record. The mental evaluator did not take any of his written statements in October, 2018 into consideration. The mental evaluator did not know of Appellant's delusional notation and psychosis diagnosis from Dr. Conrad Daum in October 24, 2018 and was not taken into consideration in the General District Court. A lot of errors and evidence was

overlooked by the Trial Court, the General District Court, And the attorneys on both the Commonwealth side and the Defense side.

That deprived Appellant of effective assistance of counsel, Strickland v. Washington, 466 U.S. 688, 694 (1984). The evidence on the Record is enough and proves it. The Trial Court clearly overlooked very important critical evidence, case laws, and statements including the attorneys from both sides of the case. There should have been an evidentiary hearing with his bazaar pro se filings and statements, especially his earlier paranoid statements from close to the time of his arrest. Such actions deprived Appellant of his Constitutional right to Due Process of Law under Amendment XIV of United States Constitution.

Citing Amendment XIV of United States Constitution:

> "… nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

No state, including the Commonwealth of Virginia can "deprive any person of life, liberty, or property, without due process of law". The Trial Court clearly erred in this regard and should not have entered a final conviction.

iii. The Trial Court erred by entering the Final Conviction (Page 434) as a matter of law or abused discretion in overlooking the evidence and facts filed by Appellant without ever conducting an evidentiary hearing and inquiry into Appellant's filed Pro Se evidence and Medical Records showing that Officer Robert Jones's claim on Page 6 that Appellant was "medically and psychologically cleared." But the evidence submitted Pro Se by Appellant proves otherwise by

clear and convincing evidence that another Dr. Conrad Daum by Piedmont Community Services had showed that maybe Appellant should not have been psychologically cleared but that overlooking of such important evidence which disproves a claim by Affiant in the "CRIMINAL COMPLAINT" affidavit thus deprived Appellant of Due Process of Law under the Fourteenth Amendment of the U.S. Constitution and deprived Appellant of Effective Assistance of counsel under the Sixth Amendment of the U.S. Constitution.

The assignment of error was that the Trial Court had errored and/or abused its discretion in accepting the Motion to Withdraw Appeal (page 422-433) while evidence and facts were overlooked by holding no evidentiary hearing and ignoring the blatant signs of ineffective assistance of counsel, prior to the final conviction (page 434).

The Statement of the Facts, Paragraphs 1 through 5, Pages 4 through 14 of this Petition for Appeal, makes very good points of evidence and law.

Was Appellant medically cleared and should the Appellant have been considered medically cleared by the charging officer Robert Jones who isn't a Medical Doctor?

The Appellant does not wish to be repetitive and just cite the entire paragraphs of the "II. STATEMENT OF THE FACTS" stated in Paragraphs 1, 2, and 3. There were a lot of Medical issues filed pro se in the Record of the Trial Court. This Court of Appeals can read those paragraphs and they would be convinced based upon the Record on Appeal that counsel of both the Prosecution and Defense did not bring any of that evidence up prior to Appellant feeling the need to file a "MOTION TO WITHDRAW APPEAL" (page 422-433) pro se and not through counsel.

So, the Trial Court erred by entering the Final Conviction (Page 434) as a matter of law or abused discretion in overlooking the evidence and facts filed by Appellant

without ever conducting an evidentiary hearing. That should have happened but instead it never happened. That is the assigned error here.

The Trial Court never conducted an inquiry, neither formal or informal, into Appellant's filed Pro Se evidence and Medical Records showing Officer Robert Jones's claim on Page 6 that Appellant was "medically and psychologically cleared." But the evidence submitted Pro Se by Appellant listed in the STATEMENT OF FACTS in Paragraphs 1, 2, and 3 in this Petition for Appeal proves otherwise by clear and convincing evidence that another mental expert such as Dr. Conrad Daum by Piedmont Community Services had shown that maybe Appellant should not have been psychologically cleared but that overlooking of such important evidence which disproves a claim by Affiant in the "CRIMINAL COMPLAINT" affidavit thus deprived Appellant of Due Process of Law under the Fourteenth Amendment of the U.S. Constitution and deprived Appellant of Effective Assistance of counsel under the Sixth Amendment of the U.S. Constitution.

The clear and convincing error was that the evidence was overlooked. It was not ruled either way under the Rules of Evidence for criminal cases. The evidence was never ruled upon at all but was simply overlooked, the Trial Court slept on the issues that were present in the record until it wakes up to those overlooked evidence issues. Today is that day.

That deprived Appellant of effective assistance of counsel, Strickland v. Washington, 466 U.S. 688, 694 (1984). Because of the evidence being overlooked which is Medical Records showing that Appellant was not medically fit and not medically well

but was discharged prematurely, it was overlooked primarily because Defense Counsel and the Commonwealth Attorney would not bring up the pro se filed evidence to test the merits of the pro se evidence, Appellant was deprived of Due Process, deprived of fair and equal access to the adversarial system, and would have prevailed had counsel been effective.

This error of law means that Appellant had been deprived of Due Process of Law.

Citing Amendment XIV of United States Constitution:

> "…No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (citation partially omitted)

Citing Article I. Bill of Rights, Section 11. "Due process of law; obligation of contracts; taking of private property; prohibited discrimination; jury trial in civil cases" of Virginia Constitution:

> "That no person shall be deprived of his life, liberty, or property without due process of law…" (citation partially omitted)

His liberty was taken away. He received more supervised release sentence, 9 months of Federal Imprisonment, see Pages 390 through 391. Unless he is proven to be innocent of his state charge or is acquitted in any way and cannot be convicted, Appellant will face further deprivation of his freedom and liberty, even though it is a conditional liberty. Therefore, Appellant is still entitled to Due Process of Law in the Virginia Courts

even for a misdemeanor. He is entitled to effective counsel, fair and equal access to the Judicial process, the adversarial system. State Courts must give equal protection under the law. That includes the Constitutional right to effective assistance of counsel. That includes Due Process where all evidence must be looked over and scrutinized, and not ignored or overlooked when making a final decision affecting the life, liberty, and freedom of a criminal defendant.

The Circuit Court didn't just err or abused discretion as a matter of law, it is also in violation of Article I., Section 11 of the Virginia Constitution as well as Amendment XIV of United States Constitution.

iv. The Trial Court erred by entering the Final Conviction (Page 434) when the General District Court erred because they did not ever receive any evidence of Appellant having his dominant theme, or purpose being an appeal to the prurient interest in sex. The Commonwealth did not prove the intent/Mens-Rea of Appellant when they prosecuted him for Indecent Exposure. The <u>evidence fails to show that Appellant acted intentionally</u> to make an obscene display or exposure of his person.

The assignment of error was that the Trial Court had errored and/or abused its discretion in accepting the "Withdraw of Appeal" (pg. 422-433) and accepted the decision by the General District Court (pg. 434-435), was that the lower Court had erred when they found Appellant guilty on December 21, 2018, when the Commonwealth did not have the evidence necessary to convict Appellant, and Appellant had brought up the arguments and case law authorities in a Pro Se manner instead of through his lawyer because his court appointed counsels were ineffective that none of them brought up these case law authorities. None of them pushed for case dismissal prior to Appellant

withdrawing his appeal in the Trial Court (Pages 422 through 433).

Even though the arguments are limited due to the General District Court not being a State Court of Record and not having any Transcripts, the Appellant still argues that the General District Court of Martinsville had erred on December 21, 2018 (Page 42), in finding that the evidence before it was sufficient to find that Appellant violated Virginia Code § 18.2-387 because the evidence fails to show that Appellant acted intentionally to make an obscene display or exposure of his person. That statute provides, in relevant part, that "[e]very person who intentionally makes an obscene display or exposure of his person, or the private parts thereof, in any public place, or in any place where others are present, or procures another to so expose himself, shall be guilty of a Class 1 misdemeanor." Va. Code § 18.2-387 (emphases added).

It should be noted that in pages 35 through 39 Appellant did file a Motion to Dismiss which was entitled a "Motion for Case Dismissal with Prejudice", it also shown ineffective counsel of Scott Albrecht when he never even attempted to try a motion to dismiss the case bringing up any of the arguments that the evidence fails to show that Appellant acted intentionally to make an obscene display or exposure of his person. The counsel Scott Albrecht in the General District Court had failed to show any proof that the Commonwealth was lying in it's COMPLAINT that Brian David Hill was medically and psychologically cleared, and that plays a major role in Brian David Hill being arrested and charged with Indecent Exposure. If Brian was not being medically cleared and the Hospital did their job properly then the charge may have never been initiated.

It should also be noted that particular "Discovery" "Order" by the General District

Court on Page 33 of the Record was never fully followed/complied-with and such violation of Court Order was never sanctioned and never requested to be sanctioned by the Defense Attorney. The Court Order had said one of the types of Discovery material that should have been given to the Defense Counsel was: "(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". Later on, it was revealed in one of Appellant's Pro Se Motions that the Martinsville Police Department had the body-camera footage of Appellant making statements regarding the guy wearing the hoodie but that body-camera footage was never turned over to the Defense counsel, therefore **the Commonwealth had violated that Court order and should have been punished and sanctioned by the Court with a contempt charge.** However, Defense Counsel never pushed for such sanctions. Review over Page 305, "MOTION – DISCOVERY, and it said in that part of the Record on Appeal that "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 Brian's defense counsel (Note: Attorney Scott Albrecht, at the time) as pertinent to Virginia discovery requirements." However, that statement proves a sheer violation of the General District Court's order dated November 28, 2018. So, they had the body-camera footage and the motion requesting discovery was timely filed prior to the end of any potential retention period for the body-camera footage. **They**

didn't want to provide a copy of any of that material to the Defendant or his Defense Counsel. That material had disappeared just like the blood vials drawn from Brian's arm around September 21, 2018. See Page 413, where it says that "Yes, Brian doesn't have the levels of carbon monoxide, but Brian couldn't have been expected to produce such levels when the blood-work obtained from Brian's arm at Sovah Hospital had been destroyed after the laboratory tests were ordered but then later to be deleted from his chart, and the **Martinsville Police failed or refused to retain the blood vials as evidence to test for any drugs/narcotics, and gases in the blood**." That was spoliation of evidence and the Trial Court and the General District Court was never asked to sanction the Commonwealth for such destruction of evidence with such negligence. **Violation of Federal Law, 18 U.S. Code § 1519.**

Anyways, "The 'obscenity' element of Code § 18.2–387 may be satisfied when: (1) the accused admits to possessing such intent, Moses v. Commonwealth, 611 S.E.2d 607, 608 (Va. App. 2005)(en banc); (2) the defendant is visibly aroused, Morales v. Commonwealth, 525 S.E.2d 23, 24 (Va. App. 2000); (3) the defendant engages in masturbatory behavior, Copeland v. Commonwealth, 525 S.E.2d 9, 10 (Va. App. 2000); or (4) in other circumstances when the totality of the circumstances supports an inference that the accused had as his dominant purpose a prurient interest in sex, Hart, 441 S.E.2d at 707–08. The mere exposure of a naked body is not obscene. See Price v. Commonwealth, 201 S.E.2d 798, 800 (Va. 1974) (finding that `[a] portrayal of nudity is not, as a matter of law, a sufficient basis for finding that [it] is obscene')." Romick v. Commonwealth, No. 1580-12-4, 2013 WL 6094240, at *2 (Va. Ct. App. Nov. 19,

2013)(unpublished)(internal citations reformatted).

While the evidence may show that Appellant was naked in public, as stated above, nudity, without more, is not obscene under Virginia law. Rather, "[t]he word `obscene' where it appears in this article shall mean that which, **considered as a whole, has as its dominant theme or purpose an appeal to the prurient interest in sex**, that is a shameful or morbid interest in nudity, sexual conduct, sexual excitement, excretory functions or products thereof or sadomasochistic abuse, and which goes substantially beyond customary limits of candor in description or representation of such matters and which, taken as a whole, does not have serious literary, artistic, political or scientific value." Va. Code § 18.2-372 (emphasis added). While Virginia does not appear to have established a clean definition of criminal intent, Black's Law Dictionary defines it as "[a]n intent to commit an actus reus without any justification, excuse, or other defense."

In summary, in order to show that Appellant violated Va. Code § 18.2-372 by committing the offense of indecent exposure under Virginia law, the Commonwealth was required to prove, among other things, that Appellant had the intent to display or expose himself in a way which has, as its dominant theme or purpose, appeal to the prurient interest in sex, as further defined above, without any justification, excuse, or other defense.[1] The Commonwealth failed to do so. Rather, the Commonwealth's evidence, presented through its own witnesses, showed Appellant as someone who was

[1] For the reasons stated above, the Commonwealth's burden was to prove every element of the offense, including the mens rea, beyond a reasonable doubt. However, even if, arguendo, this Court were to find that the Commonwealth's burden was only a preponderance of the evidence, the Commonwealth has still failed to carry its burden.

running around naked between midnight and 3:00 a.m. and taking pictures of himself because he believed that someone was going to hurt his family if he did not do so. (Pages 82 and 83 of CORRESPONDENCE, Pages 81 through 126 of CORRESPONDENCE, Federal Affidavits filed in Trial Court in 2019).

The General District Court did not hear, however, any evidence of Appellant having his dominant theme, or purpose being an appeal to the prurient interest in sex. For example, there was no evidence of Appellant making any sexual remarks, being aroused, masturbating, or enjoying his conduct, sexually or otherwise. If a person was purposing to expose himself in public because he or she found it sexually arousing, it would be logical that he or she would pick a place and time where he or she would expect to encounter lots of members of the public. Appellant did not do that. Rather, he was running around between midnight and 3:00 a.m. and the witnesses to his nudity were few. Hence, the statements Appellant made to police and his conduct both indicate that, in the light most favorable to the Commonwealth, he was naked in public while having a psychiatric episode, but without the intent necessary to commit indecent exposure under Virginia law. Consequently, the General District Court erred, as a matter of law, when it found that Appellant had violated Virginia Code § 18.2-387 by committing the Virginia state law offense of indecent exposure as per Virginia Code § 18.2-387.

Appellant never actually plead guilty when he filed his "Motion to Withdraw Appeal" (Pages 422 through 433) and the Trial Court never took his motion and withdraw as a guilty plea either, stricken the notion of it being a guilty plea from his Judgment (Page 434). Even asserted that he still retains the objection that he is "legally

innocent" and still retains the right to prove his factual innocence and find another way to be permanently acquitted of indecent exposure without risking a prison sentence.

v. The Trial Court erred by entering the Final Conviction (Page 434) when the Defendant/Appellant had made complaints about the ineffectiveness of his appointed counsel who clearly was ineffective counsel; never even attempted to file any evidence or witnesses lists prior to the Jury Trial; never attempted a Motion to Dismiss.

The assignment of error was that the Trial Court had errored and/or abused its discretion in accepting the "Withdraw of Appeal" (Pg. 422-433) and convicted the criminal Defendant/Appellant Brian David Hill, when he complained in that very pleading about the ineffectiveness of his lawyer. He may not have actually said the words "ineffective counsel" until his Motion to Vacate a Fraudulent Begotten Judgment on November 25, 2019 (page 436), when that pleading mentioned the words "ineffective counsel" but his Pro Se pleading before the Judge entered the final conviction had complained and raised objections about the effectiveness of his counsel and the unethical behaviors being alleged in regards to the Martinsville Public Defender Office meddling with any legal counsel he and his family tried to seek to attempt to have effective assistance of counsel. That deprived Appellant of having a fair trial and deprived him from being able to raise defenses such as not having the intent to make an obscene display or exposure of his person. The second defense that the Officer Robert Jones lied about Defendant being medically cleared and it could have been proven from the Medical Records and by expert witness of a Medical Doctor or any random Medical Doctor who worked at a Hospital to make a determination as to whether Brian Hill should have been medically cleared or was released prematurely thus would discredit

that major issue of the CRIMINAL COMPLAINT (page 6) that Brian could have been held culpable for the alleged charge of Indecent Exposure because the Hospital supposedly medically cleared him but the evidence had shown that he was not medically cleared and that would have meant medical neglect and being prematurely released from the Hospital. Then a month later he was diagnosed as having a psychosis from Dr. Conrad Daum (Page 193) and was also labeled as "Thought Content: Delusional" under page 195. So that psychiatrist thought that Brian was not making sense but yet that evaluation was never brought up in the sanity evaluation under SEALED Record, See pages 64 through 70 (SEALED) EVALUATION REPORT - PSYCHOLOGICAL EVAL-GDC. Says on Page 18, "ADDITIONAL INSTRUCTIONS TO EVALUATOR(S) AND ATTORNEYS", that "The defendant's attorney must provide any available psychiatric records and other information that are deemed relevant within 96 hours of the issuance of this order. Va. Code § 19.2-169.1(C)." Appellant's court appointed attorney never provided a relevant and available psychiatrist record to the Psychological Evaluator in the EVALUATION REPORT in pages 64 through 70. From pages 191 through 197. It is evident in the sealed report that the sources of information happen to be the clinical interview with defendant on November 19, 2018, mental status exam, court order, letter from Brian's attorney Scott Albrecht, copy of arrest warrant, copy of criminal complaint, copy of Appellant's medical records ONLY FROM "Carilion Clinic" and "Martinsville Memorial Hospital". However, the Medical Records that are DIRECTLY RELEVANT, yes directly relevant with Brian's indecent exposure charge was the "PIEDMONT COMMUNITY SERVICES" evaluation from Dr. Conrad

Daum on October 24, 2018, a month prior to the Evaluation for sanity. Around that time, any Carbon Monoxide that Appellant could have had in his body would likely be out of his system by that time. The evaluator named "Dr. Rebecca Loehrer" (Page 17, EVALUATION ORDER) had never reviewed over a relevant diagnosis and evaluation by Dr. Conrad Daum, a forensic Psychiatrist after the Court had ordered the mental evaluation on October 15, 2018. Still, it seems funny that the Piedmont Community Services report was never reviewed by Dr. Rebecca Loehrer. The date of evaluation was November 19, 2018, date of report was November 26, 2018. So, the evaluator had a month for Scott Albrecht, Brian's court appointed defense attorney to provide that report to her as part of the Court Order.

Again, the instructions said in the Court Order that "The defendant's attorney must provide any available psychiatric records and other information that are deemed relevant within 96 hours of the issuance of this order. Va. Code § 19.2-169.1(C)." The lawyer should have provided that document from Piedmont Community Services psychiatrist as it had relevant information and relevant mental health statuses of Appellant prior to the final report of that sanity evaluation. Ineffective assistance of counsel right from the very beginning and in sheer non-compliance with the General District Court's order. So, the sanity evaluation may be erred as well and should have been redone.

Then there was of course Appellant's filed Pro Se motion entitled "MOTION - FAX MOT TO DISMISS", Page 403. That would have been a great opportunity for the defense attorney to adopt that motion and ask the Court to hold an evidentiary hearing over it, the attorney failed to do so. Because of that the Appellant never had a chance to

try to have the case dismissed due to lack of evidence as to being "medically and psychologically cleared" as was outlined in the affidavit of the "CRIMINAL COMPLAINT" on Page 6. Then of course there was lack of evidence of intent that the Commonwealth had of Appellant when the CRIMINAL COMPLAINT had said "Mr. Hill's clothing was located in his bag." There is no mentioning of anything else in that "bag" they obtained from Mr. Hill. No plans, no documents or papers, no medical devices and no medications, no electronic devices other than the camera. Nothing other than what they claimed to have been found. So, for "whatever reason", Appellant was naked out there for whatever reason he had. The Commonwealth presented no evidence as to any plan or intent of Appellant.

Again, as argued in the last Assignment of Error, The General District Court did not hear, however, any evidence of Appellant having his dominant theme, or purpose being an appeal to the prurient interest in sex. For example, there was no evidence of Appellant making any sexual remarks, being aroused, masturbating, or enjoying his conduct, sexually or otherwise. If a person was purposing to expose himself in public because he or she found it sexually arousing, it would be logical that he or she would pick a place and time where he or she would expect to encounter lots of members of the public. Appellant did not do that. Rather, he was running around between midnight and 3:00 a.m. and the witnesses to his nudity were few. Hence, the statements Appellant made to police and his conduct both indicate that, in the light most favorable to the Commonwealth, he was naked in public while having a psychiatric episode, but without the intent necessary to commit indecent exposure under Virginia law. Consequently, the

General District Court erred, as a matter of law, when it found that Appellant had violated Virginia Code § 18.2-387 by committing the Virginia state law offense of indecent exposure as per Virginia Code § 18.2-387. There was no evidence of any intent. No notes, or any evidence showing what could have proven the intent to commit the offense. Again, Virginia Code § 18.2-387 said in part (partial citation omitted) said that "Every person who **intentionally makes an obscene display** or exposure of his person, or the private parts thereof, in any public place…" Yes, it says the word "intentionally". Just somebody being found naked alone does not prove intent. The mere exposure of a naked body is not obscene. See Price v. Commonwealth, 201 S.E.2d 798, 800 (Va. 1974) (finding that `[a] portrayal of nudity is not, as a matter of law, a sufficient basis for finding that [it] is obscene')." Romick v. Commonwealth, No. 1580-12-4, 2013 WL 6094240, at *2 (Va. Ct. App. Nov. 19, 2013)(unpublished)(internal citations reformatted). The mere exposure of a naked body does not prove intent alone. Officers did not know the exact reason why Appellant was out there, except what Appellant had told the Officer as outlined in the CRIMINAL COMPLAINT. Appellant said to the officer that he was afraid his family member would be harmed if he had not done the taking photos of himself naked. The mere exposure of a naked body in a photograph is not obscene, does not prove intent alone. The Commonwealth had a lack of evidence and would not have succeeded in even a Jury Trial had counsel clearly been effective. Proving that Officer Robert Jones who charged Brian with indecent exposure was incorrect or was clueless on Brian not being medically cleared and was discharged while having Tachycardia readings of resting blood pulse, usually exhibited by those suffering

under Carbon Monoxide gas exposure, Carbon Monoxide Poisoning (pages 155 through 157). In pages 127 through 130, citing "Carbon monoxide poisoning, By Brian David Hill's Grandparents, Stella and Ken Forinash on March 10, 2019", Pete Compton the chimney expert had saw the residue evidence of carbon monoxide in the home of Appellant, but this was not discovered by Appellant until months after Appellant was convicted in General District Court. Yes, the attorney could argue in his defense that even though he didn't have the levels of Carbon Monoxide Poisoning and that was why he never pursued that defense, but nevertheless it shows that there was a lot of medical questions never answered because Appellant was only present at the Hospital for 1 hour or less, no laboratory tests ever done, was released without his diabetic blood sugar ever checked. He could have put his clothes back on but cannot if his diabetic blood sugar was low. He cannot have possibly been medically cleared and thus factually Brian Hill can never be held culpable for his charge of indecent exposure. Pete Compton was also briefly mentioned in pages 298 in the "Motion to Request Substitute Counsel". Also, in pages 289 and 290 in "Motion to Request an Insanity Defense".

The Commonwealth clearly had a lack of evidence of intent and Brian was never medically cleared as Medical clearance means a physician or other health care provider has determined that a person is medically stable and ready for referral to the designated mental health professional. That is the definition per-se. However, the tachycardia readings had not gone down from each blood pulse check. The diabetic blood glucose/sugar was never checked before Brian was discharged to police/jail. Brian was not medically cleared and no credible Medical-Doctor would have cleared Appellant to

have faced indecent exposure charge without conducting laboratory tests or even drug tests, even a Breathalyzer. None of those tests were ever preformed. Brian could have been high on anything like alcohol. Fentanyl, methamphetamines, any drug at all but the Officers refused to have done the very drug test to find any drugs or gases or anything in his system. Pages 4 and 5 show the end result of the General District Court trial. It shows says "133 BLOOD TEST FEE" but nothing on the entry. So, there was never any drug test when Appellant could have been drugged or as high as a kite prior to being Hospitalized and arrested. None of that will ever be known because he was never laboratory tested. Appellant should not have been medically cleared and was not factually medically cleared. Appellant's counsel was ineffective because he didn't even push for a motion to dismiss to bring up the factual/elemental defects with the arrest and affidavit with the CRIMINAL COMPLAINT.

CONCLUSION

Appellant assert 5 Assignments of Error as to why Petition for Appeal should be granted for the Constitutional rights and legal errors involved.

For the foregoing reasons stated above, the Appellant urges this Court to grant this Petition for Appeal and allow the Appellant to perfect his appeal if it is so ordered by this Court in pushing for an order and remand to vacate the final order/judgment (See Pages 434 and 435) convicting Appellant of Indecent Exposure on November 18, 2021 in the Trial Court.

REQUEST FOR ORAL ARGUMENT

As this appeal raises important constitutional and evidence issues which were believed overlooked, due process of law which could have broad effects on those accused of state crimes, the Appellant requests oral argument. Appellant also requests that new counsel since "JOHN IRA, IV, JONES" who was appointed to represent Appellant had refused to consult Appellant and therefore requests new counsel be appointed to present oral argument.

Respectfully Submitted on March 25, 2021,

BRIAN DAVID HILL
Pro Se

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CERTIFICATE OF COMPLIANCE

1. This brief complies with type-volume limits (word limit 12,300), excluding the parts of the document exempted by Rule 5A:12(e) (cover page, table of contents, table of authorities, and certificate):

[X] this brief contains [*12,215*] words.

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Brian D. Hill
Signed

Brian D. Hill

Dated: March 25, 2021

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Pro Se Appellant

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 25th day of March, 2021, I caused this "PETITION FOR APPEAL OF APPELLANT" to be printed then hand delivered to the Commonwealth of Virginia and City of Martinsville through the Commonwealth Attorney's Office of Martinsville City and the original was filed with the Clerk of the Court of Appeals of Virginia by Virginia Court eFiling system (VACES) through Assistant/Filing-Representative Roberta Hill which shall satisfy proof of service as required by Rule 5A:12(b) stating that "*a copy of the petition must be mailed or delivered to the Commonwealth's attorney or the city, or county, or town attorney, as the case may be.*" And the proof that such pleading was delivered will be attached to this "Petition for Appeal" shall satisfy the proof of service was required by Rule 5A:12(b):

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

Counsel for Appellee

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

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

Brian D. Hill
Signed
Brian D. Hill

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Founder of USWGO Alternative News
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Pro Se Appellant

RECEIVED A DOCUMENT FROM BRIAN HILL:

Allyson Smith
NAME

03/25/21
DATE

Commonwealth v. **Brian Hill**